

# IDAHO ADMINISTRATIVE BULLETIN

October 3, 2018 – Vol. 18-10

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# IDAHO ADMINISTRATIVE BULLETIN

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# PREFACE

The Idaho Administrative Bulletin is an electronic-only, online monthly publication of the Office of the Administrative Rules Coordinator, Department of Administration, that is published pursuant to Section 67-5203, Idaho Code. The Bulletin is a compilation of all official rulemaking notices, official rule text, executive orders of the Governor, and all legislative documents affecting rules that are statutorily required to be published in the Bulletin. It may also include other rules-related documents an agency may want to make public through the Bulletin.

State agencies are required to provide public notice of all rulemaking actions and must invite public input. This is done through negotiated rulemaking procedures or after proposed rulemaking has been initiated. The public receives notice that an agency has initiated proposed rulemaking procedures through the Idaho Administrative Bulletin and a legal notice (Public Notice of Intent) that publishes in authorized 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 may 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 - Proposed Rule” for each proposed rule that is published in the Bulletin.

Once the comment period closes, the agency considers fully all comments and information submitted regarding the proposed rule. Changes may be made to the proposed rule at this stage of the rulemaking, but changes must be based on comments received and must be a “logical outgrowth” of the proposed rule. The agency may now adopt and publish the pending rule. A pending rule is “pending” legislative review for final approval. The pending rule is the agency’s final version of the rulemaking that will be forwarded to the legislature for review and final approval. 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 identified by the calendar year and issue number. For example, Bulletin **13-1** refers to the first Bulletin issued in calendar year **2013**; Bulletin **14-1** refers to the first Bulletin issued in calendar year **2014**. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. **13-1** refers to January 2013; Volume No. **13-2** refers to February 2013; and so forth. Example: The Bulletin published in January 2014 is cited as Volume **14-1**. The December 2015 Bulletin is cited as Volume **15-12**.

## RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE

The **Idaho Administrative Code** is an electronic-only, online compilation of all final and enforceable administrative rules of the state of Idaho that are of full force and effect. Any temporary rule that is adopted by an agency and is of force and effect is codified into the Administrative Code upon becoming effective. All pending rules that have been approved by the legislature during the legislative session as final rules and any temporary rules that are extended supplement the Administrative Code. These rules are codified into the Administrative Code upon becoming effective. Because proposed and pending rules are not enforceable, they are published in the Administrative Bulletin only and cannot be codified into the Administrative Code until approved as final.

To determine if a particular rule remains in effect or whether any amendments have been made to the rule, refer to the **Cumulative Rulemaking Index**. Link to it on the Administrative Rules homepage at [adminrules.idaho.gov](http://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 distinct rulemaking actions: negotiated, proposed, temporary, pending and final rulemaking. Not all rulemakings incorporate or require all 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 must, when feasible, engage in negotiated rulemaking at the beginning of the process to facilitate consensus building. 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 rule.

## **1. NEGOTIATED RULEMAKING**

Negotiated rulemaking is a process in which all interested persons and the agency seek consensus on the content of a rule through dialogue. Agencies are required to conduct negotiated rulemaking whenever it is feasible to do so. The agency files a “Notice of Intent to Promulgate - Negotiated Rulemaking” for publication in the Administrative Bulletin inviting interested persons to contact the agency if interested in discussing the agency’s intentions regarding the rule changes. This process is intended to result in the formulation of a proposed rule and the initiation of regular rulemaking procedures. One result, however, may also be that regular (proposed) rulemaking is not initiated and no further action is taken by the agency.

## **2. 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 very specific information regarding the rulemaking including all relevant state or federal statutory authority occasioning the rulemaking, a non-technical description of the changes being made, any associated costs, guidance on how to participate through submission of written comments and requests for public hearings, and the text of the proposed rule in legislative format.

## **3. 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 these criteria, and with the Governor’s approval, the agency may adopt and make a temporary rule effective prior to receiving legislative authorization and without allowing for any public input. The law allows an agency to make a temporary rule immediately effective upon adoption. 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.

## **4. 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 statement giving the reasons for adopting the rule, a statement regarding when the rule becomes effective, a description of how it differs from the proposed rule, and identification of any fees being imposed or changed.

Agencies are required to republish the text of the pending 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.

## **5. FINAL RULEMAKING**

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

## 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 schematic. 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 that are further subdivided into 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.

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

**“05.”** refers to Title **05**, which is the Department of Administration’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. Each rulemaking that is filed with the Coordinator is assigned a **“DOCKET NUMBER.”** The docket number is a series of numbers separated by a hyphen **“-”**, (**38-0501-1401**). Rulemaking dockets are published sequentially by IDAPA number (the two-digit agency code) in the Bulletin. The following example is a breakdown of a typical rule docket number:

### **“DOCKET NO. 38-0501-1401”**

**“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**).

**“1401”** 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 2014**. A subsequent rulemaking on this same rule chapter in calendar year 2014 would be designated as **“1402”**. The docket number in this scenario would be 38-0501-**1402**.

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)**

**BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2018**

<b>Vol. No.</b>	<b>Monthly Issue of Bulletin</b>	<b>Closing Date for Agency Filing</b>	<b>Publication Date</b>	<b>21-day Comment Period End Date</b>
18-1	January 2018	<b>*November 24, 2017</b>	January 3, 2018	January 24, 2018
18-2	February 2018	January 5, 2018	February 7, 2018	February 28, 2018
18-3	March 2018	February 2, 2018	March 7, 2018	March 28, 2018
18-4	April 2018	March 2, 2018	April 4, 2018	April 25, 2018
18-5	May 2018	April 6, 2018	May 2, 2018	May 23, 2018
18-6	June 2018	May 4, 2018	June 6, 2018	June 27, 2018
18-7	July 2018	June 8, 2018	July 4, 2018	July 25, 2018
18-8	August 2018	July 6, 2018	August 1, 2018	August 22, 2018
18-9	September 2018	August 3, 2018	September 5, 2018	September 26, 2018
18-10	October 2018	<b>**August 31, 2018</b>	October 3, 2018	October 24, 2018
18-11	November 2018	October 5, 2018	November 7, 2018	November 28, 2018
18-12	December 2018	November 2, 2018	December 5, 2018	December 26, 2018

**BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2019**

<b>Vol. No.</b>	<b>Monthly Issue of Bulletin</b>	<b>Closing Date for Agency Filing</b>	<b>Publication Date</b>	<b>21-day Comment Period End Date</b>
19-1	January 2019	<b>*November 30, 2018</b>	January 2, 2019	January 23, 2019
19-2	February 2019	January 4, 2019	February 6, 2019	February 27, 2019
19-3	March 2019	February 8, 2019	March 6, 2019	March 27, 2019
19-4	April 2019	March 8, 2019	April 3, 2019	April 24, 2019
19-5	May 2019	April 5, 2019	May 1, 2019	May 22, 2019
19-6	June 2019	May 3, 2019	June 5, 2019	June 26, 2019
19-7	July 2019	June 7, 2019	July 3, 2019	July 24, 2019
19-8	August 2019	July 5, 2019	August 7, 2019	August 28, 2019
19-9	September 2019	August 2, 2019	September 4, 2019	September 25, 2019
19-10	October 2019	<b>**August 30, 2019</b>	October 2, 2019	October 23, 2019
19-11	November 2019	October 4, 2019	November 6, 2019	November 27, 2019
19-12	December 2019	November 1, 2019	December 4, 2019	December 25, 2018

***\*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.***

<b>ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBERS</b>	
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<b>IDAPA 38</b>	<b>Administration</b> , Department of
<b>IDAPA 44</b>	<b>Administrative Rules Coordinator</b> , Office of the
<b>IDAPA 02</b>	<b>Agriculture</b> , Idaho Department of
<b>IDAPA 40</b>	<b>Arts</b> , Idaho Commission on the
<b>IDAPA 03</b>	<b>Athletic Commission</b>
<b>IDAPA 04</b>	<b>Attorney General</b> , Office of the
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<b>IDAPA 51</b>	<b>Beef Council</b> , Idaho
<b>IDAPA 07</b>	<b>Building Safety</b> , Division of Electrical Board (07.01) Plumbing Board (07.02) Building Codes & Manufactured Homes (07.03) Building Code Advisory Board (07.03.01) Public Works Contractors License Board (07.05) Uniform School Building Safety (07.06) HVAC Board (07.07)
<b>IDAPA 43</b>	<b>Canola and Rapeseed Commission</b> , Idaho
<b>IDAPA 55</b>	<b>Career-Technical Education</b> , Division of
<b>IDAPA 28</b>	<b>Commerce</b> , Idaho Department of
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<b>ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBERS</b>	
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<b>IDAPA 56</b>	<b>Rangeland Resources Commission, Idaho</b>
<b>IDAPA 33</b>	<b>Real Estate Commission, Idaho</b>
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<b>IDAPA 54</b>	<b>Treasurer, Office of the State</b>
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**IDAPA 02 – DEPARTMENT OF AGRICULTURE**

**02.04.14 – RULES GOVERNING DAIRY BYPRODUCT**

**DOCKET NO. 02-0414-1801**

**(SECOND) NOTICE OF INTENT TO PROMULGATE RULES – NEGOTIATED RULEMAKING**

**AUTHORITY:** In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Section 37-603, Idaho Code.

**MEETING SCHEDULE:** Additional public meetings on the negotiated rulemaking will be held as follows:

<b>PUBLIC MEETINGS - NEGOTIATED RULEMAKING</b>
--

<b>2nd Tuesday of Each Month – 10:00 a.m. (MST)</b>
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<i>1st meeting will occur on Tuesday, November 13 at 10:00 a.m.</i>
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**Idaho State Department of Agriculture  
2270 Old Penitentiary Road  
Boise, ID 83712**

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

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

Interested members of the public who wish to participate must submit any written comments, questions, recommendations, or ideas to the Idaho State Department of Agriculture addressed to Dr. Scott Leibsle, Deputy Administrator, Division of Animal Industries. Individuals may also attend the public meeting to be conducted on the above date during which the Idaho State Department of Agriculture will allow oral comments or presentations to be made.

Upon conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusion reached during the negotiated rulemaking will be addressed in a written summary and made available on the agency website.

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

This rule change is a result of two petitions submitted to amend this rule. The first petition, received from the Milk Producers of Idaho and Idaho Farm Bureau, seeks to remove the sunset clause from Section 004.31 and allow dairy producers the option to select either phosphorus indexing or phosphorus threshold to monitor dairy nutrient management. The second petition, received from the Idaho Dairymen’s Association, seeks for a margin of error to be provided for in the enforcement standards for phosphorus levels permitted in the soil. The margin of error is meant to compensate for the variability of currently laboratory soil testing methods. Incorporation of the NRCS Nutrient Management Code 590 reference document for phosphorus regulation will also be addressed in this negotiation.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES:** For assistance on technical questions concerning this negotiated rulemaking or to obtain a copy of the preliminary draft of the text of the proposed rule, contact Dr. Scott Leibsle, Deputy Administrator – Division of Animal Industries at (208) 332-8540. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, and additional meeting information can be found on the ISDA web site [www.agri.idaho.gov](http://www.agri.idaho.gov).

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to Dr. Scott Leibsle.

Dated this 4th day of September, 2018.

Brian J. Oakey, Deputy Director  
Idaho State Department of Agriculture  
Phone: (208) 332-8503 / Fax: (208) 334-2170

2270 Old Penitentiary Rd.  
Boise, Idaho 83701  
P.O. Box 790

**IDAPA 07 – DIVISION OF BUILDING SAFETY**  
**07.02.06 – RULES CONCERNING IDAHO STATE PLUMBING CODE**  
**DOCKET NO. 07-0206-1702**  
**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 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 or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 54-2606, 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 1, 2018 Idaho Administrative Bulletin, [Vol. 18-8, pages 13-19](#).

**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 John Nielsen, Plumbing Program Manager, at (208) 332-7112.

Dated this 30th day of August, 2018.

Ron Whitney, Deputy Administrator  
Division of Building Safety  
1090 E. Watertower St., Ste. 150  
P. O. Box 83720  
Meridian, ID 83642  
Phone: (208) 332-7150  
Fax: (877) 810-2840

## IDAPA 07 – DIVISION OF BUILDING SAFETY

### 07.03.01 – RULES OF BUILDING SAFETY

#### DOCKET NO. 07-0301-1801

### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 39-4107 and 39-4109, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

Recent amendments to Sections 39-4109 and 39-4116, Idaho Code, remove part IV as it pertains to energy conservation from the adopted version of the International Residential Code (IRC). This rulemaking will implement those amendments by removing IDAPA 07.03.01.004.02.p. (Chapter 11 Energy Efficiency) from the adopted version of the IRC and references to Chapter 11 from the adopted version of the International Energy Conservation Code (IECC).

Table C404.5.1 of the adopted version of the IECC identifies maximum piping lengths for hot water piping from a hot water source to the termination of the fixture supply pipe. The maximum lengths for public lavatory faucets are unnecessarily short. The minimal energy savings that result from these short maximum piping lengths do not justify the difficulty and cost of creating design and construction solutions. This rulemaking will increase the maximum piping lengths for public lavatory faucets in table C404.5.1. The proposed maximum piping lengths take into consideration energy savings while reducing cost and providing for a more efficient installation.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 4, 2018 Idaho Administrative Bulletin, [Vol. 18-4, pages 14-15](#).

**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:

This rulemaking will implement recent amendments to Sections 39-4109 and 39-4116, Idaho Code, by removing IDAPA 07.03.01.004.02.p. (Chapter 11 Energy Efficiency) from the adopted version of the IRC and references to Chapter 11 from the adopted version of the IECC. This rulemaking will also increase the maximum piping lengths for public lavatory faucets in table C404.5.1 of the adopted version of the IECC.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jeff Egan, Building Program Manager, at (208) 481-1366.

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 24, 2018.

Dated this 28th day of August, 2018.

Ron Whitney, Deputy Administrator – Administration  
Division of Building Safety  
1090 E. Watertower St., Ste. 150  
P. O. Box 83720  
Meridian, ID 83642  
Phone: (208) 332-7150  
Fax: (877) 810-2840

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0301-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**004. ADOPTION AND INCORPORATION BY REFERENCE.**

Under the provisions of Section 39-4109, Idaho Code, the codes enumerated in this Section are hereby adopted and incorporated by reference into IDAPA 07.03.01, “Rules of Building Safety,” Division of Building Safety. Pursuant to Section 39-4109, Idaho Code, the effective date of any edition of the codes adopted in this Section, or any amendments identified thereto, shall be January 1 of the succeeding year following legislative approval of the rulemaking establishing the edition or amendment. Copies of these documents may be reviewed at the office of the Division of Building Safety. The referenced codes may be obtained from International Code Council, 5360 Workman Mill Road, Whittier, California 90601-2298 or the International Code Council at <http://www.iccsafe.org>. (3-20-14)

**01. International Building Code.** 2015 Edition with the following amendments: (3-29-17)

**a.** Delete section 305.2.3 and replace with the following: Twelve (12) or fewer children in a dwelling unit. A facility such as the above within a dwelling unit and having twelve (12) or fewer children receiving such day care shall be classified as a Group R-3 occupancy or shall comply with the International Residential Code. (3-20-14)

**b.** Delete section 308.6.4 and replace with the following: Persons receiving care in a dwelling unit. A facility such as the above within a dwelling unit and having twelve (12) or fewer children receiving day care or having five (5) or fewer persons receiving custodial care shall be classified as a Group R-3 occupancy or shall comply with the International Residential Code. (3-20-14)

**c.** Delete section 310.5 and replace with the following: Residential Group R-3. Residential Group R-3 occupancies where the occupants are primarily permanent in nature and not classified as Group R-1, R-2, R-4, E or I, including: (3-29-17)

- i. Buildings that do not contain more than two (2) dwelling units; (3-20-14)
- ii. Boarding houses (nontransient) with sixteen (16) or fewer occupants; (3-20-14)
- iii. Boarding houses (transient) with ten (10) or fewer occupants; (3-20-14)
- iv. Care facilities that provide accommodations for five (5) or fewer persons receiving care; (3-20-14)
- v. Congregate living facilities (nontransient) with sixteen (16) or fewer occupants; (3-20-14)
- vi. Congregate living facilities (transient) with ten (10) or fewer occupants; or (3-20-14)
- vii. Dwelling units providing day care for twelve (12) or fewer children. (3-20-14)
- viii. Lodging houses with five (5) or fewer guest rooms. (3-29-17)

**d.** Delete section 310.5.1 and replace with the following: Care facilities within a dwelling. Care

facilities for twelve (12) or fewer children receiving day care or for five (5) or fewer persons receiving care that are within a single-family dwelling are permitted to comply with the International Residential Code. (3-20-14)

**e.** Delete the last paragraph of section 2107.2.1 Lap Splices, and replace with the following: In regions of moment where the design tensile stresses in the reinforcement are greater than eighty percent (80%) of the allowable steel tension stress, FS, the lap length of splices shall be increased not less than fifty percent (50%) of the minimum required length, but need not be greater than 72 db. Other equivalent means of stress transfer to accomplish the same fifty percent (50%) increase shall be permitted. Where epoxy coated bars are used, lap length shall be increased by fifty percent (50%). (3-28-18)

**f.** Add footnote (f) in the header row of the table column labeled “Drinking Fountains” of Table 2902.1 Minimum Number of Required Plumbing Fixtures, and add footnote (f) under Table 2902.1 to state the following: Drinking fountains are not required for an occupant load of thirty (30) or fewer. (3-29-17)

**g.** Delete footnote (e) contained under Table 2902.1 Minimum Number of Required Plumbing Fixtures and replace with the following: For business occupancies, excluding restaurants, and mercantile occupancies with an occupant load of thirty (30) or fewer, service sinks shall not be required. (3-29-17)

**02. International Residential Code.** 2012 Edition with the following amendments: (3-20-14)

**a.** Delete exception No. 1 contained under IRC section R101.2 - Scope. (3-20-14)

**b.** Delete exception No. 2 contained under IRC section R101.2 - Scope, and replace with the following: Owner-occupied lodging houses with five (5) or fewer guestrooms shall be permitted to be constructed in accordance with the International Residential Code for One- and Two-family Dwellings. (4-11-15)

**c.** Delete item No. 7 contained under the “Building” subsection of IRC section R105.2 - Work exempt from permit, and replace with the following: Prefabricated swimming pools that are not greater than four (4) feet (one thousand, two hundred nineteen (1219) mm) deep. (4-7-11)

**d.** Add the following item No. 11 at the end of the “Building” subsection of IRC section R105.2 - Work exempt from permit: Flag poles. (3-20-14)

**e.** Delete IRC section R109.1.3 and replace with the following: Floodplain inspections. For construction in areas prone to flooding as established by Table R301.2(1), upon placement of the lowest floor, including basement, the building official is authorized to require submission of documentation of the elevation of the lowest floor, including basement, required in section R322. (3-29-10)

**f.** IRC Table R302.1(1) Exterior Walls -- delete Table R302.1(1) and replace with the following:

**TABLE R302.1(1)**  
**EXTERIOR WALLS**

EXTERIOR WALL ELEMENT		MINIMUM FIRE-RESISTANCE RATING	MINIMUM FIRE SEPARATION DISTANCE
Walls	Fire-resistance rated	1 hour-tested in accordance with ASTM E 119 or UL263 with exposure from both sides	< 3 feet
	Not fire-resistance rated	0 hours	≥ 3 feet
Projections	Fire-resistance rated	1 hour on the underside	≥ 2 feet to < 3 feet
	Not fire-resistance rated	0 hours	≥ 3 feet

EXTERIOR WALL ELEMENT		MINIMUM FIRE-RESISTANCE RATING	MINIMUM FIRE SEPARATION DISTANCE
Openings in Walls	Not allowed	N/A	< 3 feet
	25% maximum of wall area	0 hours	≥ 3 feet to < 5 feet
	Unlimited	0 hours	5 feet
Penetrations	All	Comply with Section R302.4	< 3 feet
		None required	≥ 3 feet

For SI: 1 foot = 304.8 mm.  
 N/A = Not Applicable

(4-11-15)

**g.** Delete the exception contained under IRC section R302.2 -- Townhouses, and replace with the following two (2) exceptions: (3-25-16)

**i.** When provided with an automatic fire sprinkler system per section R313.1, a common one (1)-hour fire-resistance-rated wall assembly tested in accordance with ASTM E 119 or UL 263 is permitted for townhouses if such walls do not contain plumbing or mechanical equipment, ducts, or vents in the cavity of the common wall. The wall shall be rated for fire exposure from both sides, and shall extend to and be tight against exterior walls and the underside of the roof sheathing. Penetrations of electrical outlet boxes shall be in accordance with Section R302.4. (3-25-16)

**ii.** Two (2) one (1)-hour fire-resistance-rated wall assemblies (as specified in Section R302.1) or a common two (2)-hour fire-resistance-rated wall assembly tested in accordance with ASTM E 119 or UL 263 are permitted for townhouses. If two (2) one (1)-hour fire-resistance-rated walls are used, plumbing and electrical installations within the wall cavity shall conform to fire-resistance penetration requirements in accordance with section R302.4 through R302.4.2 for each of the two (2) one (1)-hour rated walls penetrated. The two (2)-hour fire-resistance-rated common wall shall not contain plumbing or mechanical equipment, ducts or vents within its wall cavity. The wall shall be rated for fire exposure from both sides, and shall extend to and be tight against the exterior walls and the underside of the roof sheathing. Penetrations of electrical outlet boxes shall be in accordance with Section R302.4. (3-25-16)

**h.** Delete IRC section R303.4 and replace with the following: R303.4 Mechanical Ventilation. Dwelling units shall be provided with whole-house mechanical ventilation in accordance with Section M1507.3

Exception: Where the air infiltration rate of a dwelling unit is equal to 5 air changes per hour or greater when tested with a blower door at a pressure of 0.2 inch w.c. (50 pa) in accordance with Section N1102.4.1.2. (4-11-15)

**i.** Delete the exception contained under IRC section R313.1 -- Townhouse automatic fire sprinkler systems, and replace with the following: Exception: Automatic residential fire sprinkler systems shall not be required in townhouses where either two (2) one (1)-hour fire-resistance-rated walls or a common two (2)-hour fire-resistance rated wall, as specified in exception 2 of section R302.2 is installed between dwelling units or when additions or alterations are made to existing townhouses that do not have an automatic residential fire sprinkler system installed. (3-25-16)

**j.** Delete IRC section R313.2. (3-29-10)

**k.** Add the following to IRC section R315.3 - Where required in existing dwellings: Exceptions: 1. Work involving the exterior surfaces of dwellings, such as, but not limited to, replacement of roofing or siding, or the addition or replacement of windows or doors, or the addition of a porch or deck or electrical permits, are exempt from the requirements of this section; and 2. Installation, alteration or repairs of noncombustion plumbing or mechanical systems are exempt from the requirements of this section. (3-20-14)

- l.** Delete IRC section R322.1.10. (3-29-10)
- m.** Delete IRC section R322.2.2 subparagraph 2.2, and replace with the following: The total net area of all openings shall be at least one (1) square inch (645 mm<sup>2</sup>) for each square foot (0.093 m<sup>2</sup>) of enclosed area, or the opening shall be designed and the construction documents shall include a statement that the design and installation of the openings will provide for equalization of hydrostatic flood forces on exterior walls by allowing the automatic entry and exit of floodwaters. (3-20-14)
- n.** Delete IRC section R501.3 and its exceptions. (3-20-14)
- o.** Delete IRC section R602.10 and replace with the following: Wall bracing. Buildings shall be braced in accordance with this section or, when applicable section R602.12, or the most current edition of APA System Report SR-102 as an alternate method. Where a building, or portion thereof, does not comply with one (1) or more of the bracing requirements in this section, those portions shall be designated and constructed in accordance with section R301.1. (3-20-14)
- p.** *Chapter 11 [RE] Energy Efficiency—The following sections and tables of chapter 11 shall be amended in accordance with the requirements contained below in Subsection 004.04 of these rules which correspond to the appropriate section: (3-20-14)*

  - i. Table N1102.1.1 (Table R402.1.1)—Insulation and Fenestration Requirements by Component; (3-20-14)*
  - ii. Table N1102.1.3 (Table R402.1.3)—Equivalent U-Factors; (3-20-14)*
  - iii. Table N1102.2.6 (Table R402.2.6)—Steel Frame Ceiling, Wall and Floor Insulation (R Value); (3-20-14)*
  - iv. Section N1102.4.1 (R402.4.1) Building Thermal Envelope; (3-20-14)*
  - v. Section N1102.4.1.1 (R402.4.1.1)—Insulation; (3-20-14)*
  - vi. Table N1102.4.1.1 (Table R402.4.1.1)—Air Barrier and Insulation Installation; (3-20-14)*
  - vii. Section N1102.4.1.2 (R402.4.1.2) Testing Option; (3-20-14)*
  - viii. Add Section N1102.4.1.3 (R402.4.1.3)—Visual Inspection Option; (3-20-14)*
  - ix. Add Section N1102.6 (R402.6)—Residential Log Home Thermal Envelope; (3-20-14)*
  - x. Add Table N1102.6 (Table R402.6)—Log Home Prescriptive Thermal Envelope Requirements by Component; and (3-20-14)*
  - xi. Section N1104.1 (R404.1)—Lighting Equipment. (3-20-14)*
- q.** Add an Appendix R, titled Tiny Homes to include the following provisions: (3-28-18)

  - i.** Section AR101 Scope. This appendix shall be applicable to tiny houses used as single dwelling units. Tiny houses shall comply with this code except as otherwise stated in this appendix. (3-28-18)
  - ii.** Section AR102 Definitions. The following words and terms shall, for the purposes of this appendix, have the meanings shown herein. Refer to Chapter 2 of this code for general definitions. (3-28-18)

    - (1) Tiny House. A dwelling that is four hundred (400) square feet (thirty-seven (37) m) or less in floor area excluding lofts. (3-28-18)
    - (2) Escape and Rescue Roof Access Window. A skylight or roof window designed and installed to

satisfy the emergency escape and rescue opening requirements in Section R310. (3-28-18)

(3) Landing Platform. A landing provided as the top step of a stairway accessing a loft. (3-28-18)

(4) Loft. A floor level located more than thirty (30) inches (762 mm) above the main floor and open to it on at least one (1) side with a ceiling height of less than six (6) feet eight (8) inches (2032 mm), used as a living or sleeping space. (3-28-18)

(iii) Section AR103 Minimum Ceiling Height. Habitable space and hallways in tiny houses shall have a ceiling height of not less than six (6) feet eight (8) inches (2032 mm). Bathrooms, toilet rooms, and kitchens shall have a ceiling height of not less than six (6) feet four (4) inches (1930 mm). Obstructions shall not extend below these minimum ceiling heights including beams, girders, ducts, lighting and other obstructions. Exception: Ceiling heights in lofts are permitted to be less than six (6) feet eight (8) inches (2032 mm) (3-28-18)

iv. Section AR104 Lofts. (3-28-18)

(1) AR104.1 Minimum loft area and dimensions. Lofts used as a sleeping or living space shall meet the minimum area and dimension requirements of Sections AR104.1.1 through AR104.1.3. (3-28-18)

(a) AR104.1.1 Minimum area. Lofts shall have a floor area of not less than thirty-five (35) square feet (3.25 m). (3-28-18)

(b) AR104.1.2 Minimum dimensions. Lofts shall be not less than five (5) feet (1524 mm) in any horizontal dimension. (3-28-18)

(c) AR104.1.3 Height effect on loft area. Portions of a loft with a sloping ceiling measuring less than three (3) feet (914 mm) from the finished floor to the finished ceiling shall not be considered as contributing to the minimum required area for the loft. Exception: Under gable roofs with a minimum slope of 6:12, portions of a loft with a sloping ceiling measuring less than 16 inches (406 mm) from the finished floor to the finished ceiling shall not be considered as contributing to the minimum required area for the loft. (3-28-18)

(2) AR104.2 Loft Access. The access to and primary egress from lofts shall be any type described in Sections AR104.3 through AR104.6. (3-28-18)

(3) AR104.3. Stairways. Stairways accessing lofts shall comply with this code or with Sections AR104.3.1 through AR104.3.5. (3-28-18)

(a) AR104.3.1 Width. Stairways accessing a loft shall not be less than seventeen (17) inches (432 mm) in clear width at or above the handrail. The minimum width below the handrail shall be not less than twenty (20) inches (508 mm). (3-28-18)

(b) AR104.3.2 Headroom. The headroom in stairways accessing a loft shall be not less than six (6) feet two (2) inches (1880 mm), as measured vertically, from a sloped line connecting the tread or landing platform nosings in the middle of their width. Exception: The headroom for a landing platform, where stairways access lofts, shall be not less than four (4) feet six (6) inches (1372 mm). (3-28-18)

(c) AR104.3.3 Treads and Risers. Risers for stairs accessing a loft shall be not less than seven (7) inches (178 mm) and not more than twelve (12) inches (305 mm) in height. Tread depth and riser height shall be calculated in accordance with one of the following formulas: (3-28-18)

(i) The tread depth shall be twenty (20) inches (508 mm) minus  $\frac{4}{3}$  of the riser height, or (3-28-18)

(ii) The riser height shall be fifteen (15) inches (381 mm) minus  $\frac{3}{4}$  of the tread depth. (3-28-18)

(d) AR104.3.4 Landing Platforms. The top tread and riser of stairways accessing lofts shall be constructed as a landing platform where the loft ceiling height is less than six (6) feet two (2) inches (1880 mm) where the stairway meets the loft. The landing platform shall be eighteen (18) inches to twenty-two (22) inches (457

to 559 mm) in depth measured from the nosing of the landing platform to the edge of the loft, and sixteen (16) to eighteen (18) inches (406 to 457 mm) in height measured from the landing platform to the loft floor. (3-28-18)

(e) AR104.3.5 Stairway Handrails. Handrails shall comply with Section R311.7.8. (3-28-18)

(f) AR104.3.6 Stairway Guards. Guards at open sides of stairways shall comply with Section R312.1. (3-28-18)

(4) AR104.4 Ladders. Ladders accessing lofts shall comply with Sections AR104.4.1 and AR104.4.2. (3-28-18)

(a) AR104.4.1 Ladder Size and Capacity. Ladders accessing lofts shall have a rung width of not less than twelve (12) inches (305 mm) and ten (10) inches (254 mm) to fourteen (14) inches (356 mm) spacing between rungs. Ladders shall be capable of supporting a two hundred (200) pound (75 kg) load on any rung. Rung spacing shall be uniform within 3/8-inch (9.5 mm). (3-28-18)

(b) AR104.4.2 Ladder Incline. Ladders shall be installed at seventy (70) to eighty (80) degrees from horizontal. (3-28-18)

(5) AR104.5 Alternating Tread Devices. Alternating tread devices accessing lofts, and handrails of alternating tread devices shall comply with sections 1011.14.1 and 1011.14.2 of the International Building Code, excluding the exception. The clear width at and below the handrails shall be not less than twenty (20) inches (508 mm). (3-28-18)

(6) AR104.6. Ships Ladders. Ships ladders accessing lofts, and treads and handrails of ships ladders shall comply with sections 1011.15.1 and 1011.15.2 of the International Building Code. The clear width at and below handrails shall be not less than twenty (20) inches (508 mm). (3-28-18)

(7) AR104.7 Loft Guards. Loft guards shall be located along the open side of lofts. Loft guards shall not be less than thirty-six (36) inches (914 mm) in height or one (1)-half of the clear height to the ceiling, whichever is less. (3-28-18)

v. SECTION AR105. Emergency Escape and Rescue Openings. Tiny houses shall meet the requirements of Section R310 for emergency escape and rescue openings. Exception: Escape and rescue roof access windows in lofts used as sleeping rooms shall be deemed to meet three (3) requirements of Section R310 where installed such that the bottom of the opening is not more than forty-four (44) inches (1118 mm) above the loft floor, provided the escape and rescue roof access window complies with the minimum opening area requirements of Section R310. (3-28-18)

**03. International Existing Building Code.** 2015 Edition. (3-29-17)

**04. International Energy Conservation Code.** 2015 Edition with the following amendments: (3-29-17)

**a.** Delete the Residential Provisions of the 2015 International Energy Conservation Code (IECC) set forth in chapters 1 [RE] through 6 [RE], including Appendix RA (pages R-1 through R-57), and replace with the Residential Provisions of the 2012 IECC set forth therein in chapters 1 [RE] through 5 [RE] (pages R-1 through R-47) and as such provisions may be further amended herein these rules. (3-29-17)

**b.** Add the following as new subsection C101.5.3: Industrial, electronic, and manufacturing equipment. Buildings or portions thereof that are heated or cooled exclusively to maintain the required operating temperature of industrial, electronic, or manufacturing equipment shall be exempt from the provisions of this code. Such buildings or portions thereof shall be separated from connected conditioned space by building thermal envelope assemblies complying with this code. (3-25-16)

**c.** Add the following exception No. (10) under section C403.3 Economizers (Prescriptive): Unusual outdoor air contaminate conditions – Systems where special outside air filtration and treatment for the reduction and

treatment of unusual outdoor contaminants, makes an air economizer infeasible.

(3-29-17)

**d.** Delete Table C404.5.1 and replace with the following:

<b>TABLE C404.5.1</b>			
<b>PIPING VOLUME AND MAXIMUM PIPING LENGTHS</b>			
<b><u>NOMINAL PIPE SIZE (inches)</u></b>	<b><u>VOLUME (liquid ounces per foot length)</u></b>	<b><u>MAXIMUM PIPING LENGTH (feet)</u></b>	
		<b><u>Public lavatory faucets</u></b>	<b><u>Other fixtures and appliances</u></b>
<u>1/4</u>	<u>0.33</u>	<u>31</u>	<u>50</u>
<u>5/16</u>	<u>0.5</u>	<u>N/A - non-standard size</u>	<u>50</u>
<u>3/8</u>	<u>0.75</u>	<u>17</u>	<u>50</u>
<u>1/2</u>	<u>1.5</u>	<u>10</u>	<u>43</u>
<u>5/8</u>	<u>2</u>	<u>7</u>	<u>32</u>
<u>3/4</u>	<u>3</u>	<u>5</u>	<u>21</u>
<u>7/8</u>	<u>4</u>	<u>N/A - non-standard size</u>	<u>16</u>
<u>1</u>	<u>5</u>	<u>3</u>	<u>13</u>
<u>1 1/4</u>	<u>8</u>	<u>2</u>	<u>8</u>
<u>1 1/2</u>	<u>11</u>	<u>1</u>	<u>6</u>
<u>2 or larger</u>	<u>18</u>	<u>1</u>	<u>4</u>

For SI: 1 inch = 25.4 mm; 1 foot = 304.8 mm; 1 liquid ounce = 0.030 L; 1 gallon = 128 ounces.

( )

**d.e.** Delete the values contained in Table R402.1.1 (Table N1102.1.1) for climate zone “5 and Marine 4” and climate zone “6” and replace with the following:

TABLE R402.1.1 INSULATION AND FENESTRATION REQUIREMENTS BY COMPONENT										
Climate Zone	Fenestration U-Factor	Skylight U-factor	Glazed Fenestration SHGC	Ceiling R-Value	Wood Frame Wall R-Value	Mass Wall R-Value	Floor R-Value	Basement Wall R-Value	Slab R-Value	Crawlspace Wall R-Value
5 and Marine 4	0.35	0.60	NR	38	20 or 13+5 <sup>h</sup>	13/17	30 <sup>g</sup>	10/13	10, 2 ft	10/13
6	0.35	0.60	NR	49	20 or 13+5 <sup>h</sup>	15/19	30 <sup>g</sup>	15/19	10, 4 ft	10/13

(3-20-14)( )

**f.** Add the following footnote to the title of Table R402.1.1 - Insulation and Fenestration Requirements by Component: <sup>k</sup> For residential log home building thermal envelope construction requirements see section R402.6. (3-25-16)

**g.** Delete the values contained in Table R402.1.3 (~~Table NH02.1.3~~) for climate zone “5 and Marine 4” and climate zone “6” and replace with the following:

TABLE R402.1.3 EQUIVALENT U-FACTORS								
Climate Zone	Fenestration U-factor	Skylight U-factor	Ceiling R-Value	Wood Frame Wall R-Value	Mass Wall R-Value	Floor R-Value	Basement Wall R-Value	Crawlspace Wall R-Value
5 and Marine 4	0.35	0.60	0.030	0.057	0.082	0.033	0.059	0.065
6	0.35	0.60	0.026	0.057	0.060	0.033	0.050	0.065

(3-20-14)( )

**h.** Delete Table R402.2.6 (~~Table NH02.2.6~~) and replace with the following:

TABLE R402.2.6 STEEL-FRAME CEILING, WALL AND FLOOR INSULATION (R-VALUE)	
Wood Frame R-value Requirement	Cold-formed Steel Equivalent R-value <sup>a</sup>
<b>Steel Truss Ceilings<sup>b</sup></b>	
R-30	R-38 or R-30 + 3 or R-26 + 5
R-38	R-49 or R-38 + 3
R-49	R-38 + 5
a. Cavity insulation R-value is listed first, followed by continuous insulation R-value.	
b. Insulation exceeding the height of the framing shall cover the framing.	

<b>TABLE R402.2.6</b>	
<b>STEEL-FRAME CEILING, WALL AND FLOOR INSULATION</b>	
<b>(R-VALUE)</b>	
<b>Wood Frame R-value Requirement</b>	<b>Cold-formed Steel Equivalent R-value<sup>a</sup></b>
<b>Steel Joist Ceilings<sup>b</sup></b>	
R-30	R-38 in 2 x 4 or 2 x 6 or 2 x 8 R-49 in any framing
R-38	R-49 in 2 x 4 or 2 x 6 or 2 x 8 or 2 x 10
<b>Steel-Framed Wall</b>	
R-13	R-13 + 5 or R-15 + 4 or R-21 + 3 or R-0 + 10
R-19	R-13 + 9 or R-19 + 8 or R-25 + 7
R-21	R-13 + 10 or R-19 + 9 or R-25 + 8
<b>Steel Joist Floor</b>	
R-13	R-19 in 2 x 6 R-19 + 6 in 2 x 8 or 2 x 10
R-19	R-19 + 6 in 2 x 6 R-19 + 12 in 2 x 8 or 2 x 10
a. Cavity insulation R-value is listed first, followed by continuous insulation R-value. b. Insulation exceeding the height of the framing shall cover the framing.	

(3-25-16)( )

**hi.** Delete section R402.4.1 (~~NI102.4.1~~) and replace with the following: Building thermal envelope. The building thermal envelope shall comply with sections R402.1.1 and either section R402.4.1.2 or R402.4.1.3. The sealing methods between dissimilar materials shall allow for differential expansion and contraction. (3-25-16)( )

**ij.** Delete section R402.4.1.1 (~~NI102.4.1.1~~) and replace with the following: Installation. The components of the building thermal envelope as listed in Table R402.4.1.1 shall be installed in accordance with the manufacturer’s instructions and the criteria listed in Table R402.4.1.1, as applicable to the method of construction. (3-25-16)( )

**jk.** Delete the criteria requirement for the “Fireplace” component of Table R402.4.1.1 (~~Table NI102.4.1.1~~)– Air Barrier and Insulation Installation, and replace with the following: An air barrier shall be installed on fireplace walls. (3-20-14)( )

**kl.** Delete section R402.4.1.2 (~~NI102.4.1.2~~) and replace with the following: Testing option, Building envelope tightness and insulation installation shall be considered acceptable when tested air leakage is less than seven (7) air changes per hour (ACH) when tested with a blower door at a pressure of 33.5 psf (50 Pa). Testing shall occur after rough in and after installation of penetrations of the building envelope, including penetrations for utilities, plumbing, electrical, ventilation and combustion appliances. During testing: (3-25-16)( )

- i. Exterior windows and doors, fireplace and stove doors shall be closed, but not sealed; (3-20-14)
- ii. Dampers shall be closed, but not sealed, including exhaust, intake, makeup air, backdraft and flue dampers; (3-20-14)
- iii. Interior doors shall be open; (3-20-14)

- iv. Exterior openings for continuous ventilation systems and heat recovery ventilators shall be closed and sealed; (3-20-14)
- v. Heating and cooling system(s) shall be turned off; (3-20-14)
- vi. HVAC ducts shall not be sealed; and (3-20-14)
- vii. Supply and return registers shall not be sealed. (3-20-14)

~~iv.~~ Add the following as section R402.4.1.3 (~~NI102.4.1.3~~): Visual inspection option, Building envelope tightness and insulation installation shall be considered acceptable when the items listed in Table R402.4.1.1, applicable to the method of construction, are field verified. Where required by code official an approved party independent from the installer of the insulation shall inspect the air barrier and insulation. (~~3-25-16~~)(    )

~~ii.~~ Add the following section: R402.6 (~~NI102.6~~) Residential Log Home Thermal Envelope. Residential log home construction shall comply with sections R401 (General), R402.4 (Air Leakage), R402.5 (Maximum Fenestration U-Factor and SHGC), R403.1 (Controls), R403.2.2 (Sealing), R403.2.3 (Building Cavities), sections R403.3 through R403.9 (referred to as the mandatory provisions), Section R404 (Electrical Power and Lighting Systems), and either i., ii., or iii. as follows: (~~3-25-16~~)(    )

- i. Sections R402.2 through R402.3, R403.2.1, R404.1 and Table R402.6; (3-25-16)
- ii. Section R405 Simulated Performance Alternative (Performance); or (3-25-16)
- iii. REScheck (U.S. Department of Energy Building Codes Program). (4-7-11)

~~0.~~ Add Table R402.6 (~~Table NI102.6~~) Log Home Prescriptive Thermal Envelope Requirements By Component to be used only in accordance with item i. of section R402.6 above to appear as follows:

**TABLE R402.6**  
**LOG HOME PRESCRIPTIVE THERMAL ENVELOPE REQUIREMENTS BY COMPONENT**

For SI: 1 foot = 304.8 mm.

Climate Zone	Fenestration U-factor <sup>a</sup>	Skylight U-factor	Glazed Fenestration SHGC	Ceiling R-value	Min. Average Log Size In Inches	Floor R-value	Basement Wall R-value <sup>d</sup>	Slab R-value & Depth <sup>b</sup>	Crawl Space Wall R-value <sup>d</sup>
5, 6 - High efficiency equipment path <sup>c</sup>	0.32	0.60	NR	49	5	30	15/19	10, 4 ft.	10/13
5	0.32	0.60	NR	49	8	30	10/13	10, 2 ft.	10/13
6	0.30	0.60	NR	49	8	30	15/19	10, 4 ft.	10/13

- a. The fenestration U-factor column excludes skylights. The SHGC column applies to all glazed fenestration.
- b. R-5 shall be added to the required slab edge R-values for heated slabs.
- c. 90% AFUE natural gas or propane, 84% AFUE oil, or 15 SEER heat pump heating equipment (zonal electric resistance heating equipment such as electric base board electric resistance heating equipment as the sole source for heating is considered compliant with the high efficiency equipment path).
- d. "15/19" means R-15 continuous insulated sheathing on the interior or exterior of the home or R-19 cavity insulation at the interior of the basement wall. "15/19" shall be permitted to be met with R-13 cavity insulation on the interior of the basement wall plus R-5 continuous insulated sheathing on the interior or exterior of the home. "10/13" means R-10 continuous insulated sheathing on the interior or exterior of the home or R-13 cavity insulation at the interior of the basement wall.

~~(3-25-16)~~( )

~~p.~~ Delete section R404.1 ~~(N1104.1)~~ and replace with the following: Lighting equipment (Mandatory). A minimum of fifty percent (50%) of the lamps in permanently installed lighting fixtures shall be high-efficacy lamps or a minimum of fifty percent (50%) of the permanently installed lighting fixtures shall contain only high efficacy lamps. ~~(3-20-14)~~( )

**05. References to Other Codes.** Where any provisions of the codes that are adopted in this Section make reference to other construction and safety-related model codes or standards which have not been adopted by the involved authority having jurisdiction, to the extent possible, such reference should be construed as pertaining to the equivalent code or standard that has been duly adopted by such jurisdiction. (3-29-10)

## **IDAPA 07 – DIVISION OF BUILDING SAFETY**

### **07.05.01 – RULES OF THE PUBLIC WORKS CONTRACTORS LICENSE BOARD**

**DOCKET NO. 07-0501-1801**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 54-1907 and 54-1910, 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 1, 2018 Idaho Administrative Bulletin, [Vol. 18-8, pages 20-22](#).

**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 Ron Whitney, Deputy Administrator, at (208) 332-7150.

Dated this 30th day of August, 2018.

Ron Whitney, Deputy Administrator  
Division of Building Safety  
1090 E. Watertower St., Ste. 150  
P. O. Box 83720  
Meridian, ID 83642  
Phone: (208) 332-7150  
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## **IDAPA 07 – DIVISION OF BUILDING SAFETY**

### **07.07.01 – RULES GOVERNING INSTALLATION OF HEATING, VENTILATION, AND AIR CONDITIONING SYSTEMS, DIVISION OF BUILDING SAFETY**

**DOCKET NO. 07-0701-1703**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 54-5005, 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 1, 2018 Idaho Administrative Bulletin, [Vol. 18-8, pages 23-24](#).

**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 John Nielsen, HVAC Program Manager, at (208) 332-7112.

Dated this 30th day of August, 2018.

Ron Whitney, Deputy Administrator  
Division of Building Safety  
1090 E. Watertower St., Ste. 150  
P. O. Box 83720  
Meridian, ID 83642  
Phone: (208) 332-7150  
Fax: (877) 810-2840

**IDAPA 08 – STATE BOARD OF EDUCATION**

**08.01.04 – RESIDENCY**

**DOCKET NO. 08-0104-1801**

**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 Article IX, Section 2 of the Idaho Constitution and under Section 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 17, 2018.

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 amendments make technical corrections to the existing residency requirement used for determining eligibility for “in-state” tuition. These amendments include: removing the reference to Eastern Idaho Technical College; simplifying the definition of “support” for determining if a student is a dependent of a parent or guardian; and removing a reference to hourly equivalent in reference to full-time employment.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: None.

**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 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, page 48](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tracie Bent at (208) 332-1582 or [tracie.bent@osbe.idaho.gov](mailto:tracie.bent@osbe.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 24, 2018.

Dated this 31st day of August, 2018.

Tracie Bent  
Chief Planning and Policy Officer  
State Board of Education  
650 W. State Street  
P.O. Box 83720  
Boise, Idaho 83720-0037  
Phone: (208) 332-1582  
Fax: (208) 334-2632

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0104-1801  
(Only Those Sections With Amendments Are Shown.)

001. TITLE AND SCOPE.

01. **Title.** The title of this chapter is Residency. (3-29-17)

02. **Scope.** This chapter governs residency classification for tuition purposes for the four-year institutions ~~and Eastern Idaho Technical College~~ under the governance of the State Board of Education and the Regents of the University of Idaho pursuant to Section 33-3717B, Idaho Code. ~~(3-29-17)~~( )

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. **Accredited Secondary School.** An Idaho secondary school accredited by a body recognized by the State Board of Education. (3-29-17)

02. **Armed Forces.** The United States Army, Navy, Air Force, Marine Corps, Coast Guard, and their reserve forces. It does not include the National Guard or any other reserve force. (3-29-17)

03. **Continuously Resided.** Physical presence in the state for twelve (12) consecutive months. Absence from the state for normal vacations, family travel, work assignments, short-term military training, and similar occasions during the twelve-month (12) qualifying period, in and of itself, will not be regarded as negating the continuous residence of the individual. (3-29-17)

04. **Full-time Employment.** Employment consisting on average of at least thirty (30) hours of service per week, or one hundred twenty (120) hours of service per month. (3-29-17)

05. **Full-time Student.** A student taking the number of credits set by the State Board of Education to constitute a full course load. (3-29-17)

06. **Support.** "Support" means financial support given to the student during the twelve (12) months preceding the opening date of the term for which resident status is requested, but shall not include educational scholarships or grants provided to the student to attend a postsecondary educational institution. Any student who receives less than fifty percent (50%) support may demonstrate this by showing that ~~the student~~ is not claimed as a dependent by a parent or guardian for income tax purposes ~~or that a parent or guardian provides less than fifty percent (50%) of the cost of attending an institution according to the financial aid office of that institution or that other similar evidence exists of parental support such as dental bills, medical bills, etc.~~ ~~(5-8-09)~~( )

011. -- 099. (RESERVED)

100. RESIDENT CLASSIFICATION BY ALL INSTITUTIONS.

Any student classified as a resident student for purposes of tuition by one (1) of the institutions ~~or Eastern Idaho Technical College~~ shall be considered a resident by all other institutions. ~~(3-29-17)~~( )

(BREAK IN CONTINUITY OF SECTIONS)

102. FACTORS FOR DETERMINING DOMICILE.

The following, if supported by documentation, support a claim of domicile in Idaho. (3-29-17)

**01. Tax Returns and Employment.** Both of the following, if done for at least twelve (12) months before the term in which the student proposes to enroll, proves the establishment and maintenance of domicile in Idaho for purposes other than educational: (3-29-17)

**a.** Filing of Idaho state income tax returns covering a period of at least twelve (12) months before the term in which the student proposes to enroll as a resident student; and (3-29-17)

**b.** Full-time employment ~~or the hourly equivalent~~ in Idaho. (~~3-29-17~~)( )

**02. Multiple Factors.** Five (5) of the following factors, if done for at least twelve (12) months before the term in which the student proposes to enroll, proves the establishment and maintenance of domicile in Idaho for purposes other than educational: (3-29-17)

**a.** Ownership or leasing of a residence in Idaho. (3-29-17)

**b.** Registration and payment of Idaho taxes or fees, other than sales ~~or income~~ tax, including registration and payment of Idaho taxes or fees on a motor vehicle, mobile home, travel trailer, or other item of personal property for which state registration and the payment of state tax or fee is required. (~~3-29-17~~)( )

**c.** Registration to vote for state elected officials in Idaho at a general election. (1-1-94)

**d.** Holding of an Idaho driver's license or state-issued identification card. (3-29-17)

**e.** Evidence of the abandonment of a previous domicile. (1-1-94)

**f.** The establishment of accounts with financial institutions in Idaho. (3-29-17)

**g.** Other similar factors indicating intent to be domiciled in Idaho and the maintenance of such domicile. Factors may include, but are not limited to, enrollment of dependent children in Idaho elementary or secondary schools, establishment of acceptance of an offer of permanent employment for self in Idaho, documented need to care for a relative in Idaho, utility statements, or employment documentation. Multiple factors under this category may be used. (3-29-17)

**04. Idaho Elementary and Secondary Students.** If a student meets the requirements set forth under Idaho Code, Section 33-3717B(1)(c), that student shall not be required to meet the twelve (12) month requirement for establishing domicile. (3-29-17)

## IDAPA 08 – STATE BOARD OF EDUCATION

### 08.01.13 – RULES GOVERNING THE OPPORTUNITY SCHOLARSHIP PROGRAM

DOCKET NO. 08-0113-1802

#### 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 Article IX, Section 2, Idaho Constitution and under Sections 33-105, 33-107, and 33-4303, 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 17, 2018.

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

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

The proposed rule would make amendments to the student eligibility and application requirements to allow for a portion of the Opportunity Scholarship awards to be used for individuals who have earned 24 or more postsecondary credits. Proposed amendments would include: lowering the minimum GPA to 2.7; allowing students who have earned 24 or more credits to apply up to three-weeks prior to the start of the term; requiring these students to have “stopped out” for 24 or more months; allowing students to attend part-time; pro-rate the amount of the award based on the number of credits attempted down to a minimum of six (6) credits; requiring institutions to discuss opportunities for receiving credits through prior learning assessments; and requiring students to show progress on their educational plan to maintain scholarship eligibility.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: None.

**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 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, page 49](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tracie Bent at (208) 332-1582 or [tracie.bent@osbe.idaho.gov](mailto:tracie.bent@osbe.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 24, 2018.

Dated this 31st day of August, 2018.

Tracie Bent, Chief Planning and Policy Officer  
State Board of Education  
650 W. State Street  
P.O. Box 83720  
Boise, Idaho 83720-0037  
Phone: (208) 332-1582  
Fax: (208) 334-2632

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0113-1802  
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS.

**01. Adult Learner.** Means an individual who: ( )

**a.** Is not currently enrolled in a postsecondary institution accredited by a body recognized by the State Board of Education, or is enrolled pursuant to receiving the Opportunity Scholarship as an adult learner: ( )

**b.** Has not attended a postsecondary institution at any time during the twenty-four (24) month period immediately prior to application for the Opportunity Scholarship; and ( )

**c.** Has earned twenty-four (24) or more transferable credits from a postsecondary institution accredited by a body recognized by the State Board of Education. ( )

**02. Grade Point Average (GPA).** Means the average grade earned by a student, figured by dividing the grade points earned by the number of credits attempted. (3-20-14)

**03. Graduation Plan.** Means a plan developed by the postsecondary student in consultation with the postsecondary institution that identifies the certificate or degree the student is pursuing; the course and credit requirements necessary for earning the certificate or degree; how the application of previously earned credits and credits granted through prior learning assessments will be applied to the certificate or degree; the estimated number of terms remaining to complete the certificate or degree; and the proposed courses to be taken during each term. ( )

011. -- 100. (RESERVED)

101. ELIGIBILITY.

Applicants must meet all of the eligibility requirements to be considered for the scholarship award. (3-28-18)

**01. Undergraduate Student.** An eligible student must be pursuing their first undergraduate certificate or degree from an institution accredited by a body recognized by the State Board of Education. Other than an Adult Learner, a student may have received multiple certificates or degrees as part of the natural progression towards a recognized baccalaureate degree program. A student who is enrolled in a graduate program, but who has not yet earned a baccalaureate degree, is not eligible for an opportunity scholarship. A student enrolled in an undergraduate program is eligible for consideration for an opportunity scholarship, even if some of the student's courses are at the graduate level. A student meeting the definition of an Adult Learner must be pursuing their first undergraduate certificate or degree from an institution accredited by a body recognized by the State Board of Education. (3-20-14)( )

**02. Academic Eligibility.** To be eligible for an opportunity scholarship, an applicant must meet minimum academic eligibility criteria, as follows: (3-28-18)

**a.** A student who has not yet graduated from secondary school or its equivalent in the state of Idaho must have an un-weighted minimum cumulative grade point of average of ~~three two~~ point ~~zero seven~~ (3.27) or better on a scale of four point zero (4.0) to be eligible to apply for an opportunity scholarship. Cumulative grade point averages of more than one (1) decimal place shall be rounded to one (1) place. Home schooled students must provide a transcript of subjects taught and grades received signed by the parent or guardian of the student; or (3-28-18)( )

**b.** A student who has obtained a general equivalency diploma must have taken the ACT assessment and received a minimum composite score of twenty (20) or better, or the equivalent SAT assessment and received a one thousand ten (1,010) or better, to be academically eligible to apply for an opportunity scholarship; or (3-28-18)

c. A student currently enrolled in an eligible Idaho postsecondary educational institution must have a minimum cumulative grade point average of ~~three two~~ point ~~zero seven~~ (~~3.07~~) or better on a scale of four point zero (4.0) at such institution in order to be academically eligible to apply for an opportunity scholarship. Cumulative grade point averages of more than one (1) decimal place shall be rounded to one (1) place. (~~3-28-18~~)(    )

d. An Adult Learner must have a minimum cumulative grade point average of two point seven (2.7) or higher on a scale of four point zero (4.0). Cumulative grade point averages of more than one (1) decimal place shall be rounded to one (1) decimal place. (    )

**03. Financial Eligibility.** Applicants for the opportunity scholarship are selected as recipients, in part, based on of demonstrated financial need. The tool used to determine financial need is the Free Application for Federal Student Aid (FAFSA), used by the United States Department of Education. The financial need of an applicant for an opportunity scholarship will be based upon the verified expected family contribution, as identified by the FAFSA Student Aid report. The Student Aid report used to calculate financial need will be the report generated on the ~~March 1~~ application deadline. (~~3-28-18~~)(    )

**04. Additional Eligibility Requirements.** (4-2-08)

a. A student must not be in default on a student educational loan, or owe a repayment on a federal grant, and must be in good financial standing with the opportunity scholarship program. (3-20-14)

b. If a student has attempted or completed more than one hundred (100) postsecondary academic credits, then such student must identify his or her major, the required number of credits necessary for graduation in such major, and shall submit an academic transcript that contains all courses taken and all postsecondary academic credit received to the Board office. A student shall not be eligible for an opportunity scholarship if: (3-20-14)

i. The student is not meeting satisfactory academic progress at the eligible Idaho postsecondary educational institution the student is attending at the time he or she applies for an opportunity scholarship; (4-2-08)

ii. The student has completed more than one hundred fifty percent (150%) of the courses and academic credit necessary to graduate in such major; or (4-2-08)

iii. Upon review of the student's academic transcript(s), the student cannot complete their degree/certificate in the major they have identified within two (2) semesters based on normal academic course load unless a determination by the executive director or designee has been made that there are extenuating circumstances and the student has a plan approved by the executive director or designee outlining the courses that will be taken and the completion date of the degree or certificate. (3-28-18)

**102. -- 201. (RESERVED)**

**202. APPLICATION PROCESS.**

**01. Initial Applications.** An eligible student must complete and submit the opportunity scholarship program application to the Board electronically on or before the date specified in the application, but not later than three (3) weeks prior to the term in which they plan to enroll if an Adult Learner and not later than March 1 for all other students. An applicant without electronic capabilities may request a waiver of this requirement and if granted submit an application on the form established by the Board through the United States Postal Service, which must be postmarked not later than ~~March 1~~ the applicable application deadline. All applicants must complete and submit the FAFSA on or prior to ~~March 1~~ the applicable application deadline. (~~3-28-18~~)(    )

**02. Announcement of Award.** Announcement of the award of initial scholarships will be made no later than June 1 of each year, with awards to be effective at the beginning of the first full term following July 1 of that year. Announcements must clearly state the award is part of the state's scholarship program and is funded through state appropriated funds. Additional award announcement may be made after this date based on the availability of funds and the acceptance rate of the initial awards. (3-9-16)

**03. Communication with State Officials.** Applicants must respond by the date specified to any communication from officials of the opportunity scholarship 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 and approved by the executive director or designee. (3-28-18)

203. -- 299. (RESERVED)

**300. SELECTION OF SCHOLARSHIP RECIPIENTS.**

**01. Selection Process.** Scholarship awards will be based on the availability of scholarship program funds. Opportunity scholarships will be awarded to applicants, based on ranking and priority, in accordance with the following criteria: (3-28-18)

**a.** Eligible students shall be selected based on ranking criteria that assigns seventy percent (70%) to financial eligibility, and thirty percent (30%) to academic eligibility. In the event that this weighted score results in a tie, an eligible student who submitted his application to the Board earliest in time will be assigned a higher rank. (3-28-18)

**b.** Notwithstanding Subsection 300.01.a. of these rules, the priority for the selection of recipients of opportunity scholarship awards shall be to scholarship recipients who received an opportunity scholarship award during the previous fiscal year, and have met all of the continuing eligibility requirements provided in these rules. (3-28-18)

**02. Monetary Value of the Opportunity Scholarship.** (4-2-08)

**a.** The Board will establish annually the educational costs for attending an eligible Idaho postsecondary educational institution for purposes of the opportunity scholarship program. (3-28-18)

**b.** The monetary value of the opportunity scholarship award to a student shall be based on the educational costs for attending an eligible Idaho postsecondary educational institution, less the following: (4-2-08)

**i.** The amount of the assigned student responsibility, established by the Board annually; (4-2-08)

**ii.** The amount of federal grant aid, as identified by the Student Aid Report (SAR) that is known at the time of award determination; (3-20-14)

**iii.** The amount of other financial aid awarded the student, from private or other sources that is known at the time of award determination. (3-20-14)

**iv.** The eligible maximum award amount for Adult Learners enrolled in less than twenty-four (24) credit hours or its equivalent in an academic year attending an eligible four-year postsecondary institution or less than eighteen (18) credit hours or its equivalent in an academic year attending an eligible two-year institution will be prorated as follows: ( )

(1) Enrolled in six (6) to eight (8) credits or its equivalent per term, fifty percent (50%) of the maximum award amount; ( )

(2) Enrolled in nine (9) to eleven (11) credits or its equivalent per term, seventy-five percent (75%) of the maximum award amount; and ( )

(3) Enrolled in twelve (12) or more credits or its equivalent per term, one-hundred percent (100%) of the maximum award amount. ( )

**c.** The amount of an opportunity scholarship award to an individual student shall not exceed the educational cost established by the Board annually, and shall not exceed the actual cost of tuition and fees at ~~an~~ the Idaho public postsecondary educational institution the student attends or will attend, or if the student attends or will attend an Idaho private postsecondary educational institution, the average tuition at Idaho's public four (4) year

postsecondary educational institutions.

(3-28-18)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**302. CONTINUING ELIGIBILITY.**

To remain eligible for renewal of an opportunity scholarship, the recipient must comply with all of the provisions of the Opportunity Scholarship Program and these rules: (3-28-18)

**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 and update and submit the FAFSA on or prior to March 1. (3-20-14)

**02. Credit Hours.** To remain eligible for renewal of an opportunity scholarship, the scholarship recipient attending a four-year eligible postsecondary institution must have completed a minimum of twenty-four (24) credit hours or its equivalent each academic year that the student received an opportunity scholarship award. A scholarship recipient attending a two-year eligible postsecondary institution must have completed a minimum of eighteen (18) credit hours or its equivalent each academic year that the student received an opportunity scholarship award. Notwithstanding these provisions, a scholarship recipient that has received the Opportunity Scholarship as an Adult Learner may retain eligibility through the completion of twelve (12) or more credit hours or its equivalent each academic year the student received the Opportunity Scholarship award. All students may use the summer term to meet the annual credit accumulation requirements. (3-9-16)( )

**03. Satisfactory Academic Progress.** To remain eligible for renewal of an opportunity scholarship, the scholarship recipient must have maintained a minimum cumulative grade point average of ~~three~~ two point ~~zero~~ seven (~~3.07~~) on a scale of four point zero (4.0) during the time that the recipient received an opportunity scholarship award, and must be maintaining satisfactory academic progress, consistent within federal financial aid regulations as implemented at the eligible Idaho postsecondary educational institution at which the scholarship recipient was enrolled. Students receiving an Opportunity Scholarship award must make satisfactory progress on the student's graduation plan established with the eligible institution at the time of admission. (3-28-18)( )

**04. Maximum Duration of Scholarship Award.** The award of an opportunity scholarship shall not exceed the equivalent of eight (8) semesters or the equivalent of four (4) academic years. (3-20-14)

**05. Eligibility Following Interruption of Continuous Enrollment.** A scholarship recipient whose continuous enrollment is interrupted for more than four (4) months but less than two (2) years for any reason but who intends to re-enroll in an eligible Idaho postsecondary educational institution must file a letter of intent to withdraw no later than sixty (60) days prior to the first day of the academic term of the discontinued attendance to the Office of the State Board of Education. Failure to do so may result in forfeiture of the scholarship. The Board's Executive Director or designee 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 Board declaring his intent to re-enroll as a full-time undergraduate student in an academic or career technical program in an eligible Idaho postsecondary educational 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 within two (2) years of the approval of the request to withdraw. Failure to do so will result in forfeiture of the scholarship unless an extension has been granted. An extension of interruption of continuous enrollment period may be granted for eligible students due to military service in the United States armed forces, medical circumstances, or other circumstances approved by the executive director. All requests for extension must be made sixty (60) days prior to the start of the succeeding academic year. (3-28-18)

**303. -- 399. (RESERVED)**

**400. RESPONSIBILITIES OF ELIGIBLE IDAHO POSTSECONDARY EDUCATIONAL INSTITUTIONS.**

**01. Statements of Continuing Eligibility.** An eligible Idaho postsecondary educational institution participating in this Opportunity Scholarship Program must submit statements of continuing student eligibility to the

Board by the 30th day after the end of each academic year. Such statements must include verification that the scholarship recipient is still enrolled, attending part-time if an Adult Learner and full-time for all other scholarship recipients, maintaining satisfactory academic progress, and has not exceeded the award eligibility terms.

~~(3-9-16)~~( )

- 02. Other Requirements.** An eligible Idaho postsecondary educational institution must: (4-2-08)
- a.** Be eligible to participate in Federal Title IV financial aid programs, and must supply documentation to the Board verifying this eligibility, and prompt notification regarding any changes in this status; (4-2-08)
  - b.** Have the necessary administrative computing capability to administer the Opportunity Scholarship Program on its campus, and electronically report student data records to the Board; (4-2-08)
  - c.** Provide data on student enrollment and federal, state, and private financial aid for students to the Board, and (4-2-08)
  - d.** Agree to permit periodic Opportunity Scholarship Program audits to verify compliance with Idaho law and these rules related to the program. (4-2-08)

**03. Adult Learner Evaluation.** Upon admission, scholarship recipients receiving an award as an Adult Learner shall be administered prior learning assessments to determine eligibility for credit for prior learning including credit for prior experiential learning. As part of this process, an eligible institution shall work with the student to develop a graduation plan for the program they are entering that includes estimated completion dates. ( )

# IDAPA 08 – STATE BOARD OF EDUCATION

## 08.02.02 – RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-1802

### 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 Article IX, Section 2, Idaho Constitution and under Sections 33-105, 33-107, 33-116, 33-1004B, 33-1201, 33-1201A, 33-1204, 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 17, 2018.

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

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

The proposed rule will create an alternate route to certification for non-traditional educators to earn an administrator certificate. Initial qualifications for the alternative route include: a graduate degree, assurance from the hiring school district or charter school that the individual is highly and uniquely qualified to serve as a school building administrator and, four (4) or more years of full-time experience working with students grades pre-k–12, in an accredited school setting, in a position equivalent to a certificated position in Idaho.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: None.

**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 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, page 50](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tracie Bent at (208) 332-1582 or [tracie.bent@osbe.idaho.gov](mailto:tracie.bent@osbe.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 24, 2018.

Dated this 31st day of August, 2018.

Tracie Bent  
Chief Planning and Policy Officer  
State Board of Education  
650 W. State Street  
P.O. Box 83720  
Boise, Idaho 83720-0037  
Phone: (208) 332-1582  
Fax: (208) 334-2632

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0202-1802  
(Only Those Sections With Amendments Are Shown.)

**016. IDAHO INTERIM CERTIFICATE.**

The State Department of Education or the Division of Career Technical Education, as applicable to the certificate, 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 pursuant to Section 33-4104, Idaho Code, or engaged in an alternate route to certification as prescribed herein. (3-29-17)

**01. Interim Certificate Not Renewable.** Interim certification is only available on a one-time basis per individual except under extenuating circumstances approved by the State Department of Education. It will be the responsibility of the individual to meet the requirements of the applicable alternate authorization route and to obtain a full Idaho Educator Credential during the term of the interim certificate. (3-29-17)

**02. Idaho Comprehensive Literacy Course.** For all Idaho teachers working on interim certificates, (alternate authorizations, nontraditional routes, reinstatements or coming from out of the state), completion of a state board approved Idaho Comprehensive Literacy course or assessment, or approved secondary equivalent shall be a one-time requirement for full certification. (~~3-28-18~~)(    )

**a.** Those individuals who qualify for an Idaho certificate through state reciprocity shall be granted a three-year, non-renewable interim certificate to allow time to meet the Idaho Comprehensive Literacy Course requirement. (3-25-16)

**03. Mathematical Thinking for Instruction.** For all Idaho teachers or administrators working on interim certificates (alternate authorizations, nontraditional routes, reinstatements or coming from out of the state), with an All Subjects (K-8) endorsement, any mathematics endorsement, Exceptional Child Generalist endorsement, Blended Early Childhood/Early Childhood Special Education endorsement, or Administrator certificate must complete a state board approved Mathematical Thinking for Instruction, or another State Department of Education approved alternative course, as a one-time requirement for full certification. (~~3-28-18~~)(    )

**04. Technology.** Out-of-state applicants may be reviewed by the hiring district for technology deficiencies and may be required to take technology courses to improve their technology skills. (3-28-18)

**05. Reinstatement of Expired Certificate.** An individual holding an expired Idaho certificate may be issued a nonrenewable three-year interim certificate. During the validity period of the interim certificate, the applicant must meet the following requirements to obtain a full certification during the term of the interim certificate: (3-28-18)

**a.** Two (2) years' successful evaluations as per Section 33-1001(14), Idaho Code. (3-28-18)

**b.** Measured annual progress on specific goals identified on Individualized Professional Learning Plan. (3-28-18)

**c.** Six (6) credit renewal requirement. (3-28-18)

**d.** Any applicable requirement for Idaho Comprehensive Literacy Course or Mathematical Thinking for Instruction as indicated in Subsections 016.02 and 016.03. (3-28-18)

**06. Foreign Institutions.** An educator having graduated from a foreign institution may be issued a non-renewable, three-year (3) interim certificate. The applicant must also complete the requirements listed in Section 013 of these rules. (3-28-18)

**07. Codes of Ethics.** All laws and rules governing standard certificated staff with respect to conduct, discipline, and professional standards shall apply to all certified staff serving in an Idaho public school, including those employed under an interim certificate. (3-28-18)

**(BREAK IN CONTINUITY OF SECTIONS)**

**021. ENDORSEMENTS.**

Holders of a Standard Instructional Certificate, Standard Occupational Specialist Certificate, and Advanced Occupational Specialist Certificate may be granted endorsements in subject areas as provided herein. Instructional staff are eligible to teach in the grades and content areas of their endorsements. Idaho preparation programs shall prepare candidates for endorsements in accordance with the Idaho Standards for Initial Certification of Professional School Personnel. An official statement from the college of education of competency in a teaching area or field is acceptable in lieu of required credits if such statements are created in consultation with 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. Statements must include the number of credits the competency evaluation is equivalent to. 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 board approved content, pedagogy ~~and~~ or performance assessments. When converting semester credit hours to quarter credit hours, two (2) semester credit hours is equal to three (3) quarter credit hours.

~~(3-28-18)~~ ( )

**01. Clinical Experience Requirement.** All endorsements require supervised teaching experience in the relevant content area, or a State Department of Education or Division of Career Technical Education approved alternative clinical experience as applicable to the area of endorsement. (3-28-18)

**02. Alternative Authorization to Endorsement.** Candidates shall meet all requirements of the chosen option for the endorsement as provided herein. (3-28-18)

**a.** Option I -- An official statement from the college of education of competency in a teaching area or field is acceptable in lieu of courses for a teaching field if such statements are created in consultation with 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. (3-28-18)

**b.** Option II -- National Board. By earning National Board Certification in content specific areas, teachers may gain endorsement in a corresponding subject area. (3-29-17)

**c.** Option III -- Master's degree or higher. By earning a graduate degree in a content specific area, candidates may add an endorsement in that same content area to a valid instructional certificate. (3-28-18)

**d.** Option IV -- Testing and/or Assessment. Two (2) pathways are available to some teachers, depending upon endorsement(s) already held. (3-29-17)

**i.** Pathway 1 -- Endorsements may be added through state-approved testing and a mentoring component. The appropriate test must be successfully completed within the first year of authorization in an area closely compatible with an endorsement for which the candidate already qualifies and is experienced. Additionally, requires the successful completion of a one-year state-approved mentoring component; or (3-28-18)

**ii.** Pathway 2 -- Endorsements may be added through state-approved testing in an area less closely compatible with an endorsement for which the candidate already qualifies and is experienced. The appropriate test must be successfully completed within the first year of the authorization. Additionally, requires the successful completion of a one-year state-approved mentoring component and passing a final pedagogy assessment. (3-25-16)

**(BREAK IN CONTINUITY OF SECTIONS)**

**042. ALTERNATE ROUTES TO CERTIFICATION.**

The purpose of this program is to provide an alternative for individuals to become certificated teachers in Idaho without following a standard ~~teacher-education~~ educator preparation program. Alternative Routes to Certification shall allow individuals to serve as the teacher of record prior to having earned full certification status. The teacher of record is defined as the person who is primarily responsible for planning instruction, delivering instruction, assessing students formatively and summatively, and designating the final grade. Individuals who are currently employed as Paraprofessionals and, individuals with strong subject matter background but limited experience with educational methodology shall follow the alternate certification requirements provided herein. Individuals who are currently certificated to teach but who are in need of an emergency endorsement in another area may obtain an endorsement through an alternate route as described in Subsection 021.02 of these rules. (3-29-17)( )

**01. Alternative Authorization -- Teacher To New Certification.** The purpose of this alternative authorization is to allow Idaho school districts to request additional certification when a professional position cannot be filled with someone who has the correct certification. Alternative authorization in this area is valid for one (1) year and may be renewed for two (2) additional years with evidence of satisfactory progress toward completion of an approved alternative route preparation program. Interim certification is valid for not more than three (3) years total. (3-29-17)

**a.** Prior to application, a candidate must hold a baccalaureate degree, and a valid Idaho instructional certificate. The school district must provide supportive information attesting to the ability of the candidate to fill the position. (3-29-17)

**b.** A candidate must participate in an approved alternative route preparation program. (3-25-16)

**i.** The candidate will work toward completion of the alternative route preparation program through a participating college/university, and the employing school district. The candidate must complete a minimum of nine (9) semester credits annually to maintain eligibility for renewal; and (3-25-16)

**ii.** The participating college/university shall provide procedures to assess and credit equivalent knowledge, dispositions, and relevant life/work experiences. (3-20-04)

**02. Alternative Authorization -- Content Specialist.** The purpose of this alternative authorization is to offer an expedited route to certification for individuals who are highly and uniquely qualified in a subject area to teach in a district with an identified need for teachers in that area. Alternative authorization in this area is valid for one (1) year and may be renewed for two (2) additional years with evidence of satisfactory progress toward completion of an approved alternative route preparation program. Interim certification is valid for not more than three (3) years total. (3-25-16)

**a.** Initial Qualifications. (3-20-04)

**i.** A candidate must hold a baccalaureate degree or have completed all of the requirements of a baccalaureate degree except the student teaching or practicum portion; and (3-29-17)

**ii.** The hiring district shall ensure the candidate is qualified to teach in the area of identified need through demonstrated content knowledge. This may be accomplished through a combination of employment experience and education. (3-25-16)

**b.** Alternative Route Preparation Program -- College/University Preparation or Other State Board Approved Certification Program. (3-25-16)

**i.** At the time of authorization a consortium comprised of a designee from the college/university to be attended or other state board approved certification program, and a representative from the school district, and the candidate shall determine the preparation needed to meet the Idaho Standards for Initial Certification of Professional School Personnel. This plan must include mentoring and a minimum of one (1) classroom observation by the mentor per month, which will include feedback and reflection, while teaching under the alternative authorization. The plan must include annual progress goals that must be met for annual renewal; (3-29-17)

- ii. The candidate must complete a minimum of nine (9) semester credit hours or its equivalent of accelerated study in education pedagogy prior to the end of the first year of authorization. The number of required credits will be specified in the consortium developed plan; (3-29-17)
- iii. At the time of authorization the candidate must enroll in and work toward completion of the alternative route preparation program through a participating college/university or other state board approved certification program, and the employing school district. A teacher must attend, participate in, and successfully complete an individualized alternative route preparation program as one (1) of the conditions for annual renewal and to receive a ~~recommendation for full certification~~ certificate of completion; (~~3-25-16~~) ( )
- iv. The participating college/university or other state board approved certification program shall provide procedures to assess and credit equivalent knowledge, dispositions and relevant life/work experiences; and (3-25-16)
- v. Prior to entering the classroom, the candidate shall meet or exceed the state qualifying score on appropriate state-approved content, pedagogy, or performance assessment. (3-20-04)

**03. Alternative Authorization – School Administrator.** The purpose of this alternative authorization is to offer an expedited route to certification for individuals who are highly and uniquely qualified in the areas of school administration. Alternative authorization in this area is valid for one (1) year and may be renewed for two (2) additional years with evidence of satisfactory progress toward completion of an approved alternative route preparation program. Interim certification is valid for not more than three (3) years total. ( )

**a. Initial Qualifications:** ( )

i. Candidate must hold a graduate degree; ( )

ii. The hiring school hiring district or charter school shall ensure the candidate is experienced and qualified to serve in a position of leadership based on an identified need and shall have other leadership, management, and administrative experience. This may be accomplished through a combination of employment experience and education; and ( )

iii. Has four (4) or more years of full-time experience working with students, pre-k–12, in a position equivalent to a certificated position in Idaho, in an accredited school setting, accredited by a body recognized by the Idaho State Board of Education. ( )

**b. Alternative Route Preparation Program – College/University Preparation or Other State Board Approved Certification Program.** ( )

i. At the time of authorization, a consortium comprised of a designee from the college/university to be attended or other state board approved educator preparation program, and a representative from the local education agency and the candidate shall determine the preparation needed to meet in Idaho Standards for Initial Certification of Professional School Personnel. This individualized professional learning plan must include mentoring and a minimum of one (1) observation by the mentor per month, which will include feedback and reflection, while serving in an administrative capacity under the alternative authorization. The plan must include annual progress goals that must be met for annual renewal; ( )

ii. The candidate must receive a qualifying score on a state board approved school leaders certification assessment. ( )

iii. The candidate must complete a minimum of nine (9) semester credit hours or its equivalent of accelerated study in education pedagogy and certificated staff evaluation based on the state framework for evaluation prior to the end of the first year of authorization. The number of required credits will be specified in the consortium developed individualized professional learning plan; ( )

iv. At the time of authorization, the candidate must enroll in and work toward completion of the

individualized alternative route preparation program through a participating college/university or other state board approved educator preparation program, and the employing local education agency; and ( )

v. The participating college/university or other state board approved educator preparation program shall provide procedures to assess and credit equivalent knowledge, dispositions, and relevant life/work experiences. ( )

c. Candidates meeting all requirements of the alternative route preparation program, at the conclusion of the three (3) year validity period of the interim certificate, may apply for a standard administrator certificate. ( )

i. An administrator who participates in, and successfully completes, an individualized alternative route preparation program and receives a certificate of completion and statement of meeting the state standards for initial certification of school personnel for school administrators from the partnering educator preparation program shall be considered as having met the requirement for completion of a state-approved program of at least thirty (30) semester credit hours, forty-five (45) quarter credit hours, of graduate study in school administration for the preparation of school principals at an accredited college or university. ( )

**034. Non-Traditional Route to Teacher Certification.** An individual may acquire interim certification as found in Section 016 of these rules through an approved non-traditional route certification program. (3-25-16)

**a.** Individuals who possess a baccalaureate degree or higher from an accredited institution of higher education may utilize this non-traditional route to an interim Idaho Teacher Certification. (3-29-17)

**b.** To complete this non-traditional route, the individual must: (3-25-16)

**i.** Complete a Board approved program; (4-6-05)

**ii.** Pass the Board approved pedagogy and content knowledge exams; and (4-6-05)

**iii.** Complete the Idaho Department of Education background investigation check. (3-28-18)

**c.** Interim Certificate. Upon completion of the certification process described herein, the individual will be awarded an interim certificate from the State Department of Education's Certification and Professional Standards Department. During the term of the interim certificate, teaching by the individual must be done in conjunction with a two (2) year teacher mentoring program approved by the Board. The individual must complete the mentoring program during the term of the interim certificate. All laws and rules governing standard instructional certificated teachers and pupil service staff with respect to conduct, discipline and professional standards shall apply to individuals teaching under any Idaho certificate including an interim certificate. (3-28-18)

**d.** Interim Certificate Not Renewable. Interim certification hereunder is only available on a one (1) time basis per individual. It will be the responsibility of the individual to obtain a valid renewable Idaho Educator Credential during the three (3) year interim certification term. (3-25-16)

**e.** Types of Certificates and Endorsements. The non-traditional route may be used for first-time certification, subsequent certificates, and additional endorsements. (3-20-14)

**045. Alternative Authorization - Pupil Service Staff.** The purpose of this alternative authorization is to allow Idaho school districts to request endorsement/certification when a position requiring the Pupil Service Staff Certificate cannot be filled with someone who has the correct endorsement/certification. The exception to this rule is the Interim School Nurse endorsement and the Interim Speech Language Pathologist endorsement. The requirements for these endorsements are defined in Subsection 015.02 of these rules. The alternate authorization is valid for one (1) year and may be renewed for two (2) additional years with evidence of satisfactory progress toward completion of an approved alternative route preparation program. Interim certification is valid for not more than three (3) years total. (3-28-18)

**a.** Initial Qualifications. The applicant must complete the following: (4-2-08)

i. Prior to application, a candidate must hold a master's degree and hold a current Idaho license from the Bureau of Occupational Licenses in the area of desired certification; and (3-25-16)

ii. The employing school district must provide supportive information attesting to the ability of the candidate to fill the position. (4-2-08)

**b.** Alternative Route Preparation Program. (4-2-08)

i. The candidate must work toward completion of the alternative route preparation program through a participating college/university and the employing school district. The alternative route preparation program must include annual progress goals. (3-25-16)

ii. The candidate must complete a minimum of nine (9) semester credits annually to be eligible for extension of up to a total of three (3) years. (4-2-08)

iii. The participating college/university or the State Department of Education will provide procedures to assess and credit equivalent knowledge, dispositions, and relevant life/work experiences. (4-2-08)

iv. The candidate must meet all requirements for the endorsement/certificate as provided herein. (4-2-08)

**056. Alternate Authorization Renewal.** Annual renewal will be based on the school year and satisfactory progress toward completion of the applicable alternate authorization requirements. (3-25-16)

# IDAPA 08 – STATE BOARD OF EDUCATION

## 08.02.02 – RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-1803

### 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 Article IX, Section 2, Idaho Constitution and under Sections 33-105, 33-107, 33-116, and 33-1004B, 33-1201, 33-1201A, 33-1204, 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 17, 2018.

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

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

The proposed rule updates terminology and makes technical corrections to the educator credential requirements. This includes replacing “teacher education” with “educator preparation,” indicating the official vehicle for educator preparation program approval is the Council for the Accreditation of Educator Preparation “standards” rather than “model,” and clarifying the alternative route preparation program recommendation for full certification is a certificate of completion and not the defined term “Institutional Recommendation.”

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: None.

**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 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, page 51](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tracie Bent at (208) 332-1582 or [tracie.bent@osbe.idaho.gov](mailto:tracie.bent@osbe.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 24, 2018.

Dated this 31st day of August, 2018.

Tracie Bent  
Chief Planning and Policy Officer  
State Board of Education  
650 W. State Street  
P.O. Box 83720  
Boise, Idaho 83720-0037  
Phone: (208) 332-1582  
Fax: (208) 334-2632

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0202-1803**  
**(Only Those Sections With Amendments Are Shown.)**

**007. DEFINITIONS.**

**01. Active Teacher.** K-12 teacher with a valid Idaho certificate who is currently teaching in an Idaho K-12 classroom or school, either in person or online. (3-29-17)

**02. Alternative Routes.** Routes to teacher certification designed for candidates who want to enter the teaching profession from non-education professions or the paraprofessional profession, or for teachers lacking certification in a specific area defined as an emergency district need. (3-29-17)

**03. Credential.** The general term used to denote the document on which all of a person's educational certificates and endorsements are listed. The holder is entitled to provide educational services in any and/or all areas listed on the credential. (3-16-04)

**04. Endorsement.** Term used to refer to the content area or specific area of expertise in which a holder is granted permission to provide services. (3-16-04)

**05. Idaho Student Achievement Standards.** Standards of achievement for Idaho's K-12 students. See IDAPA 08.02.03, "Rules Governing Thoroughness." (3-16-04)

**06. Individualized Professional Learning Plan.** An individualized professional development plan based on the Idaho framework for teaching evaluation as outlined in Section 120 of these rules to include interventions based on the individual's strengths and areas of needed growth. (3-28-18)

**07. Institutional Recommendation.** Signed form or written verification from an accredited institution with a state board approved educator preparation program stating that an individual has completed the program, received a basic or higher rating in all components of the approved Idaho framework for teaching evaluation, has an individualized professional learning plan, has demonstrated the ability to produce measurable student achievement or student success, has the ability to create student learning objectives, and is now being recommended for state certification. Institutional recommendations must include statements of identified competency areas and grade ranges. Institutional Recommendation for administrators must additionally include a competency statement indicating proficiency in conducting accurate evaluations of instructional practice based upon the state's framework for evaluation as outlined in Section 120 of these rules. (3-28-18)

**08. Local Education Agency (LEA).** An Idaho public school district or charter school pursuant to Section 33-5203(8), Idaho Code. (3-29-17)

**09. Orientation.** School district/school process used to acquaint teachers new to district/school on its policies, procedures and processes. (3-16-04)

**10. Paraprofessional.** A noncertificated individual who is employed by a school district or charter school to support educational programming. Paraprofessionals must work under the direct supervision of a properly certificated staff member for the areas they are providing support. Paraprofessionals cannot serve as the teacher of record and may not provide direct instruction to a student unless the paraprofessional is working under the direct supervision of a teacher. (3-29-17)

**a.** To qualify as a paraprofessional the individual must have a high school diploma or general equivalency diploma (GED) and: (3-29-17)

**i.** Demonstrate through a state [board](#) approved academic assessment knowledge of and the ability to

assist in instructing or preparing students to be instructed as applicable to the academic areas they are providing support in; or ~~(3-29-17)~~( )

ii. Have completed at least two (2) years of study at an accredited postsecondary educational institution; or (3-29-17)

iii. Obtained an associate degree or higher level degree; demonstrate through a state board approved academic assessment knowledge of and the ability to assist in instructing or preparing students to be instructed as applicable to the academic areas they are providing support in. ~~(3-29-17)~~( )

b. Individuals who do not meet these requirements will be considered school or classroom aides. (3-29-17)

c. Duties of a paraprofessional include, but are not limited to, one-on-one tutoring; assisting in classroom management; assisting in computer instruction; conducting parent involvement activities; providing instructional support in a library or media center; acting as a translator in instructional matters; and providing instructional support services. Non-instructional duties such as providing technical support for computers, personal care services, and clerical duties are generally performed by classroom or school aides, however, this does not preclude paraprofessionals from also assisting in these non-instructional areas. (3-29-17)

**11. Pedagogy.** Teaching knowledge and skills. (3-16-04)

**12. Student Learning Objective (SLO).** A measurable, long-term academic growth target that a teacher sets at the beginning of the year for all student or for subgroups of students. SLOs demonstrate a teacher's impact on student learning within a given interval of instruction based upon baseline data gathered at the beginning of the course. (3-25-16)

**13. Teacher Leader.** A teacher who facilitates the design and implementation of sustained, intensive, and job-embedded professional learning based on identified student and teacher needs. (3-25-16)

**008. -- 011. (RESERVED)**

**012. ACCREDITED INSTITUTION.**

For purposes of teacher educator certification, an accredited school, college, university, or other teacher educator training institution is considered by the Idaho State Board of Education to be one that is accredited by a regional accrediting association recognized by the State Board of Education or an alternative or non-traditional model approved by the State Board of Education. (Sections 33-107; 33-114; 33-1203, Idaho Code) ~~(4-1-97)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**015. IDAHO EDUCATOR CREDENTIAL.**

The State Board of Education authorizes the State Department of Education to issue certificates and endorsements to those individuals meeting the specific requirements for each area provided herein. (3-25-16)

**01. Standard Instructional Certificate.** A Standard Instructional Certificate makes an individual eligible to teach all grades, subject to the grade ranges and subject areas of the valid endorsement(s) attached to the certificate. A standard instructional certificate may be issued to any person who has a baccalaureate degree from an accredited college or university and who meets the following requirements: (3-29-17)

a. Professional education requirements: (3-29-17)

i. Earned a minimum of twenty (20) semester credit hours, or thirty (30) quarter credit hours, in the philosophical, psychological, methodological foundations, instructional technology, and in the professional subject matter, which shall include at least three (3) semester credit hours, or four (4) quarter credit hours, in reading and its application to the content area; (3-29-17)

ii. The required minimum credit hours must include at least six (6) semester credit hours, or nine (9) quarter credit hours, of student teaching in the grade range and subject areas as applicable to the endorsement; and (3-29-17)

b. Completed an approved ~~teacher~~ educator preparation program and have an institutional recommendation from an accredited college or university specifying the grade ranges and subjects for which they are eligible to receive an endorsement in; (~~3-29-17~~)(    )

c. Individuals seeking endorsement in a secondary grade (pursuant to Section 33-1001, Idaho Code) range must complete preparation in at least two (2) fields of teaching. One (1) of the teaching fields must consist of at least thirty (30) semester credit hours, or forty-five (45) quarter credit hours and a second field of teaching consisting of at least twenty (20) semester credit hours, or thirty (30) quarter credit hours. Preparation of not less than forty-five (45) semester credit hours, or sixty-seven (67) quarter credit hours, in a single subject area may be used in lieu of the two (2) teaching field requirements; (3-29-17)

d. Proficiency in areas noted above is measured by completion of the credit hour requirements provided herein. Additionally, each candidate must meet or exceed the state qualifying score on the state board approved content area and pedagogy assessments. (3-29-17)

e. The Standard Instructional Certificate is valid for five (5) years. Six (6) semester credit hours are required every five (5) years in order to renew the certificate. (3-29-17)

**02. Pupil Service Staff 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 Service Staff Certificate, with the respective endorsement(s) for which they qualify. Persons who serve as an occupational therapist or physical therapist may be required, as determined by the local educational agency, to hold the Pupil Service Staff Certificate with respective endorsements for which they qualify. (3-28-18)

a. School Counselor (K-12) Endorsement. To be eligible for a Pupil Service Staff Certificate - School Counselor (K-12) endorsement, a candidate must have satisfied the following requirements. The Pupil Service Staff Certificate with a School Counselor (K-12) endorsement is valid for five (5) years. Six (6) semester credit hours are required every five (5) years in order to renew the endorsement. (3-28-18)

i. Hold a master's degree and provide verification of completion of an approved program of graduate study in school 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. 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; and (3-25-16)

ii. An institutional recommendation is required for a School Counselor (K-12) endorsement. (3-28-18)

b. School Counselor – Basic (K-12) Endorsement. (3-28-18)

i. Individuals serving as a school counselor pursuant to Section 33-1212, Idaho Code, shall be granted a Pupil Personnel Services Certificate with a School Counselor – Basic (K-12) endorsement. The endorsement is valid for five (5) years or until such time as the holder no longer meets the eligibility requirements pursuant to Section 33-1212, Idaho Code. Six (6) semester credit hours are required every five (5) years in order to renew the endorsement. (3-28-18)

ii. Individuals who received their endorsement pursuant to Section 33-1212, Idaho Code, prior to July 1, 2018, will be transitioned into the School Counselor – Basic (K-12) endorsement. Renewal date will remain the same as the initial credential. (3-28-18)

**c.** 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. 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: (3-25-16)

i. Completion of an approved thirty (30) semester credit hour, or forty-five (45) quarter credit hours, master's degree in education or psychology and completion of an approved thirty (30) semester credit hour, or forty-five (45) quarter credit hour, School Psychology Specialist Degree program, and completion of a minimum of twelve hundred (1,200) clock-hour internship within a school district under the supervision of the training institution and direct supervision of a certificated school psychologist; (3-25-16)

ii. Completion of an approved sixty (60) semester credit hour, or ninety (90) quarter credit hour, master's degree program in School Psychology, and completion of a minimum of twelve hundred (1,200) clock-hour internship within a school district under the supervision of the training institution and direct supervision of a certificated school psychologist; (3-25-16)

iii. 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; and (3-25-16)

iv. Earn a current and valid National Certification for School Psychologists (NCSP) issued by the National Association of School Psychologists (NASP). (3-25-16)

**d.** 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 015.02.c.i. or 015.02.c.ii. in addition to the requirement of Subsection 015.02.c.iii. (3-29-17)

i. The candidate must possess a valid nursing (RN) license issued by the Idaho State Board of Nursing, and a baccalaureate degree in nursing, education, or a health-related field from an accredited institution. (3-29-17)

ii. 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: (3-25-16)

(1) Health program management; (3-25-16)

(2) Child and adolescent health issues; (3-25-16)

(3) Counseling, psychology, or social work; or (3-25-16)

(4) Methods of instruction. (3-25-16)

iii. Additionally, each candidate must have two (2) years of full-time (or part-time equivalent) school nursing, community health nursing, or any area of pediatric, adolescent, or family nursing experience. (3-25-16)

**e.** Interim Endorsement - School Nurse. This endorsement 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 School Nurse Endorsement will be issued for three (3) years while the applicant is meeting the educational requirements, and it is not renewable. (3-29-17)

**f.** 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. The 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. (3-25-16)

**g.** 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. The 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. (3-25-16)

**h.** 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 shall be accomplished by meeting the requirements of Subsections 015.02.g.i. through 02.g.iii., or by meeting the requirement in Subsection 015.02.g.iv.: (3-29-17)

i. A master's degree in social work (MSW) from a postsecondary institution accredited by an organization recognized by the State Board of Education. The program must be currently approved by the state educational agency of the state in which the program was completed; and (3-29-17)

ii. An institution recommendation from an Idaho State Board of Education approved program; and (3-29-17)

iii. The successful completion of a school social work practicum in a kindergarten through grade twelve (K-12) setting. Post-MSW extensive experience working with children and families may be substituted for the completion of a school social work practicum in a K-12 setting. (3-29-17)

iv. A current and valid master's degree or higher social work license pursuant to chapter 32, title 54 and the rules of the State Board of Social Work Examiners. (3-29-17)

**i.** Interim Endorsement-Speech Language Pathologist. This certificate will be granted for those who do not meet the educational requirements but who hold a baccalaureate degree in speech language pathology and are pursuing a master's degree in order to obtain the Pupil Service Staff 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. (3-28-18)

**j.** Occupational Therapist Endorsement. A candidate with a current and valid Occupational Therapy license issued by the State of Idaho Bureau of Occupational Licenses shall be granted an Occupational Therapist endorsement. The Pupil Personnel Services Certificate with an Occupational Therapist endorsement is valid for five (5) years. Six (6) semester credit hours are required every five (5) years in order to renew the endorsement. Candidate must maintain current and valid Occupational Therapy Licensure through the State of Idaho Bureau of Occupational Licenses for the endorsement to remain valid. (3-28-18)

**k.** Physical Therapist Endorsement. A candidate with a current and valid Physical Therapy license issued by the State of Idaho Bureau of Occupational Licenses shall be granted a Physical Therapist endorsement. The Pupil Service Staff Certificate with a Physical Therapist endorsement is valid for five (5) years. Six (6) semester credit hours are required every five (5) years in order to renew the endorsement. Candidate must maintain current and valid Physical Therapy Licensure through the State of Idaho Bureau of Occupational Licenses for the endorsement to remain valid. (3-28-18)

**03. Administrator Certificate.** Every person who serves as a superintendent, a director of special education, a secondary school principal, or principal of an elementary school with eight (8) or more teachers (including the principal), or is assigned to conduct the summative evaluation of certified staff is required to hold an Administrator Certificate. The certificate may be endorsed for service as a school principal, a superintendent, or a director of special education. Assistant superintendents are required to hold the Superintendent endorsement. Assistant principals or vice-principals are required to hold the School Principal endorsement. Directors of special

education are required to hold the Director of Special Education endorsement. Possession of an Administrator Certificate does not entitle the holder to serve as a teacher at a grade level for which the educator is not qualified or certificated. All administrator certificates require candidates to meet the Idaho Standards for School Principals. The Administrator Certificate is valid for five (5) years. Six (6) semester credit hours are required every five (5) years in order to renew the certificate. (3-28-18)

**a.** School Principal (Pre-K-12) Endorsement. To be eligible for an Administrator Certificate endorsed for School Principal (Pre-K-12), a candidate must have satisfied the following requirements: (3-28-18)

- i. Hold a master's degree from an accredited college or university. (3-25-16)
- ii. Have four (4) years of full-time certificated experience working with students, Pre-K-12, while under contract in an accredited school setting. (3-25-16)
- iii. Have completed an administrative internship in a state-approved program, or have one (1) year of experience as an administrator in grades Pre-K-12. (3-25-16)
- iv. Provide verification of completion of a state-approved program of at least thirty (30) semester credit hours, forty-five (45) quarter credit hours, of graduate study in school administration for the preparation of school principals at an accredited college or university. This program shall include the competencies of the Idaho Standards for School Principals. (3-28-18)
- v. An institutional recommendation is required for a School Principal (Pre-K-12) Endorsement. (3-28-18)

**b.** Superintendent (Pre-K-12) Endorsement. To be eligible for an Administrator Certificate with a Superintendent (Pre-K-12) endorsement, a candidate must have satisfied the following requirements: (3-28-18)

- i. Hold an education specialist or doctorate degree or complete a comparable post-master's sixth year program at an accredited college or university. (3-25-16)
- ii. Have four (4) years of full-time certificated/licensed experience working with Pre-K-12 students while under contract in an accredited school setting. (3-25-16)
- iii. Have completed an administrative internship in a state-approved program for the superintendent endorsement or have one (1) year of out-of-state experience as an assistant superintendent or superintendent in grades Pre-K-12. (3-25-16)
- iv. Provide verification of completion of an approved program of at least thirty (30) semester credit hours, or forty-five (45) quarter credit hours, of post-master's degree graduate study for the preparation of school superintendents at an accredited college or university. This program in school administration and interdisciplinary supporting areas shall include the competencies in Superintendent Leadership, in addition to the competencies in the Idaho Standards for School Principals. (3-28-18)
- v. An institutional recommendation is required for a School Superintendent Endorsement (Pre-K-12). (3-28-18)

**c.** Director of Special Education (Pre-K-12) Endorsement. To be eligible for an Administrator Certificate endorsed for Director of Special Education (Pre-K-12), a candidate must have satisfied all of the following requirements: (3-28-18)

- i. Hold a master's degree from an accredited college or university; (3-25-16)
- ii. Have four (4) years of full-time certificated/licensed experience working with students Pre-K-12, while under contract in a school setting; (3-25-16)
- iii. Obtain college or university verification of demonstrated the competencies of the Director of

Special Education in Idaho Standards for Initial Certification of Professional School Personnel; (3-28-18)

iv. Obtain college or university verification of demonstrated competencies in the following areas, in addition to the competencies in the Idaho Standards for School Principals: Concepts of Least Restrictive Environment; Post-School Outcomes and Services for Students with Disabilities Ages Three (3) to Twenty-one (21); Collaboration Skills for General Education Intervention; Instructional and Behavioral Strategies; Individual Education Programs (IEPs); Assistive and Adaptive Technology; Community-Based Instruction and Experiences; Data Analysis for Instructional Needs and Professional Training; Strategies to Increase Program Accessibility; Federal and State Laws and Regulations and School District Policies; Resource Advocacy; and Technology Skills for Referral Processes, and Record Keeping; (3-28-18)

v. Have completed an administrative internship/practicum in the area of administration of special education; and (3-28-18)

vi. An institutional recommendation is required for Director of Special Education (Pre-K-12) endorsement. (3-28-18)

**04. Certification Standards For Career Technical Educators.** Teachers of career technical courses or programs in secondary schools must hold an occupational specialist certificate and an endorsement in an appropriate occupational discipline. All occupational certificates must be approved by the Division of Career Technical Education regardless of the route an individual is pursuing to receive the certificate. (3-28-18)

**05. Degree Based Career Technical Certification.** (3-25-16)

a. Individuals graduating from an approved occupational teacher preparation degree program qualify to teach in the following five (5) disciplines: agricultural science and technology; business technology education; computer science technology; engineering; family and consumer sciences; marketing technology education; and technology education. Occupational teacher preparation course work must meet the Idaho Standards for the Initial Certification of Professional School Personnel. The occupational teacher education program must provide appropriate content to constitute a major in the identified field. Student teaching shall be in an approved program and include experiences in the major field. Applicants shall have accumulated one thousand (1,000) clock hours of related work experience or practicum in their respective field of specialization, as approved by the Division of Career Technical Education. The certificate is valid for five (5) years. Six (6) semester credit hours are required every five (5) years pursuant to Section 060 of these rules. (3-28-18)

b. The Career Technical Administrator certificate is required for an individual serving as an administrator, director, or manager of career technical education programs at the state Division of Career Technical Education or in Idaho public schools. Individuals must meet one (1) of the two (2) following prerequisites to qualify for the Career Technical Administrator Certificate. The certificate is valid for five (5) years. Six (6) semester credit hours are required every five (5) years pursuant to Section 060 of these rules to renew. (3-28-18)

i. Qualify for or hold an Advanced Occupational Specialist certificate or hold an occupational endorsement on a standard instructional certificate; provide evidence of a minimum of four (4) years teaching, three (3) of which must be in a career technical discipline; hold a master's degree; and complete at least fifteen (15) semester credits of administrative course work. (3-28-18)

(1) Applicants must have completed credits in: education finance, administration and supervision of personnel, legal aspects of education; and conducting evaluations using the statewide framework for teacher evaluations. (3-28-18)

(2) Additional course work may be selected from any of the following areas: administration and supervision of occupational programs; instructional supervision; administration internship; curriculum development; curriculum evaluation; research in curriculum; school community relations; communication; teaching the adult learner; coordination of work-based learning programs; and/or measurement and evaluation. (3-28-18)

ii. Hold a superintendent or principal (pre-K-12) endorsement on a standard administrator certificate and provide evidence of a minimum of four (4) years teaching, three (3) of which must be in a career technical

discipline or successfully complete the Division of Career Technical Education twenty-seven (27) month Idaho career technical education leadership institute. (3-28-18)

**c.** Work-Based Learning Coordinator Endorsement. Educators assigned to coordinate approved work-based experiences must hold the Work-Based Learning Coordinator endorsement. To be eligible, applicants must hold an occupational endorsement on the Standard Instructional Certificate or qualify for an Occupational Specialist Certificate, plus complete course work in coordination of work-based learning programs. (3-29-17)

**d.** Career Counselor Endorsement. The endorsement for a Career Counselor may be issued to applicants who hold a current Pupil Service Staff Certificate with a School Counselor (K-12) endorsement, and who have satisfied the following career technical requirement: Career Pathways and Career Technical Guidance; Principles/Foundations of Career Technical Education; and Theories of Occupational Choice. (3-28-18)

**06. Industry-Based Occupational Specialist Certificate.** The industry-based Occupational Specialist Certificates are industry-based career technical certifications issued in lieu of a degree-based career technical certificate. Certificate holders must meet the following eligibility requirements: (3-28-18)

**a.** Be at least twenty-two (22) years of age; document recent, gainful employment in the area for which certification is requested; possess either a high school diploma or General Educational Development (GED) certificate; meet provisions of Idaho Code; and, verify technical skills through work experience, industry certification or testing as listed below. When applicable, requirements of occupationally related state agencies must also be met. Since educational levels and work experiences vary, applicants may be determined highly qualified under any one (1) of the following three (3) options: (3-28-18)

**i.** Have six (6) years or twelve thousand (12,000) hours of recent, gainful employment in the occupation for which certification is requested. Up to forty-eight (48) months credit or up to eight thousand (8,000) hours can be counted toward the six (6) years or twelve thousand (12,000) hours on a month-to-month basis for journeyman training or completed postsecondary training in a career technical education program; or (3-28-18)

**ii.** Have a baccalaureate degree in the specific occupation or related area, plus two (2) years or four thousand (4,000) hours of recent, gainful employment in the occupation for which certification is required, at least half of which must have been during the immediate previous five (5) years; or (3-28-18)

**iii.** Have completed a formal apprenticeship program in the occupation or related area for which certification is requested plus two (2) years or four thousand (4,000) hours of recent, gainful, related work experience, at least half of which must have been completed in the immediate previous five (5) years. (3-28-18)

**b.** Limited Occupational Specialist Certificate. This certificate is issued to individuals who are new to teaching in Idaho public schools or new to teaching in career technical education in Idaho public schools. The certificate is an interim certificate and is valid for three (3) years and is non-renewable. Applicants must meet all of the minimum requirements established in Subsection 015.06.a. of these rules. Individuals on a limited occupational specialist certificate must complete one (1) of the two (2) following pathways during the validity period of the certificate: (3-28-18)

**i.** Pathway I - Coursework: Within the three-year period of the Limited Occupational Specialist Certificate, the instructor must satisfactorily complete the pre-service training prescribed by the Division of Career Technical Education and demonstrate competencies in principles/foundations of occupational education and methods of teaching occupational education. Additionally, the instructor must satisfactorily demonstrate competencies in two (2) of the following areas: career pathways and guidance; analysis, integration, and curriculum development; and measurement and evaluation. (3-28-18)

**ii.** Pathway II – Cohort Training: Within the first twelve (12) months, the holder must enroll in the Division of Career Technical Education sponsored two-year cohort training and complete the two (2) training within the three-year validity period of the interim certificate. (3-28-18)

**c.** Standard Occupational Specialist Certificate. (3-28-18)

i. This certificate is issued to individuals who have held a limited occupational specialist certificate and completed one (1) of the pathways for completions. (3-28-18)

ii. The Standard Occupational Specialist Certificate is valid for five (5) years. Six (6) semester credit hours are required every five (5) years pursuant to Section 060 of these rules to renew. Credit equivalency will be based on verification of forty-five (45) hours of participation at approved technical conferences, institutes, or workshops where participation is prorated at the rate of fifteen (15) hours per credit; or one hundred twenty (120) hours of approved related work experience where hours worked may be prorated at the rate of forty (4) hours per credit; or any equivalent combination thereof, and having on file a new professional development plan for the next certification period. (3-28-18)

d. Advanced Occupational Specialist Certificate. This certificate is issued to individuals who: (3-29-17)

i. Are eligible for the Standard Occupational Specialist Certificate; (3-28-18)

ii. Provide evidence of completion of a teacher training degree program or eighteen (18) semester credits of Division of Career Technical Education approved education or content-related course work in addition to the twelve (12) semester credits required for the Standard Occupational Specialist Certificate (a total of thirty (30) semester credits); and (3-28-18)

iii. Have on file a new professional development plan for the next certification period. (3-28-18)

iv. The Advanced Occupational Specialist Certificate is valid for five (5) years. Six (6) semester credit hours are required every five (5) years pursuant to Section 060 of these rules to renew. (3-28-18)

**07. Postsecondary Specialist.** A Postsecondary Specialist certificate will be granted to a current academic faculty member whose primary employment is with any accredited Idaho postsecondary institution. To be eligible to teach in the public schools under this postsecondary specialist certificate, the candidate must supply a recommendation from the employing institution (faculty's college dean). The primary use of this state-issued certificate will be for distance education, virtual classroom programs, and for public and postsecondary partnerships. (3-29-17)

a. Renewal. This certificate is good for five (5) years and is renewable. To renew the certificate, the renewal application must be accompanied with a new written recommendation from the postsecondary institution (faculty's college dean level or higher). (3-25-16)

b. Fees. The fee is the same as currently in effect for an initial or renewal certificate as established in Section 066 of these rules. (3-25-16)

c. The candidate must meet the following qualifications: (3-25-16)

i. Hold a master's degree or higher in the content area being taught; (3-25-16)

ii. Be currently employed by the postsecondary institution in the content area to be taught; and (3-25-16)

iii. Complete and pass a criminal history background check as required according to Section 33-130, Idaho Code. (3-25-16)

**08. American Indian Language.** Each Indian tribe shall provide to the State Department of Education the names of those highly and uniquely qualified individuals who have been designated to teach the tribe's native language in accordance with Section 33-1280, Idaho Code. Individuals identified by the tribe(s) may apply for an Idaho American Indian Certificate as American Indian languages teachers. (3-25-16)

a. The Office of Indian Education at the State Department of Education will process an application that has met the requirements of the Tribe(s) for an American Indian languages teacher. (3-25-16)

**b.** Once an application with Tribal approval has been received, it will be reviewed and, if approved, it will be forwarded to the Office of Certification for a criminal history background check as required in Section 33-130, Idaho Code. The application must include a ten-finger fingerprint card or scan and a fee for undergoing a background investigation check pursuant to Section 33-130, Idaho Code. (3-28-18)

**c.** The Office of Certification will review the application and verify the applicant is eligible for an Idaho American Indian Certificate. The State Department of Education shall authorize an eligible applicant as an American Indian languages teacher. An Idaho American Indian Certificate is valid for not more than five (5) years. Individuals may apply for a renewal certificate. (3-25-16)

**09. Junior Reserved Officer Training Corps (Junior ROTC) Instructors.** (3-25-16)

**a.** Each school district with a Junior ROTC program shall provide the State Department of Education with a list of the names of those individuals who have completed an official armed forces training program to qualify as Junior ROTC instructors in high schools. (3-25-16)

**b.** Each school district with a Junior ROTC program shall provide the State Department of Education with a notarized copy of their certificate(s) of completion. (3-25-16)

**c.** Authorization Letter. Upon receiving the items identified in Subsections 015.09.a. and 09.b., the State Department of Education shall issue a letter authorizing these individuals as Junior ROTC instructors. (3-29-17)

**10. Additional Renewal Requirements.** In addition to specific certificate or endorsement renewal requirements, applicants must meet the following renewal requirements as applicable: (3-25-16)

**a.** Mathematics In-Service Program. In order to recertify, the state **board** approved mathematics instruction course titled “Mathematical Thinking for Instruction,” or another State Department of Education approved alternative course, shall be required. The “Mathematical Thinking for Instruction” course consists of three (3) credits. Teachers must take one (1) of the three (3) courses developed that is most closely aligned with their current assignment prior to July 1, 2019. Any teacher successfully completing said course shall be deemed to have met the requirement of Subsection 060.02.c. of this rule as long as said course is part of an official transcript or completed before September 1, 2013, and verified by the State Department of Education. Successful completion of a state **board** approved mathematics instruction course shall be a one-time requirement for renewal of certification for those currently employed in an Idaho school district and shall be included within current requirements for continuing education for renewal. The following must successfully complete the “Mathematical Thinking for Instruction” course or another State Department of Education approved alternative course in order to recertify: ~~(3-28-18)~~( )

**i.** Each teacher holding a Blended Early Childhood Education/Early Childhood Special Education (Birth - Grade 3) endorsement who is employed by a school district or charter school as a K-3 multi-subject or special education teacher; (3-28-18)

**ii.** Each teacher holding an All Subjects (K-8) endorsement who is employed by a school district or charter school as a K-6 multi-subject teacher; (3-28-18)

**iii.** Each teacher holding an All Subjects (K-8) endorsement, Mathematics – Basic (5-9 or 6-12) endorsement, Mathematics (5-9 or 6-12) endorsement teaching in a mathematics content classroom (grade six (6) through grade twelve (12)) including Title I who is employed by a school district or charter school; and (3-28-18)

**iv.** Each teacher holding an Exceptional Child Generalist endorsement who is employed by a school district or charter school as a special education teacher. (3-28-18)

**b.** Waiver of Mathematics In-Service Program. When applying for certificate renewal, an automatic waiver of the mathematics in-service program requirement shall be granted for any certificated individual living outside of the state of Idaho who is not currently employed as an educator in the state of Idaho. This waiver applies only as long as the individual remains outside the state of Idaho or as long as the individual is not employed as an

educator in the state of Idaho. Upon returning to Idaho or employment in an Idaho public school, the educator will need to complete this requirement prior to the next renewal period. (3-25-16)

**c.** Administrator certificate renewal. In order to recertify, holders of an administrator certificate must complete a course consisting of a minimum of three (3) semester credits in the Idaho framework for teachers' evaluation pursuant to Section 33-1204, Idaho Code. Credits must be earned through an approved educator preparation program and include a laboratory component. The laboratory component must include in-person or video observation and scoring of teacher performance using the statewide framework for teacher's evaluation. The approved course must include the following competencies: (3-28-18)

**i.** Understanding professional practice in Idaho evaluation requirements, including gathering accurate evidence and artifacts, understanding and using the state framework for evaluation rubric with fidelity, proof of calibration and interrater reliability, ability to provide effective feedback for teacher growth, and understanding and advising teachers on individualized learning plan and portfolio development. (3-28-18)

**ii.** Understanding student achievement and growth in the Idaho evaluation framework, including understanding how measurable student achievement and growth measures impact summative evaluation ratings and proficiency in assessment literacy. (3-28-18)

**016. IDAHO INTERIM CERTIFICATE.**

The State Department of Education or the Division of Career Technical Education, as applicable to the certificate, is authorized to issue a three-year 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 pursuant to Section 33-4104, Idaho Code, or engaged in an alternate route to certification as prescribed herein. (3-29-17)

**01. Interim Certificate Not Renewable.** Interim certification is only available on a one-time basis per individual except under extenuating circumstances approved by the State Department of Education. It will be the responsibility of the individual to meet the requirements of the applicable alternate authorization route and to obtain a full Idaho Educator Credential during the term of the interim certificate. (3-29-17)

**02. Idaho Comprehensive Literacy Course.** For all Idaho teachers working on interim certificates, (alternate authorizations, nontraditional routes, reinstatements or coming from out of the state), completion of a state board approved Idaho Comprehensive Literacy course or assessment, or approved secondary equivalent shall be a one-time requirement for full certification. ~~(3-28-18)~~( )

**a.** Those individuals who qualify for an Idaho certificate through state reciprocity shall be granted a three-year, non-renewable interim certificate to allow time to meet the Idaho Comprehensive Literacy Course requirement. (3-25-16)

**03. Mathematical Thinking for Instruction.** For all Idaho teachers or administrators working on interim certificates (alternate authorizations, nontraditional routes, reinstatements or coming from out of the state), with an All Subjects (K-8) endorsement, any mathematics endorsement, Exceptional Child Generalist endorsement, Blended Early Childhood/Early Childhood Special Education endorsement, or Administrator certificate must complete a state board approved Mathematical Thinking for Instruction, or another State Department of Education approved alternative course, as a one-time requirement for full certification. ~~(3-28-18)~~( )

**04. Technology.** Out-of-state applicants may be reviewed by the hiring district for technology deficiencies and may be required to take technology courses to improve their technology skills. (3-28-18)

**05. Reinstatement of Expired Certificate.** An individual holding an expired Idaho certificate may be issued a nonrenewable three-year interim certificate. During the validity period of the interim certificate, the applicant must meet the following requirements to obtain a full certification during the term of the interim certificate: (3-28-18)

**a.** Two (2) years of successful evaluations as per Section 33-1001(14), Idaho Code. (3-28-18)

- b. Measured annual progress on specific goals identified on Individualized Professional Learning Plan. (3-28-18)
- c. Six (6) credit renewal requirement. (3-28-18)
- d. Any applicable requirement for Idaho Comprehensive Literacy Course or Mathematical Thinking for Instruction as indicated in Subsections 016.02 and 016.03. (3-28-18)

**06. Foreign Institutions.** An educator having graduated from a foreign institution may be issued a non-renewable, three-year interim certificate. The applicant must also complete the requirements listed in Section 013 of these rules. (3-28-18)

**07. Codes of Ethics.** All laws and rules governing standard certificated staff with respect to conduct, discipline, and professional standards shall apply to all certified staff serving in an Idaho public school, including those employed under an interim certificate. (3-28-18)

**017. CONTENT, PEDAGOGY AND PERFORMANCE ASSESSMENT FOR CERTIFICATION.**

**01. Assessments.** State Board of Education approved content, pedagogy and performance area assessments shall be used in the state of Idaho to ensure qualified teachers are employed in Idaho's classrooms. The Professional Standards Commission shall recommend assessments and qualifying scores to the State Board of Education for approval. (4-2-08)

**02. Out-of-State Waivers.** An out-of-state applicant for Idaho certification holding a current certificate may request a waiver from the above requirement. The applicant shall provide evidence of passing a state ~~board~~ approved content, pedagogy and performance area assessment(s) or hold current National Board for Professional Standards Teaching Certificate. (~~4-2-08~~)( )

**03. Idaho Comprehensive Literacy Assessment.** All applicants for initial Idaho certification (Kindergarten through grade twelve (12)) from an Idaho approved ~~teacher education~~ ~~educator preparation~~ program must demonstrate competency in comprehensive literacy. Areas to be included as parts of the assessment are: phonological awareness, phonics, fluency, vocabulary, comprehension, writing, and assessments and intervention strategies. Each Idaho public higher education institution shall be responsible for the assessment of teacher candidates in its ~~teacher~~ ~~educator~~ preparation program. The assessment must measure teaching skills and knowledge congruent with current research on best literacy practices for elementary students or secondary students (adolescent literacy) dependent upon level of certification and English Language Learners. In addition, the assessment must measure understanding and the ability to apply strategies and beliefs about language, literacy instruction, and assessments based on current research and best practices congruent with International Reading Association/National Council of Teachers of English standards, National English Language Learner's Association professional teaching standards, National Council for Accreditation of Teacher Education standards, and state accreditation standards. (~~4-7-11~~)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**042. ALTERNATE ROUTES TO CERTIFICATION.**

The purpose of this program is to provide an alternative for individuals to become certificated teachers in Idaho without following a standard ~~teacher education~~ ~~educator preparation~~ program. Alternative Routes to Certification shall allow individuals to serve as the teacher of record prior to having earned full certification status. The teacher of record is defined as the person who is primarily responsible for planning instruction, delivering instruction, assessing students formatively and summatively, and designating the final grade. Individuals who are currently employed as Paraprofessionals and, individuals with strong subject matter background but limited experience with educational methodology shall follow the alternate certification requirements provided herein. Individuals who are currently certificated to teach but who are in need of an emergency endorsement in another area may obtain an endorsement through an alternate route as described in Subsection 021.02 of these rules. (~~3-29-17~~)( )

**01. Alternative Authorization -- Teacher To New Certification.** The purpose of this alternative authorization is to allow Idaho school districts to request additional certification when a professional position cannot be filled with someone who has the correct certification. Alternative authorization in this area is valid for one (1) year and may be renewed for two (2) additional years with evidence of satisfactory progress toward completion of an approved alternative route preparation program. Interim certification is valid for not more than three (3) years total. (3-29-17)

**a.** Prior to application, a candidate must hold a baccalaureate degree, and a valid Idaho instructional certificate. The school district must provide supportive information attesting to the ability of the candidate to fill the position. (3-29-17)

**b.** A candidate must participate in an approved alternative route preparation program. (3-25-16)

**i.** The candidate will work toward completion of the alternative route preparation program through a participating college/university, and the employing school district. The candidate must complete a minimum of nine (9) semester credits annually to maintain eligibility for renewal; and (3-25-16)

**ii.** The participating college/university shall provide procedures to assess and credit equivalent knowledge, dispositions, and relevant life/work experiences. (3-20-04)

**02. Alternative Authorization -- Content Specialist.** The purpose of this alternative authorization is to offer an expedited route to certification for individuals who are highly and uniquely qualified in a subject area to teach in a district with an identified need for teachers in that area. Alternative authorization in this area is valid for one (1) year and may be renewed for two (2) additional years with evidence of satisfactory progress toward completion of an approved alternative route preparation program. Interim certification is valid for not more than three (3) years total. (3-25-16)

**a.** Initial Qualifications. (3-20-04)

**i.** A candidate must hold a baccalaureate degree or have completed all of the requirements of a baccalaureate degree except the student teaching or practicum portion; and (3-29-17)

**ii.** The hiring district shall ensure the candidate is qualified to teach in the area of identified need through demonstrated content knowledge. This may be accomplished through a combination of employment experience and education. (3-25-16)

**b.** Alternative Route Preparation Program -- College/University Preparation or Other State Board Approved Certification Program. (3-25-16)

**i.** At the time of authorization a consortium comprised of a designee from the college/university to be attended or other state board approved certification program, and a representative from the school district, and the candidate shall determine the preparation needed to meet the Idaho Standards for Initial Certification of Professional School Personnel. This plan must include mentoring and a minimum of one (1) classroom observation by the mentor per month, which will include feedback and reflection, while teaching under the alternative authorization. The plan must include annual progress goals that must be met for annual renewal; (3-29-17)

**ii.** The candidate must complete a minimum of nine (9) semester credit hours or its equivalent of accelerated study in education pedagogy prior to the end of the first year of authorization. The number of required credits will be specified in the consortium developed plan; (3-29-17)

**iii.** At the time of authorization the candidate must enroll in and work toward completion of the alternative route preparation program through a participating college/university or other state board approved certification program, and the employing school district. A teacher must attend, participate in, and successfully complete an individualized alternative route preparation program as one (1) of the conditions for annual renewal and to receive a recommendation for full certification certificate of completion; (3-25-16)( )

**iv.** The participating college/university or other state board approved certification program shall

provide procedures to assess and credit equivalent knowledge, dispositions and relevant life/work experiences; and (3-25-16)

v. Prior to entering the classroom, the candidate shall meet or exceed the state qualifying score on appropriate state-approved content, pedagogy, or performance assessment. (3-20-04)

**03. Non-Traditional Route to Teacher Certification.** An individual may acquire interim certification as found in Section 016 of these rules through an approved non-traditional route certification program. (3-25-16)

a. Individuals who possess a baccalaureate degree or higher from an accredited institution of higher education may utilize this non-traditional route to an interim Idaho Teacher Certification. (3-29-17)

b. To complete this non-traditional route, the individual must: (3-25-16)

i. Complete a Board approved program; (4-6-05)

ii. Pass the Board approved pedagogy and content knowledge exams; and (4-6-05)

iii. Complete the Idaho Department of Education background investigation check. (3-28-18)

c. Interim Certificate. Upon completion of the certification process described herein, the individual will be awarded an interim certificate from the State Department of Education's Certification and Professional Standards Department. During the term of the interim certificate, teaching by the individual must be done in conjunction with a two-year teacher mentoring program approved by the Board. The individual must complete the mentoring program during the term of the interim certificate. All laws and rules governing standard instructional certificated teachers and pupil service staff with respect to conduct, discipline and professional standards shall apply to individuals teaching under any Idaho certificate including an interim certificate. (3-28-18)

d. Interim Certificate Not Renewable. Interim certification hereunder is only available on a one (1) time basis per individual. It will be the responsibility of the individual to obtain a valid renewable Idaho Educator Credential during the three-year interim certification term. (3-25-16)

e. Types of Certificates and Endorsements. The non-traditional route may be used for first-time certification, subsequent certificates, and additional endorsements. (3-20-14)

**04. Alternative Authorization - Pupil Service Staff.** The purpose of this alternative authorization is to allow Idaho school districts to request endorsement/certification when a position requiring the Pupil Service Staff Certificate cannot be filled with someone who has the correct endorsement/certification. The exception to this rule is the Interim School Nurse endorsement and the Interim Speech Language Pathologist endorsement. The requirements for these endorsements are defined in Subsection 015.02 of these rules. The alternate authorization is valid for one (1) year and may be renewed for two (2) additional years with evidence of satisfactory progress toward completion of an approved alternative route preparation program. Interim certification is valid for not more than three (3) years total. (3-28-18)

a. Initial Qualifications. The applicant must complete the following: (4-2-08)

i. Prior to application, a candidate must hold a master's degree and hold a current Idaho license from the Bureau of Occupational Licenses in the area of desired certification; and (3-25-16)

ii. The employing school district must provide supportive information attesting to the ability of the candidate to fill the position. (4-2-08)

b. Alternative Route Preparation Program. (4-2-08)

i. The candidate must work toward completion of the alternative route preparation program through a participating college/university and the employing school district. The alternative route preparation program must include annual progress goals. (3-25-16)

- ii. The candidate must complete a minimum of nine (9) semester credits annually to be eligible for extension of up to a total of three (3) years. (4-2-08)
  - iii. The participating college/university or the State Department of Education will provide procedures to assess and credit equivalent knowledge, dispositions, and relevant life/work experiences. (4-2-08)
  - iv. The candidate must meet all requirements for the endorsement/certificate as provided herein. (4-2-08)
- 05. Alternate Authorization Renewal.** Annual renewal will be based on the school year and satisfactory progress toward completion of the applicable alternate authorization requirements. (3-25-16)

**(BREAK IN CONTINUITY OF SECTIONS)**

**100. OFFICIAL VEHICLE FOR APPROVING ~~TEACHER EDUCATION~~ EDUCATOR PREPARATION PROGRAMS.**

Section 33-114, Idaho Code

**01. The Official Vehicle for the Approval of ~~Teacher Education~~ Educator Preparation Programs.** The official vehicle for the approval of ~~teacher education~~ traditional educator preparation programs is the Council for the Accreditation of Educator Preparation (CAEP) standards and the approved Idaho Standards for the Initial Certification of Professional School Personnel. The Idaho Standards are based upon the accepted national standards for 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 take effect and must be implemented within a period not to exceed two (2) years after notification of such revision. (3-25-16)( )

**02. Non-Traditional ~~Teacher~~ Educator Preparation Program.** The State Board of Education must approve all non-traditional route to teacher certification programs. The programs must include, at a minimum, the following components: (3-25-16)( )

- a. Pre-assessment of teaching and content knowledge; (3-25-16)
- b. An academic advisor with knowledge of the prescribed instruction area; (3-25-16)
- c. Exams of pedagogy and content knowledge; and (3-25-16)
- d. Be aligned to the Idaho Standards for the Initial Certification of Professional School Personnel. (3-25-16)

**03. Reference Availability.** The Idaho Standards for the Initial Certification of Professional School Personnel, incorporated by reference in Subsection 004.01, are available for inspection on the Office of the State Board of Education's website at [www.boardofed.idaho.gov](http://www.boardofed.idaho.gov). (3-29-12)

**04. Continuing Approval.** (3-29-12)

a. The state of Idaho will follow the Council for Accreditation of Educator Preparation (CAEP) standards model by which institutions shall pursue continuing approval through a full program review every seven (7) years. The full program review shall be based upon the Idaho Standards for Initial Certification of Professional School Personnel. (3-25-16)( )

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. (3-29-12)

c. All approved non-traditional ~~teacher~~ **educator** preparation programs will be reviewed for continued approval on the same schedule as traditional ~~teacher~~ **educator** preparation programs. Reviews will include determination of continued alignment with the approved Idaho Standards for the Initial Certification of Professional School Personnel and effectiveness of program completers. ~~(3-25-16)~~( )

**05. Payment Responsibilities for ~~Teacher~~ **Educator** Preparation Program Reviews.** The Professional Standards Commission is responsible for Idaho ~~teacher~~ **educator** 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 state review team expenses for on-site teacher preparation reviews from its budget. (3-25-16)

b. Requesting institutions pay for all other expenses related to on-site ~~teacher~~ **educator** preparation program reviews, including the standards review. ~~(3-25-16)~~( )

**IDAPA 08 – STATE BOARD OF EDUCATION**

**08.02.02 – RULES GOVERNING UNIFORMITY**

**DOCKET NO. 08-0202-1804**

**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 Article IX, Section 2, Idaho Constitution and under Sections 33-105, 33-107, 33-116, and 33-1004B, 33-1201, 33-1201A, 33-1204, 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 17, 2018.

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

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

The proposed rule will create a new section of Administrative Code, IDAPA 08.02.02.028, providing clarification to types of “additional evidence demonstrating effective teaching” that are authorized as evidence for the Professional Endorsement pursuant to Section 33-1201A, Idaho Code.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: None.

**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 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, page 52](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tracie Bent at (208) 332-1582 or [tracie.bent@osbe.idaho.gov](mailto:tracie.bent@osbe.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 24, 2018.

Dated this 31st day of August, 2018.

Tracie Bent, Chief Planning and Policy Officer  
State Board of Education  
650 W. State Street  
P.O. Box 83720  
Boise, Idaho 83720-0037  
Phone: (208) 332-1582  
Fax: (208) 334-2632

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0202-1804  
(Only Those Sections With Amendments Are Shown.)

025. -- ~~041~~27. (RESERVED)

**028. PROFESSIONAL ENDORSEMENT.**

Eligibility for the professional endorsement pursuant to Section 33-1201A, Idaho Code, may be established by providing additional evidence demonstrating effective teaching for the purpose of determining proficiency and student achievement in the event required standards for the professional endorsement are not met. ( )

**01. Measurable Student Achievement and Student Success Indicators.** Evidence of a majority of the applicable staff person's students meeting measurable student achievement targets, or student success indicator targets, may be demonstrated by the certificated staff member providing evidence that students from an accredited private or out-of-state public school have met targets set by the certificated staff member. The measurable student achievement or student success indicators must be comparable to the measurable student achievement or student success indicator targets established by the hiring school for certificated staff in similar employment areas and similar grade ranges. ( )

**02. Performance Criteria.** Evidence of an overall rating of proficient, and no components rated as unsatisfactory on the state framework for teaching evaluation, may be provided through the submittal of annual evaluations showing standards aligned to the Idaho framework for teaching evaluation standards. ( )

**03. Validity of Evidence.** Evidence provided must show that the certificated staff member met each of the proficiency and student achievement requirements in each year required. ( )

**04. Evaluation of Evidence.** The local education agency administrator shall be responsible for evaluating the evidence provided and determining alignment with the school district or charter schools measurable student achievement and student success indicators and alignment with the Idaho framework for teaching evaluation standards. The reviewing administrator shall sign an affidavit stating the evidence meets the district and state standards for measurable student achievement and student success indicators and performance criteria. The local education agency shall report the equivalent performance criteria rating the certificated staff member received and indicate if any equivalent components were rated as unsatisfactory and the measurable student achievement or student success indicator used with verification that the majority of their students have met the measurable student achievement targets or student success indicators. Targets must be comparable to targets set for like groups of students at the hiring school. The state board of education or state department of education may request to review the evidence provided for determining proficiency and student achievement. ( )

**029. -- 041. (RESERVED)**

## **IDAPA 08 – STATE BOARD OF EDUCATION**

### **08.02.02 – RULES GOVERNING UNIFORMITY**

**DOCKET NO. 08-0202-1805**

### **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 Article IX, Section 2, Idaho Constitution and under Sections 33-105, 33-107, 33-116, and 33-1004B, 33-1201, 33-1201A, 33-1204, 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 17, 2018.

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:

Like standard instructional certificates, individuals receiving an Occupational Specialist Certificate also receive an endorsement for the content area they are qualified to teach. The Board is authorized in statute to set certification requirements for educators in Idaho's public schools. Historically, the Division of Career Technical Education (Division), working with industry groups, has established industry experience standards for teaching in a specific subject area, Division staff then evaluate applicant experience and determine whether the applicant will receive an occupational certificate and corresponding endorsement in the subject area. Currently these standards reside in Division policy. Establishing the Occupational Specialist Certificate endorsement requirements in rule will provide more transparency and consistency in the eligibility requirements for these endorsements and will require they go through the same public rulemaking process as endorsements for standard instructional certificates.

The proposed endorsements are largely consistent with current practice. Names of the endorsements have been changed to align with the names of the existing career technical content standards and program pathways providing for better alignment and simplification of the existing endorsements. In some content areas, endorsements with similar names and requirements have been consolidated under a single broader endorsement allowing more individuals to teach in a single program or pathway.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: None.

**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 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, page 53](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tracie Bent at (208) 332-1582 or [tracie.bent@osbe.idaho.gov](mailto:tracie.bent@osbe.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 24, 2018.

Dated this 31st day of August, 2018.

Tracie Bent, Chief Planning and Policy Officer  
State Board of Education  
650 W. State Street  
P.O. Box 83720  
Boise, Idaho 83720-0037  
Phone: (208)332-1582  
Fax: (208) 334-2632

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0202-1805  
(Only Those Sections With Amendments Are Shown.)**

**015. IDAHO EDUCATOR CREDENTIAL.**

The State Board of Education authorizes the State Department of Education to issue certificates and endorsements to those individuals meeting the specific requirements for each area provided herein. (3-25-16)

**01. Standard Instructional Certificate.** A Standard Instructional Certificate makes an individual eligible to teach all grades, subject to the grade ranges and subject areas of the valid endorsement(s) attached to the certificate. A standard instructional certificate may be issued to any person who has a baccalaureate degree from an accredited college or university and who meets the following requirements: (3-29-17)

- a.** Professional education requirements: (3-29-17)
  - i.** Earned a minimum of twenty (20) semester credit hours, or thirty (30) quarter credit hours, in the philosophical, psychological, methodological foundations, instructional technology, and in the professional subject matter, which shall include at least three (3) semester credit hours, or four (4) quarter credit hours, in reading and its application to the content area; (3-29-17)
  - ii.** The required minimum credit hours must include at least six (6) semester credit hours, or nine (9) quarter credit hours, of student teaching in the grade range and subject areas as applicable to the endorsement; and (3-29-17)
- b.** Completed an approved teacher preparation program and have an institutional recommendation from an accredited college or university specifying the grade ranges and subjects for which they are eligible to receive an endorsement in; (3-29-17)
- c.** Individuals seeking endorsement in a secondary grade (pursuant to Section 33-1001, Idaho Code) range must complete preparation in at least two (2) fields of teaching. One (1) of the teaching fields must consist of at least thirty (30) semester credit hours, or forty-five (45) quarter credit hours and a second field of teaching consisting of at least twenty (20) semester credit hours, or thirty (30) quarter credit hours. Preparation of not less than forty-five (45) semester credit hours, or sixty-seven (67) quarter credit hours, in a single subject area may be used in lieu of the two (2) teaching field requirements; (3-29-17)
- d.** Proficiency in areas noted above is measured by completion of the credit hour requirements provided herein. Additionally, each candidate must meet or exceed the state qualifying score on the state board approved content area and pedagogy assessments. (3-29-17)
- e.** The Standard Instructional Certificate is valid for five (5) years. Six (6) semester credit hours are required every five (5) years in order to renew the certificate. (3-29-17)

**02. Pupil Service Staff 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 Service Staff Certificate, with the respective endorsement(s) for which they qualify. Persons who serve as an occupational therapist or physical therapist may be required, as determined by the local educational agency, to hold the Pupil Service Staff Certificate with respective endorsements for which they qualify. (3-28-18)

**a. School Counselor (K-12) Endorsement.** To be eligible for a Pupil Service Staff Certificate - School Counselor (K-12) endorsement, a candidate must have satisfied the following requirements. The Pupil Service Staff Certificate with a School Counselor (K-12) endorsement is valid for five (5) years. Six (6) semester credit hours are required every five (5) years in order to renew the endorsement. (3-28-18)

i. Hold a master's degree and provide verification of completion of an approved program of graduate study in school 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. 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; and (3-25-16)

ii. An institutional recommendation is required for a School Counselor (K-12) endorsement. (3-28-18)

**b. School Counselor – Basic (K-12) Endorsement.** (3-28-18)

i. Individuals serving as a school counselor pursuant to Section 33-1212, Idaho Code, shall be granted a Pupil Personnel Services Certificate with a School Counselor – Basic (K-12) endorsement. The endorsement is valid for five (5) years or until such time as the holder no longer meets the eligibility requirements pursuant to Section 33-1212, Idaho Code. Six (6) semester credit hours are required every five (5) years in order to renew the endorsement. (3-28-18)

ii. Individuals who received their endorsement pursuant to Section 33-1212, Idaho Code, prior to July 1, 2018, will be transitioned into the School Counselor – Basic (K-12) endorsement. Renewal date will remain the same as the initial credential. (3-28-18)

**c. 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. 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: (3-25-16)

i. Completion of an approved thirty (30) semester credit hour, or forty-five (45) quarter credit hours, master's degree in education or psychology and completion of an approved thirty (30) semester credit hour, or forty-five (45) quarter credit hour, School Psychology Specialist Degree program, and completion of a minimum of twelve hundred (1,200) clock-hour internship within a school district under the supervision of the training institution and direct supervision of a certificated school psychologist; (3-25-16)

ii. Completion of an approved sixty (60) semester credit hour, or ninety (90) quarter credit hour, master's degree program in School Psychology, and completion of a minimum of twelve hundred (1,200) clock-hour internship within a school district under the supervision of the training institution and direct supervision of a certificated school psychologist; (3-25-16)

iii. 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; and (3-25-16)

iv. Earn a current and valid National Certification for School Psychologists (NCSP) issued by the National Association of School Psychologists (NASP). (3-25-16)

d. 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 015.02.c.i. or 015.02.c.ii. in addition to the requirement of Subsection 015.02.c.iii. (3-29-17)

i. The candidate must possess a valid nursing (RN) license issued by the Idaho State Board of Nursing, and a baccalaureate degree in nursing, education, or a health-related field from an accredited institution. (3-29-17)

ii. 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: (3-25-16)

(1) Health program management; (3-25-16)

(2) Child and adolescent health issues; (3-25-16)

(3) Counseling, psychology, or social work; or (3-25-16)

(4) Methods of instruction. (3-25-16)

iii. Additionally, each candidate must have two (2) years of full-time (or part-time equivalent) school nursing, community health nursing, or any area of pediatric, adolescent, or family nursing experience. (3-25-16)

e. Interim Endorsement - School Nurse. This endorsement 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 School Nurse Endorsement will be issued for three (3) years while the applicant is meeting the educational requirements, and it is not renewable. (3-29-17)

f. 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. The 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. (3-25-16)

g. 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. The 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. (3-25-16)

h. 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 shall be accomplished by meeting the requirements of Subsections 015.02.g.i. through iii., or by meeting the requirement in Subsection 015.02.g.iv.: (3-29-17)

i. A master's degree in social work (MSW) from a postsecondary institution accredited by an organization recognized by the State Board of Education. The program must be currently approved by the state educational agency of the state in which the program was completed; and (3-29-17)

ii. An institution recommendation from an Idaho State Board of Education approved program; and (3-29-17)

iii. The successful completion of a school social work practicum in a kindergarten through grade twelve 12 (K-12) setting. Post-MSW extensive experience working with children and families may be substituted for the completion of a school social work practicum in a K-12 setting. (3-29-17)

iv. A current and valid master's degree or higher social work license pursuant to chapter 32, title 54 and the rules of the State Board of Social Work Examiners. (3-29-17)

i. Interim Endorsement-Speech Language Pathologist. This certificate will be granted for those who do not meet the educational requirements but who hold a baccalaureate degree in speech language pathology and are pursuing a master's degree in order to obtain the Pupil Service Staff 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. (3-28-18)

j. Occupational Therapist Endorsement. A candidate with a current and valid Occupational Therapy license issued by the State of Idaho Bureau of Occupational Licenses shall be granted an Occupational Therapist endorsement. The Pupil Personnel Services Certificate with an Occupational Therapist endorsement is valid for five (5) years. Six (6) semester credit hours are required every five (5) years in order to renew the endorsement. Candidate must maintain current and valid Occupational Therapy Licensure through the State of Idaho Bureau of Occupational Licenses for the endorsement to remain valid. (3-28-18)

k. Physical Therapist Endorsement. A candidate with a current and valid Physical Therapy license issued by the State of Idaho Bureau of Occupational Licenses shall be granted a Physical Therapist endorsement. The Pupil Service Staff Certificate with a Physical Therapist endorsement is valid for five (5) years. Six (6) semester credit hours are required every five (5) years in order to renew the endorsement. Candidate must maintain current and valid Physical Therapy Licensure through the State of Idaho Bureau of Occupational Licenses for the endorsement to remain valid. (3-28-18)

**l. Career Counselor Endorsement. The endorsement for a Career Counselor is issued to applicants who hold a current Pupil Service Staff Certificate with a School Counselor (K-12) endorsement, and who have satisfied the following career technical course requirements: Career Pathways and Career Technical Guidance; Principles/Foundations of Career Technical Education; and Theories of Occupational Choice. ( )**

**03. Administrator Certificate.** Every person who serves as a superintendent, a director of special education, a secondary school principal, or principal of an elementary school with eight (8) or more teachers (including the principal), or is assigned to conduct the summative evaluation of certified staff is required to hold an Administrator Certificate. The certificate may be endorsed for service as a school principal, a superintendent, or a director of special education. Assistant superintendents are required to hold the Superintendent endorsement. Assistant principals or vice-principals are required to hold the School Principal endorsement. Directors of special education are required to hold the Director of Special Education endorsement. Possession of an Administrator Certificate does not entitle the holder to serve as a teacher at a grade level for which the educator is not qualified or certificated. All administrator certificates require candidates to meet the Idaho Standards for School Principals. The Administrator Certificate is valid for five (5) years. Six (6) semester credit hours are required every five (5) years in order to renew the certificate. (3-28-18)

a. School Principal (Pre-K-12) Endorsement. To be eligible for an Administrator Certificate endorsed for School Principal (Pre-K-12), a candidate must have satisfied the following requirements: (3-28-18)

i. Hold a master's degree from an accredited college or university. (3-25-16)

ii. Have four (4) years of full-time certificated experience working with students, Pre-K-12, while under contract in an accredited school setting. (3-25-16)

iii. Have completed an administrative internship in a state-approved program, or have one (1) year of experience as an administrator in grades Pre-K-12. (3-25-16)

iv. Provide verification of completion of a state-approved program of at least thirty (30) semester

credit hours, forty-five (45) quarter credit hours, of graduate study in school administration for the preparation of school principals at an accredited college or university. This program shall include the competencies of the Idaho Standards for School Principals. (3-28-18)

- v. An institutional recommendation is required for a School Principal (Pre-K-12) Endorsement. (3-28-18)
- b. Superintendent (Pre-K-12) Endorsement. To be eligible for an Administrator Certificate with a Superintendent (Pre-K-12) endorsement, a candidate must have satisfied the following requirements: (3-28-18)
  - i. Hold an education specialist or doctorate degree or complete a comparable post-master's sixth year program at an accredited college or university. (3-25-16)
  - ii. Have four (4) years of full-time certificated/licensed experience working with Pre-K-12 students while under contract in an accredited school setting. (3-25-16)
  - iii. Have completed an administrative internship in a state-approved program for the superintendent endorsement or have one (1) year of out-of-state experience as an assistant superintendent or superintendent in grades Pre-K-12. (3-25-16)
  - iv. Provide verification of completion of an approved program of at least thirty (30) semester credit hours, or forty-five (45) quarter credit hours, of post-master's degree graduate study for the preparation of school superintendents at an accredited college or university. This program in school administration and interdisciplinary supporting areas shall include the competencies in Superintendent Leadership, in addition to the competencies in the Idaho Standards for School Principals. (3-28-18)
  - v. An institutional recommendation is required for a School Superintendent Endorsement (Pre-K-12). (3-28-18)
- c. Director of Special Education (Pre-K-12) Endorsement. To be eligible for an Administrator Certificate endorsed for Director of Special Education (Pre-K-12), a candidate must have satisfied all of the following requirements: (3-28-18)
  - i. Hold a master's degree from an accredited college or university; (3-25-16)
  - ii. Have four (4) years of full-time certificated/licensed experience working with students Pre-K-12, while under contract in a school setting; (3-25-16)
  - iii. Obtain college or university verification of demonstrated the competencies of the Director of Special Education in Idaho Standards for Initial Certification of Professional School Personnel; (3-28-18)
  - iv. Obtain college or university verification of demonstrated competencies in the following areas, in addition to the competencies in the Idaho Standards for School Principals: Concepts of Least Restrictive Environment; Post-School Outcomes and Services for Students with Disabilities Ages Three (3) to Twenty-one (21); Collaboration Skills for General Education Intervention; Instructional and Behavioral Strategies; Individual Education Programs (IEPs); Assistive and Adaptive Technology; Community-Based Instruction and Experiences; Data Analysis for Instructional Needs and Professional Training; Strategies to Increase Program Accessibility; Federal and State Laws and Regulations and School District Policies; Resource Advocacy; and Technology Skills for Referral Processes, and Record Keeping; (3-28-18)
  - v. Have completed an administrative internship/practicum in the area of administration of special education; and (3-28-18)
  - vi. An institutional recommendation is required for Director of Special Education (Pre-K-12) endorsement. (3-28-18)

**04. Certification Standards For Career Technical Educators.** Teachers of career technical courses

or programs in secondary schools must hold an occupational specialist certificate and an endorsement in an appropriate occupational discipline. All occupational certificates must be approved by the Division of Career Technical Education regardless of the route an individual is pursuing to receive the certificate. (3-28-18)

**05. Degree Based Career Technical Certification.** (3-25-16)

a. Individuals graduating from an approved occupational teacher preparation degree program qualify to teach in the following five (5) disciplines: agricultural science and technology; business technology education; computer science technology; engineering; family and consumer sciences; marketing technology education; and technology education. Occupational teacher preparation course work must meet the Idaho Standards for the Initial Certification of Professional School Personnel. The occupational ~~teacher-education~~ **educator preparation** program must provide appropriate content to constitute a major in the identified field. Student teaching shall be in an approved program and include experiences in the major field. Applicants shall have accumulated one thousand (1,000) clock hours of related work experience or practicum in their respective field of specialization, as approved by the Division of Career Technical Education. The certificate is valid for five (5) years. Six (6) semester credit hours are required every five (5) years pursuant to Section 060 of these rules. (~~3-28-18~~) ( )

b. The Career Technical Administrator certificate is required for an individual serving as an administrator, director, or manager of career technical education programs at the state Division of Career Technical Education or in Idaho public schools. Individuals must meet one (1) of the two (2) following prerequisites to qualify for the Career Technical Administrator Certificate. The certificate is valid for five (5) years. Six (6) semester credit hours are required every five (5) years pursuant to Section 060 of these rules to renew. (3-28-18)

i. Qualify for or hold an Advanced Occupational Specialist certificate or hold an occupational endorsement on a standard instructional certificate; provide evidence of a minimum of four (4) years' teaching, three (3) of which must be in a career technical discipline; hold a master's degree; and complete at least fifteen (15) semester credits of administrative course work. (3-28-18)

(1) Applicants must have completed credits in: education finance, administration and supervision of personnel, legal aspects of education; and conducting evaluations using the statewide framework for teacher evaluations. (3-28-18)

(2) Additional course work may be selected from any of the following areas: administration and supervision of occupational programs; instructional supervision; administration internship; curriculum development; curriculum evaluation; research in curriculum; school community relations; communication; teaching the adult learner; coordination of work-based learning programs; and/or measurement and evaluation. (3-28-18)

ii. Hold a superintendent or principal (pre-K-12) endorsement on a standard administrator certificate and provide evidence of a minimum of four (4) years' teaching, three (3) of which must be in a career technical discipline or successfully complete the Division of Career Technical Education twenty-seven (27) month Idaho career technical education leadership institute. (3-28-18)

~~c. *Work-Based Learning Coordinator Endorsement. Educators assigned to coordinate approved work based experiences must hold the Work Based Learning Coordinator endorsement. To be eligible, applicants must hold an occupational endorsement on the Standard Instructional Certificate or qualify for an Occupational Specialist Certificate, plus complete course work in coordination of work-based learning programs.* (3-29-17)~~

~~d. *Career Counselor Endorsement. The endorsement for a Career Counselor may be issued to applicants who hold a current Pupil Service Staff Certificate with a School Counselor (K-12) endorsement, and who have satisfied the following career technical requirement: Career Pathways and Career Technical Guidance; Principles/Foundations of Career Technical Education; and Theories of Occupational Choice.* (3-28-18)~~

**06. Industry-Based Occupational Specialist Certificate.** The industry-based Occupational Specialist Certificates are industry-based career technical certifications issued in lieu of a degree-based career technical certificate. Certificate holders must meet the following eligibility requirements: (3-28-18)

a. Be at least twenty-two (22) years of age; document recent, gainful employment in the area for

which certification is requested; possess either a high school diploma or General Educational Development (GED) certificate; meet provisions of Idaho Code; and, verify technical skills through work experience, industry certification or testing as listed below. When applicable, requirements of occupationally related state agencies must also be met. Since educational levels and work experiences vary, applicants may be determined highly qualified under any one (1) of the following three (3) options: (3-28-18)

i. Have six (6) years or twelve thousand (12,000) hours of recent, gainful employment in the occupation for which certification is requested. Up to forty-eight (48) months credit or up to eight thousand (8,000) hours can be counted toward the six (6) years or twelve thousand (12,000) hours on a month-to-month basis for journeyman training or completed postsecondary training in a career technical education program; or (3-28-18)

ii. Have a baccalaureate degree in the specific occupation or related area, plus two (2) years or four thousand (4,000) hours of recent, gainful employment in the occupation for which certification is required, at least half of which must have been during the immediate previous five (5) years; or (3-28-18)

iii. Have completed a formal apprenticeship program in the occupation or related area for which certification is requested plus two (2) years or four thousand (4,000) hours of recent, gainful, related work experience, at least half of which must have been completed in the immediate previous five (5) years. (3-28-18)

**b. Limited Occupational Specialist Certificate.** This certificate is issued to individuals who are new to teaching in Idaho public schools or new to teaching in career technical education in Idaho public schools. The certificate is an interim certificate and is valid for three (3) years and is non-renewable. Applicants must meet all of the minimum requirements established in Subsection 015.06.a. of these rules. Individuals on a limited occupational specialist certificate must complete one (1) of the two (2) following pathways during the validity period of the certificate: (3-28-18)

i. **Pathway I - Coursework:** Within the three-year (3) period of the Limited Occupational Specialist Certificate, the instructor must satisfactorily complete the pre-service training prescribed by the Division of Career Technical Education and demonstrate competencies in principles/foundations of occupational education and methods of teaching occupational education. Additionally, the instructor must satisfactorily demonstrate competencies in two (2) of the following areas: career pathways and guidance; analysis, integration, and curriculum development; and measurement and evaluation. (3-28-18)

ii. **Pathway II – Cohort Training:** Within the first twelve (12) months, the holder must enroll in the Division of Career Technical Education sponsored two (2) year cohort training and complete the two (2) training within the three (3) year validity period of the interim certificate. (3-28-18)

**c. Standard Occupational Specialist Certificate.** (3-28-18)

i. This certificate is issued to individuals who have held a limited occupational specialist certificate and completed one (1) of the pathways for completions. (3-28-18)

ii. The Standard Occupational Specialist Certificate is valid for five (5) years. Six (6) semester credit hours are required every five (5) years pursuant to Section 060 of these rules to renew. Credit equivalency will be based on verification of forty-five (45) hours of participation at approved technical conferences, institutes, or workshops where participation is prorated at the rate of fifteen (15) hours per credit; or one hundred twenty (120) hours of approved related work experience where hours worked may be prorated at the rate of forty (4) hours per credit; or any equivalent combination thereof, and having on file a new professional development plan for the next certification period. (3-28-18)

**d. Advanced Occupational Specialist Certificate.** This certificate is issued to individuals who: (3-29-17)

i. Are eligible for the Standard Occupational Specialist Certificate; (3-28-18)

ii. Provide evidence of completion of a teacher training degree program or eighteen (18) semester credits of Division of Career Technical Education approved education or content-related course work in addition to

the twelve (12) semester credits required for the Standard Occupational Specialist Certificate (a total of thirty (30) semester credits); and (3-28-18)

iii. Have on file a new professional development plan for the next certification period. (3-28-18)

iv. The Advanced Occupational Specialist Certificate is valid for five (5) years. Six (6) semester credit hours are required every five (5) years pursuant to Section 060 of these rules to renew. (3-28-18)

**07. Postsecondary Specialist.** A Postsecondary Specialist certificate will be granted to a current academic faculty member whose primary employment is with any accredited Idaho postsecondary institution. To be eligible to teach in the public schools under this postsecondary specialist certificate, the candidate must supply a recommendation from the employing institution (faculty's college dean). The primary use of this state-issued certificate will be for distance education, virtual classroom programs, and for public and postsecondary partnerships. (3-29-17)

a. Renewal. This certificate is good for five (5) years and is renewable. To renew the certificate, the renewal application must be accompanied with a new written recommendation from the postsecondary institution (faculty's college dean level or higher). (3-25-16)

b. Fees. The fee is the same as currently in effect for an initial or renewal certificate as established in Section 066 of these rules. (3-25-16)

c. The candidate must meet the following qualifications: (3-25-16)

i. Hold a master's degree or higher in the content area being taught; (3-25-16)

ii. Be currently employed by the postsecondary institution in the content area to be taught; and (3-25-16)

iii. Complete and pass a criminal history background check as required according to Section 33-130, Idaho Code. (3-25-16)

**08. American Indian Language.** Each Indian tribe shall provide to the State Department of Education the names of those highly and uniquely qualified individuals who have been designated to teach the tribe's native language in accordance with Section 33-1280, Idaho Code. Individuals identified by the tribe(s) may apply for an Idaho American Indian Certificate as American Indian languages teachers. (3-25-16)

a. The Office of Indian Education at the State Department of Education will process an application that has met the requirements of the Tribe(s) for an American Indian languages teacher. (3-25-16)

b. Once an application with Tribal approval has been received, it will be reviewed and, if approved, it will be forwarded to the Office of Certification for a criminal history background check as required in Section 33-130, Idaho Code. The application must include a ten--finger fingerprint card or scan and a fee for undergoing a background investigation check pursuant to Section 33-130, Idaho Code. (3-28-18)

c. The Office of Certification will review the application and verify the applicant is eligible for an Idaho American Indian Certificate. The State Department of Education shall authorize an eligible applicant as an American Indian languages teacher. An Idaho American Indian Certificate is valid for not more than five (5) years. Individuals may apply for a renewal certificate. (3-25-16)

**09. Junior Reserved Officer Training Corps (Junior ROTC) Instructors.** (3-25-16)

a. Each school district with a Junior ROTC program shall provide the State Department of Education with a list of the names of those individuals who have completed an official armed forces training program to qualify as Junior ROTC instructors in high schools. (3-25-16)

b. Each school district with a Junior ROTC program shall provide the State Department of Education

with a notarized copy of their certificate(s) of completion. (3-25-16)

c. Authorization Letter. Upon receiving the items identified in Subsections 015.09.a. and 09.b., the State Department of Education shall issue a letter authorizing these individuals as Junior ROTC instructors. (3-29-17)

**10. Additional Renewal Requirements.** In addition to specific certificate or endorsement renewal requirements, applicants must meet the following renewal requirements as applicable: (3-25-16)

a. Mathematics In-Service Program. In order to recertify, the state **board** approved mathematics instruction course titled “Mathematical Thinking for Instruction,” or another State Department of Education approved alternative course, shall be required. The “Mathematical Thinking for Instruction” course consists of three (3) credits. Teachers must take one (1) of the three (3) courses developed that is most closely aligned with their current assignment prior to July 1, 2019. Any teacher successfully completing said course shall be deemed to have met the requirement of Subsection 060.02.c. of this rule as long as said course is part of an official transcript or completed before September 1, 2013, and verified by the State Department of Education. Successful completion of a state **board** approved mathematics instruction course shall be a one-time requirement for renewal of certification for those currently employed in an Idaho school district and shall be included within current requirements for continuing education for renewal. The following must successfully complete the “Mathematical Thinking for Instruction” course or another State Department of Education approved alternative course in order to recertify: ~~(3-28-18)~~ ( )

i. Each teacher holding a Blended Early Childhood Education/Early Childhood Special Education (Birth - Grade 3) endorsement who is employed by a school district or charter school as a K-3 multi-subject or special education teacher; (3-28-18)

ii. Each teacher holding an All Subjects (K-8) endorsement who is employed by a school district or charter school as a K-6 multi-subject teacher; (3-28-18)

iii. Each teacher holding an All Subjects (K-8) endorsement, Mathematics – Basic (5-9 or 6-12) endorsement, Mathematics (5-9 or 6-12) endorsement teaching in a mathematics content classroom (grade six (6) through grade twelve (12)) including Title I who is employed by a school district or charter school; and (3-28-18)

iv. Each teacher holding an Exceptional Child Generalist endorsement who is employed by a school district or charter school as a special education teacher. (3-28-18)

b. Waiver of Mathematics In-Service Program. When applying for certificate renewal, an automatic waiver of the mathematics in-service program requirement shall be granted for any certificated individual living outside of the state of Idaho who is not currently employed as an educator in the state of Idaho. This waiver applies only as long as the individual remains outside the state of Idaho or as long as the individual is not employed as an educator in the state of Idaho. Upon returning to Idaho or employment in an Idaho public school, the educator will need to complete this requirement prior to the next renewal period. (3-25-16)

c. Administrator certificate renewal. In order to recertify, holders of an administrator certificate must complete a course consisting of a minimum of three (3) semester credits in the Idaho framework for teachers' evaluation pursuant to Section 33-1204, Idaho Code. Credits must be earned through an approved educator preparation program and include a laboratory component. The laboratory component must include in-person or video observation and scoring of teacher performance using the statewide framework for teacher's evaluation. The approved course must include the following competencies: (3-28-18)

i. Understanding professional practice in Idaho evaluation requirements, including gathering accurate evidence and artifacts, understanding and using the state framework for evaluation rubric with fidelity, proof of calibration and interrater reliability, ability to provide effective feedback for teacher growth, and understanding and advising teachers on individualized learning plan and portfolio development. (3-28-18)

ii. Understanding student achievement and growth in the Idaho evaluation framework, including understanding how measurable student achievement and growth measures impact summative evaluation ratings and proficiency in assessment literacy. (3-28-18)

(BREAK IN CONTINUITY OF SECTIONS)

**021. ENDORSEMENTS.**

Holders of a Standard Instructional Certificate, Standard Occupational Specialist Certificate, and Advanced Occupational Specialist Certificate may be granted endorsements in subject areas as provided herein. Instructional staff are eligible to teach in the grades and content areas of their endorsements. Idaho preparation programs shall prepare candidates for endorsements in accordance with the Idaho Standards for Initial Certification of Professional School Personnel. An official statement from the college of education of competency in a teaching area or field is acceptable in lieu of required credits if such statements are created in consultation with 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. Statements must include the number of credits the competency evaluation is equivalent to. 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 **board** approved content, pedagogy ~~and~~ **or** performance assessments. When converting semester credit hours to quarter credit hours, two (2) semester credit hours is equal to three (3) quarter credit hours.

~~(3-28-18)~~ ( )

**01. Clinical Experience Requirement.** All endorsements require supervised teaching experience in the relevant content area, or a State Department of Education or Division of Career Technical Education approved alternative clinical experience as applicable to the area of endorsement. (3-28-18)

**02. Alternative Authorization to Endorsement.** Candidates shall meet all requirements of the chosen option for the endorsement as provided herein. (3-28-18)

**a.** Option I -- An official statement from the college of education of competency in a teaching area or field is acceptable in lieu of courses for a teaching field if such statements are created in consultation with 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. (3-28-18)

**b.** Option II -- National Board. By earning National Board Certification in content specific areas, teachers may gain endorsement in a corresponding subject area. (3-29-17)

**c.** Option III -- Master's degree or higher. By earning a graduate degree in a content specific area, candidates may add an endorsement in that same content area to a valid instructional certificate. (3-28-18)

**d.** Option IV -- Testing and/or Assessment. Two (2) pathways are available to some teachers, depending upon endorsement(s) already held. (3-29-17)

**i.** Pathway 1 -- Endorsements may be added through state-approved testing and a mentoring component. The appropriate test must be successfully completed within the first year of authorization in an area closely compatible with an endorsement for which the candidate already qualifies and is experienced. Additionally, requires the successful completion of a one (1)-year state-approved mentoring component; or (3-28-18)

**ii.** Pathway 2 -- Endorsements may be added through state-approved testing in an area less closely compatible with an endorsement for which the candidate already qualifies and is experienced. The appropriate test must be successfully completed within the first year of the authorization. Additionally, requires the successful completion of a one (1)-year state-approved mentoring component and passing a final pedagogy assessment. (3-25-16)

(BREAK IN CONTINUITY OF SECTIONS)

**025. CAREER TECHNICAL EDUCATION OCCUPATIONAL SPECIALIST ENDORSEMENTS A-D.**

**01. Administrative Services (6-12).** Industry experience to include applied demonstration of the majority of the following areas: proficiency in word processing, spreadsheet, database, presentation, and technology media applications; accounting functions; legal and ethical issues that impact business; customer relations; business communication; and business office operations. ( )

**02. Agribusiness (6-12).** Industry experience to include applied demonstration of the majority of the following areas: plant and animal science; agricultural economic principles; business planning and entrepreneurship; agriculture business financial concepts and record-keeping systems; risk management in agriculture; laws related to agriculture and landowners; marketing and sales plans, and sales. ( )

**03. Agricultural Leadership and Applied Communication (6-12).** Industry experience to include applied demonstration of the majority of the following areas: applied communications and leadership through agricultural education; supervised agricultural experience; career opportunities in agricultural science, communications, and leadership; agriculture's impact on society; agricultural science principles; agricultural communication principles; and agricultural leadership principles. ( )

**04. Agricultural Mechanics and Power Systems (6-12).** Industry experience to include applied demonstration of the majority of the following areas: safety practices; tools and hardware; metal technology; power systems; electricity; mathematical applications; insulation; and careers in agricultural mechanics and power systems. ( )

**05. Agricultural Small Engine Repair/Power Sports (6-12).** Industry experience to include applied demonstration of the majority of the following areas: workplace safety; tools, fasteners, and measurement; basic electrical, engine design and theory; maintenance, parts and service management; and career opportunities. ( )

**06. Animal Science (6-12).** Industry experience to include applied demonstration of the majority of the following areas: animal agricultural industries; nutritional requirements for livestock; livestock reproductive systems; principles of evaluation for animal selection; animal welfare, handling, and quality assurance; medication and care; disease transmission and care; harvesting and processing of animal products; and animal science risk management. ( )

**07. Applied Accounting (6-12).** Industry experience to include applied demonstration of the majority of the following areas: accounting functions; accounting ethics; software application packages; financial statements; asset protection and internal controls; inventory records; long-term assets; and, payroll procedures. ( )

**08. Automated Manufacturing (6-12).** Industry experience to include applied demonstration of the majority of the following areas: lab organization and safety practices; blueprint reading, measuring, computer aided design; fundamental power system principles, manufacturing processes, electronic and instrumentation principles; machining; robotics and materials-handling systems; and additive (3D) printing. ( )

**09. Automotive Technology (6-12).** Industry experience to include applied demonstration of the majority of the following areas: service, maintenance, and repair practices for a wide variety of vehicles; and, diagnosing, adjusting, repairing, and replacing individual vehicle components and systems. ( )

**10. Business Management (6-12).** Industry experience to include applied demonstration of the majority of the following areas: planning and organizing; directing, controlling and evaluating goals and accomplishments; financial decision-making; competitive analysis and marketing strategies; human resource management; customer relations; technology; project management; operations and inventory; and social responsibility. ( )

**11. Cabinetry and Millwork (6-12).** Industry experience to include applied demonstration of the majority of the following areas: cabinetmaking and millwork production; cutting, refinishing, installing, and shaping of various materials; knowledge of industry standards and construction applications; hardware; and, blueprint reading. ( )

**12. Collision Repair (6-12).** Industry experience to include applied demonstration of the majority of the following areas: auto body collision repair practices; tools; trade skills in refinishing, welding, and painting. ( )

**13. Commercial Photography (6-12).** Industry experience to include applied demonstration of the majority of the following areas: ethics in photography; elements and principles of design composition; cameras and lenses; exposure settings; light sources; digital workflow; presentation techniques and portfolios; and production using industry standard software. ( )

**14. Cosmetology (6-12).** Industry experience to include applied demonstration of the majority of the following areas: hair design; skincare; nail care; industry guidelines and procedures; entrepreneurship; and, communications. ( )

**15. Culinary Arts (6-12).** Industry experience to include applied demonstration of the majority of the following areas: experience as a chef in a full-service restaurant; communication and organization skills; knowledge of and certification in proper food handling and sanitation standards; food quality and control; safety and sanitation practices; delegation of tasks related to meal prep, cooking, and delivery of food to diners; management of relationships with distributors and vendors; knowledge of industry trends; food service industry and career options; culinary tools and equipment; menu planning principles; ingredients and food production; cooking methods; and business operations in the culinary/catering industry. ( )

**16. Dental Assisting (6-12).** Industry experience to include applied demonstration of the majority of the following areas: dental professions pathways; ethics in dental practice; nutrition as related to oral health; infection control; occupational safety; dental-related anatomy and pathology; dental anesthesia; dental assisting skills; dental materials; and, dental radiology. Instructor must hold a current/valid Idaho license or certificate as a dental assistant, dental hygienist, or dentist. ( )

**17. Diesel Technology (6-12).** Industry experience to include applied demonstration of the majority of the following areas: knowledge of diesel engine service; preliminary inspection; identification and repair of vehicle components; preventative maintenance; and, heavy equipment applications. ( )

**18. Digital Communications (6-12).** Industry experience to include applied demonstration of the majority of the following areas: elements and principles of design and visual communications; professional communication skills; editing and proofreading; copyright and intellectual property law; portfolio development; content development strategy; branding and corporate identity; graphic communication production; video editing; web page development; web page design and layout; and web-related planning and organizational standards. ( )

**19. Digital Media Technologies (6-12).** Industry experience to include applied demonstration of the majority of the following areas: graphic design industry structure; elements and principles of design composition; visual communication; industry-standard software production; ethics and graphic design; digital portfolios; mathematical skills as related to design; communication skills; editing and proofreading; video editing; digital media and production; dissemination techniques and methods; broadcasting equipment, camera and lens operations; light sources; presentation techniques; public speaking, and writing skills. ADDA Certified Digital Designer, NOCTI Advertising and Design 5261, or Adobe Certified Expert Certification is desired. ( )

**20. Drafting (6-12).** Industry experience to include applied demonstration of the majority of the following areas: technical drawings; scale drawings; architectural drafting; mechanical drafting; orthographic projection; two (2) and three (3) dimensional drawings; manual drafting; and computer aided design. ( )

**026. CAREER TECHNICAL EDUCATION OCCUPATIONAL SPECIALIST ENDORSEMENTS E-M.**

**01. Early Childhood Education (6-12).** Industry experience to include applied demonstration of the majority of the following areas: early childhood education career paths and opportunities for employment; ethical conduct; advocacy for children; child/human development and learning; family and community relations; child observation, documentation, and assessment; positive relationships and supportive interaction; and approaches, strategies, and tools for early childhood education. ( )

**02. Ecology and Natural Resource Management (6-12).** Industry experience to include applied demonstration of the majority of the following areas: ecological concepts and scientific principles related to natural resource systems; forest types; forest management components and practices; fire ecology and management; importance and application of GPS/GIS in natural resource management; fish and wildlife ecology; and mineral and energy resources management. ( )

**03. Educational Assistant (6-12).** Industry experience to include applied demonstration of the majority of the following areas: knowledge of postsecondary options and career pathways; foundations of educational theories and philosophies; student diversity; instructional planning; lesson plan development; instructional delivery; assessment; and learning environment management. ( )

**04. Electrical Technology (6-12).** Industry experience to include applied demonstration of the majority of the following areas: digital and solid-state circuits; DC principles; AC concepts; soldering techniques; circuits; and associated electronic components and tools. ( )

**05. Electronics Technology (6-12).** Industry experience to include applied demonstration of the majority of the following areas: digital and solid-state circuits; DC principles; AC concepts; soldering techniques; circuits; digital electronics; electronic circuits; electronic devices; and electronic digital circuitry simulations and associated electronic components and tools. ( )

**06. Emergency Medical Technician (EMT)/(6-12).** Industry experience to include applied demonstration of the majority of the following areas: fundamental knowledge of the emergency management services (EMS) system; medical and legal/ethical issues in the provision of emergency care; EMS systems; workforce safety and wellness; documentation; EMS system communication; therapeutic communication; anatomy and physiology; medical terminology; pathophysiology; and lifespan development (per the EMR and EMT sections of the Idaho EMS Education Standards located on the Idaho Department of Health and Welfare website). Instructor must have passed the National Registry exam. Instructor must hold a current/valid Idaho EMS license or certificate and be certified as an EMT instructor through Idaho EMS. ( )

**07. Firefighting (6-12).** Industry experience to include applied demonstration of the majority of the following areas: knowledge of local, state, and federal laws and regulations; firefighting procedures; firefighting tactics; firefighting equipment and vehicles; EMT basic training; first aid and CPR training; and reporting requirements under Idaho criminal code. ( )

**08. Food Processing Technologies (6-12).** Industry experience to include applied demonstration of the majority of the following areas: properties of food; principles of processing/post-processing operations; safety practices; and equipment and tools used in food processing. ( )

**09. Graphic Design (6-12).** Industry experience to include applied demonstration of the majority of the following areas: the graphic design industry; elements and principles of design and visual communication; production using industry standard software; branding and corporate identity; ethical and legal issues related to graphic design; portfolio development and evaluation; mathematical skills for visual communications; communication, editing and proofreading skills; graphic design in digital media; and applied art. ( )

**10. HVAC Technology (6-12).** Industry experience to include applied demonstration of technical subjects and skills related to the HVAC trade as approved by the Idaho HVAC Board and the Idaho State Board for Career Technical Education: installing, altering, repairing, and maintaining HVAC systems and equipment including air conditioners, venting or gas supply systems, ductwork and boilers. ( )

**11. Hospitality Management (6-12).** Industry experience to include applied demonstration of the majority of the following areas: business structures; economics; human resources; sales and marketing; finance and budgeting; safety and security; legal and ethical considerations; event planning and management; teamwork; communication skills; lodging operations; and food and beverage operations. ( )

**12. Hospitality Services (6-12).** Industry experience to include applied demonstration of the majority of the following areas: careers in the hospitality and tourism industry; customer service; event planning

implementation; procedures applied to safety, security, and environmental issues; practices and skills involved in lodging occupations and travel-related services; and facilities management. ( )

**13. Industrial Mechanics (6-12).** Industry experience to include applied demonstration of the majority of the following areas: industrial mechanics knowledge; shop skills; diagnostic and repair techniques; welding; hydraulic; electronic systems; and maintenance and preventative maintenance. ( )

**14. Journalism (6-12).** Industry experience to include applied demonstration of the majority of the following areas: legal and ethical issues related to journalism and photojournalism; principles and techniques of media design; design formats; journalistic writing; social media and digital citizenship; and media leadership. ( )

**15. Law Enforcement (6-12).** Industry experience to include applied demonstration of the majority of the following areas: knowledge of local, state, and federal laws and regulations; defensive strategies; investigative strategies; search principles and strategies; tactical procedures; vehicle operations; knowledge of weapons and use where appropriate; first aid and CPR training; social and psychological sciences; and identification systems. ( )

**16. Precision Machining (6-12).** Industry experience to include applied demonstration of the majority of the following areas: precision machining practices; tools used to shape parts for machines; industrial mechanics; shop skills; safety in practice; blueprint reading; and diagnostic and repair techniques. ( )

**17. Marketing (6-12).** Industry experience to include applied demonstration of the majority of the following areas: economic systems; international marketing and trade; ethics; external factors to business; product/service management; pricing; distribution channels; advertising; sales promotion; public relations; retail management; market research and characteristics; E-marketing; and financing and financial analysis. ( )

**027. CAREER TECHNICAL EDUCATION OCCUPATIONAL SPECIALIST ENDORSEMENTS N-Z.**

**01. Networking/Computer Support (6-12).** Industry experience to include applied demonstration of the majority of the following areas: PC hardware; networking technologies; laptop support; printer support; operating systems; security; mobile device support; troubleshooting techniques; and trends in the industry. Industry certification — A+, Net Plus, CIW, or CISCO — is desired. ( )

**02. Nursing Assistant (6-12).** Industry experience to include applied demonstration of the majority of the following areas: scope of practice; ethics and legal issues; communication and interpersonal relationships; documentation; care practices; infection prevention; human anatomy and physiology; medical terminology; personal care procedures; physiological measurements; nutritional requirements and techniques; procedures and processes related to elimination; quality patient environment; patient mobility; admission, transfer, and discharge procedures; care of residents with complex needs; and safety and emergency. Instructor must hold a current/valid Idaho registered nursing license, and be approved as a certified CNA instructor through Idaho Department of Health and Welfare. ( )

**03. Ornamental Horticulture (6-12).** Industry experience to include applied demonstration of the majority of the following areas: safety practices; plant anatomy; plant physiology; plants identification skills; growing media; plant nutrition; integrated pest management; plant propagation; ornamental horticulture crops; business concepts; plant technologies; ornamental design standards; and career opportunities in ornamental horticulture. ( )

**04. Pharmacy Technician (6-12).** Industry experience to include applied demonstration of the majority of the following areas: patient profile establishment and maintenance; insurance claim preparation; third-party insurance provider correspondence; prescription and over-the-counter medications stocking and inventorying; equipment and supplies maintenance and cleaning; and cash register operation. Instructor must be a pharmacist, registered nurse, or pharmacy technician holding a current/valid Idaho license or certification. ( )

**05. Physical Therapy Assistant (6-12).** Industry experience to include applied demonstration of the majority of the following areas: ethical, legal, and professional responsibilities; medical terminology; anatomy and physiology; roles and responsibilities of the rehabilitation team; patient care skills; therapeutic interventions; and common pathologies. Instructor must be a health professional holding a current/valid Idaho license or certificate in

his/her field of study. ( )

**06. Plant and Soil (6-12).** Industry experience to include applied demonstration of the majority of the following areas: plant anatomy and identification; plant processes, growth and development; soil and water; plant nutrition; integrated pest management; careers and technology; and safety. ( )

**07. Plumbing Technology (6-12).** Industry experience to include applied demonstration of technical subjects and skills related to the plumbing trade as approved by the Idaho Plumbing Board and the Idaho Board for Career Technical Education: repairing, installing, altering, and maintaining plumbing systems and fixtures; including, interconnecting system pipes and traps, water drainage, water supply systems, and liquid waste/sewer facilities. ( )

**08. Pre-Engineering (6-12).** Industry experience to include applied demonstration of the majority of the following areas: lab safety; impacts of engineering; ethics of engineering; design process; documentation; technical drawing; 3D modeling; material science; power systems; basic energy principles; statistics; and kinematic principles. ( )

**09. Programming and Web Technologies (6-12).** Industry experience to include applied demonstration of the majority of the following programming areas: basic programming principles; problem solving; programming logic; validation; repetition; classes' expectations; events and functionality; arrays and structure; design principles; system analysis; implementation and support; web page development; web page design and layout; integration of web pages; web planning and organizational standards; and web marketing. ( )

**10. Residential Construction (6-12).** Industry experience to include applied demonstration of the majority of the following areas: comprehensive knowledge of structural systems and processes; classical and contemporary construction elements; knowledge of industry standards; knowledge of architecture; cabinetry and millwork; and blueprint reading. ( )

**11. Small Engine Repair/Power Sports (6-12).** Industry experience to include applied demonstration of the majority of the following areas: small gasoline engine construction and performance; industry-related resources; equipment used to diagnose and troubleshoot issues; repair; entrepreneurship; and customer service. ( )

**12. Sports Medicine/Athletic Training (6-12).** Industry experience to include applied demonstration of the majority of the following areas: prevention, assessment, treatment, and reconditioning of athletic injuries; proper taping, strapping, bracing, and fitting of athletic equipment; implementation of prescribed treatments by the team/programs/event physician; coverage of assigned pre-season physicals, sports games or matches, and related events; principles of growth and development over the lifespan; referral and transfer of athletes; and assessment of data reflective of the athlete's status and interpret the appropriate information. Instructor must be a certified athletic trainer or physical therapist holding a current/valid Idaho license. ( )

**13. Welding Technology (6-12).** Industry experience to include applied demonstration of the majority of the following areas: fundamental print reading; measurement and layout/fit-up techniques; properties of metals; shielded metal arc welding (SMAW); gas metal arc welding (GMAW and GMAW-S); flux cored arc welding (FCAW-G); gas tungsten arc welding (GTAW); thermal cutting processes; welding codes; inspection and testing principles; and fabrication techniques. ( )

**14. Work-Based Learning (6-12).** This endorsement must be held by educators assigned to coordinate approved work-based experiences. Applicants must hold an occupational endorsement on the Standard Instructional Certificate or qualify for an Occupational Specialist Certificate, plus complete course work in coordination of work-based learning programs. ( )

~~0258~~. -- 041. (RESERVED)

**IDAPA 08 – STATE BOARD OF EDUCATION**

**08.02.03 – RULES GOVERNING THOROUGHNESS**

**DOCKET NO. 08-0203-1803**

**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 Article IX, Section 2 of the Idaho Constitution and under Sections 33-105, 33-107, 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 17, 2018.

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 amendments will incorporate changes required by Section 33-523, Idaho Code, exempting students who complete eight (8) or more credits in mathematics and have completed Algebra II or higher-level mathematics prior to the student's senior year from taking a mathematics class during the student's senior year. Amendments additionally include: updating the reference to Algebra and to add integrated math to be consistent with integrated math offerings by school districts and charter schools; removing restrictions on computer science courses to also allow for computer science courses aligned to the Idaho Computer Science Content Standards at the high school level; and expanding on the senior project to provide clarity on the intent of the senior project. In addition to these amendments the Board seeks feedback on providing further clarification to the senior project options for internships, and school to work internships.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: None.

**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 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, page 54](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tracie Bent at (208) 332-1582 or [tracie.bent@osbe.idaho.gov](mailto:tracie.bent@osbe.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 24, 2018.

Dated this 31st day of August, 2018.

Tracie Bent, Chief Planning and Policy Officer  
State Board of Education  
Phone: (208) 332-1582  
Fax: (208)334-2632

650 W. State Street  
P.O. Box 83720  
Boise, Idaho 83720-0037

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0203-1803  
(Only Those Sections With Amendments Are Shown.)

**104. OTHER REQUIRED INSTRUCTION.**

Other required instruction for all students and other required offerings of the school are: (4-1-97)

**01. Elementary Schools.** (4-11-06)

**a.** The following section outlines other information required for all elementary students, as well as other required offerings of the school:

Fine Arts (art and music)  
Health (wellness)  
Physical Education (fitness) (4-11-06)

**b.** Additional instructional options as determined by the local school district. For example:

Languages other than English  
Career Awareness (4-1-97)

**02. Middle Schools/Junior High Schools.** (4-11-06)

**a.** No later than the end of Grade eight (8) each student shall develop parent-approved student learning plans for their high school and post-high school options. The learning plan shall be developed by students with the assistance of parents or guardians, and with advice and recommendation from school personnel. It shall be reviewed annually and may be revised at any time. The purpose of a parent-approved student learning plan is to outline a course of study and learning activities for students to become contributing members of society. A student learning plan describes, at a minimum, the list of courses and learning activities in which the student will engage while working toward meeting the state and school district's or LEA's graduation standards in preparation for postsecondary goals. The school district or LEA will have met its obligation for parental involvement if it makes a good faith effort to notify the parent or guardian of the responsibility for the development and approval of the learning plan. A learning plan will not be required if the parent or guardian requests, in writing, that no learning plan be developed. (3-28-18)

**b.** A student must have ~~taken pre-algebra~~ met the grade eight (8) mathematics standards before the student will be permitted to enter grade nine (9). (~~3-12-14~~)(    )

**c.** Other required instruction for all middle school students:

Health (wellness)  
Physical Education (fitness) (4-11-06)

**d.** Other required offerings of the school:

Family and Consumer Science  
Fine and Performing Arts  
Career Technical Education  
Advisory Period (middle school only, encouraged in junior high school) (4-11-06)

**03. High Schools.** (4-11-15)

a. High schools must offer a wide variety of courses to satisfy state and local graduation requirements. High schools are required to provide instructional offerings in Physical Education (fitness) and Career Technical Education and the instruction necessary to assure students are college and career ready at the time of graduation. (3-28-18)

b. High schools will annually review and update with the student the parent-approved student learning plans outlined in Subsection 104.02.a.. (4-11-15)

**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-six (46) credits and must include twenty-nine (29) credits in core subjects as identified in Paragraphs 105.01.c. through 105.01.i. (3-12-14)

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. Notwithstanding the credit definition of Subsection 105.01.a., 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. (3-29-17)

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. Six (6) credits are required. Secondary mathematics includes Integrated Mathematics, Applied Mathematics, Business Mathematics, Algebra, Geometry, Trigonometry, Fundamentals of Calculus, Probability and Statistics, Discrete Mathematics, and courses in mathematical problem solving and quantitative reasoning. Dual credit engineering and computer science courses aligned to the state standards for grades nine (9) through (12), including AP Computer Science, and Dual Credit Computer Science courses may also be counted as a mathematics credit if the student has completed Algebra II (or equivalent integrated mathematics) standards. Students who choose to take ~~AP Computer Science, Dual Credit Computer Science, and Dual Credit Engineering courses~~ may not concurrently count such courses as both a mathematics and science credit. (3-12-14)(    )

i. Students must complete secondary mathematics in the following areas: (3-12-14)

(1) Two (2) credits of Algebra I, Algebra I level equivalent Integrated Mathematics or courses that meet the ~~Idaho High School Algebra I~~ Content Standards ~~as approved by the State Department of Education;~~ (3-29-10)(    )

(2) 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)(    )

(3) Two (2) credits of mathematics of the student's choice. (3-29-10)

ii. Two (2) credits of the required six (6) credits of mathematics must be taken in the last year of high

school in which the student intends to graduate. For the purposes of this subsection, the last year of high school shall include the summer preceding the fall start of classes. Students who return to school during the summer or the following fall of the next year for less than a full schedule of courses due to failing to pass a course other than mathematics are not required to retake a mathematics course as long as they have earned six (6) credits of high school level mathematics. (3-12-14)( )

iii. Students who have completed six (6) or more high school credits of mathematics prior to the fall of their last year of high school, including at least two (2) semesters of an Advanced Placement or dual credit calculus or higher level course, are exempt from taking mathematics during their last year of high school. High School mathematics credits completed in middle school shall count for the purposes of this section. (3-12-14)( )

iv. Students who earn eight (8) or more high school credits of mathematics that include Algebra II or higher level of mathematics class before the student's senior year are not required to take mathematics during their last year of high school. High school mathematics credits earned in middle school shall count for the purposes of this section. ( )

e. Science. Six (6) credits are required, four (4) of which will be laboratory based. Secondary sciences include instruction in applied sciences, earth and space sciences, physical sciences, and life sciences. ( )

i. Up to two (2) credits in Dual credit engineering and computer science courses aligned to the state standards for grades nine (9) through (12), including AP Computer Science, Dual Credit Computer Science, ~~and Dual Credit Engineering~~ may be used as science credits. Students who choose to take ~~AP Computer Science, Dual Credit Computer Science, and Dual Credit Engineering~~ may not concurrently count such courses as both a mathematics and science credit. (3-12-14)( )

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 Interdisciplinary Humanities Content Standards. (3-28-18)

h. Health/Wellness. One (1) credit is required. Course must be aligned to the Idaho Health Content Standards. Effective for all public school students who enter grade nine (9) in Fall 2015 or later, each student shall receive a minimum of one (1) class period on psychomotor cardiopulmonary resuscitation (CPR) training as outlined in the American Heart Association (AHA) Guidelines for CPR to include the proper utilization of an automatic external defibrillator (AED) as part of the Health/Wellness course. (3-12-14)

i. Students participating in one (1) season in any sport recognized by the Idaho High School Activities Association or club sport recognized by the local school district, or eighteen (18) weeks of a sport recognized by the local school district may choose to substitute participation up to one (1) credit of physical education. Students must show mastery of the Physical Education Content Standards in a format provided by the school district. (3-28-18)

**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 grade nine (9) in Fall 2012 or later.) (3-12-14)

**a.** A student must take one (1) of the following college entrance examinations before the end of the student's eleventh grade year: SAT or ACT. Students who participated in the Compass assessment prior to its final administration may also use the Compass to meet this requirement. Students receiving special education services through a current Individualized Education Plan (IEP) may utilize the ACCUPLACER placement exam in lieu of the SAT or ACT. (3-28-18)

**b.** A student who misses the statewide administration of the college exam during the student's grade eleven (11) for one (1) of the following reasons, may take the examination during their grade twelve (12) to meet this requirement: (3-25-16)

i. Transferred to an Idaho school district during grade eleven (11) and has not previously participated in one of the allowed college entrance exams outlined in Subsection 03.a; (3-28-18)

ii. Was homeschooled during grade eleven (11) and is enrolled in an Idaho high school as a diploma seeking student; or (3-28-18)

iii. Missed the spring statewide administration of the college entrance exam dates for documented medical reasons. (3-12-14)

**c.** A student may elect an exemption in from the college entrance exam requirement if the student is: (3-28-18)

i. Receiving special education services through a current Individual Education Plan (IEP) that specifies the student meets the alternate assessment eligibility criteria; (3-28-18)

ii. Enrolled in a Limited English Proficient (LEP) program for three (3) academic years or less; or (3-12-14)

iii. Transferring from out of state to an Idaho high school in grade twelve (12). (3-28-18)

**d.** A school district, on behalf of a student, on a form established by the State Department of Education, may submit an appeal application requesting the Superintendent of Public Instruction or their designee consider another college entrance exam or college placement exam to fulfill this requirement, or exempt the student due to extenuating circumstances. (3-28-18)

**04. Senior Project.** The senior project is a culminating project to show a student's ability to analyze, synthesize and evaluate information and communicate that knowledge and understanding. A student must complete a senior project by the end of grade twelve (12). Senior projects may be multi-year projects and may be group or individual projects. The project must include a written report and an oral presentation elements of research, development of a thesis using experiential learning or integrated project based learning experiences and presentation of the project outcome. Additional requirements for a senior project are at the discretion of the local school district or LEA. Completion of a postsecondary certificate or degree at the time of high school graduation or an approved pre-internship or internship program may be used to meet this requirement. (3-28-18)( )

**05. Civics and Government Proficiency.** Pursuant to Section 33-1602, Idaho Code, each LEA may establish an alternate path for determining if a student has met the state civics and government content standards. Alternate paths are open to all students in grades seven (7) through twelve (12.) Any student who has been determined proficient in the state civics and government content standards either through the completion of the civics test or an alternate path shall have it noted on the student's high school transcript. (3-29-17)

**06. Middle School.** A student will have met the high school content and credit area requirement for any high school course if the requirements outlined in Subsections 105.06.a. through 105.06.c. of this rule are met. (3-25-16)

**a.** The student completes such course with a grade of C or higher before entering grade nine (9); (3-12-14)

**b.** The course meets the same content standards that are required in high school for the same course;  
and (3-25-16)

**c.** The course is taught by a teacher properly certified to teach high school content and who meets the federal definition of highly qualified for the course being taught. (3-25-16)

**d.** The student shall be given a grade for the successful completion of that course and such grade and the number of credit hours assigned to the course shall be transferred to the student's high school transcript. Notwithstanding this requirement, the student's parent or guardian shall be notified in advance when credits are going to be transcribed and may elect to not have the credits and grade transferred to the student's high school transcript. Courses taken in middle school appearing in the student's high school transcript, pursuant to this subsection, shall count for the purpose of high school graduation. However, the student must complete the required number of credits in all high school core subjects as identified in Subsections 105.01.c. through 105.01.h. except as provided in 105.01.d.iii. The transcribing high school is required to verify the course meets the requirements specified in Subsections 105.06.a. through 105.06.b. of this rule. (3-25-16)

**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)

# **IDAPA 08 – STATE BOARD OF EDUCATION**

## **08.02.03 – RULES GOVERNING THOROUGHNESS**

**DOCKET NO. 08-0203-1804**

### **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 Article IX, Section 2 of the Idaho Constitution and under Section(s) 33-105, 33-107, 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 17, 2018.

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:

Similar to academic programs, content standards exist for secondary career technical programs. These content standards are developed with secondary and postsecondary instructors and industry representatives by the Division of Career Technical Education (Division). Postsecondary instructors provide guidance into the postsecondary program alignment, and industry representatives validate the outcomes with current needs of the particular industry occupations supported by the program. The standards being considered this year add the following subcategories into the current content standard areas:

- I Agriculture and Natural Resources
  - Ag Leadership and Applied Communication
  - Ag Mechanics and Power Systems
  - Ecology and Natural Resources
- II Engineering and Technology
  - Computer Support and Journalism
- III Family and Consumer Sciences
  - Education Assistant
- IV Health Sciences
  - Pharmacy Technician
- V Skilled and Technical Sciences
  - Automated Manufacturing
  - Cosmetology
  - Firefighting
  - Precision Machining

In addition to adding these subsections to the existing categories, the Division will be amending the current standards for Collision Repair by adding a section that outlines the standards to perform spray gun and related equipment operations. The amendment to this content standard adds performance standards that were identified in the criticality survey and the technical skills assessment for collision repair, and were not included in the original content standards. The Collision Repair content standards are a subsection of the Skilled and Technical Sciences Content Standards.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: None.

**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 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, page 55](#).

**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 new incorporated documents are being added by reference. Proposed amendments impact existing standards that are incorporated by reference. The career technical education content standards are incorporated by reference due the length and complexity of content standards. This processes allows these content standards to be treated in the same fashion as academic content standards that are already incorporated by reference into Administrative Code.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tracie Bent at (208) 332-1582 or [tracie.bent@osbe.idaho.gov](mailto:tracie.bent@osbe.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 24, 2018.

Dated this 31st day of August, 2018.

Tracie Bent  
Chief Planning and Policy Officer  
State Board of Education  
650 W. State Street  
P.O. Box 83720  
Boise, Idaho 83720-0037  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0203-1804  
(Only Those Sections With Amendments Are Shown.)**

**004. INCORPORATION BY REFERENCE.**

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

**01. The Idaho Content Standards.** The Idaho Content Standards as adopted by the State Board of Education. Individual subject content standards are adopted in various years in relation to the curricular materials adoption schedule. Copies of the document can be found on the State Board of Education website at <https://boardofed.idaho.gov>. (3-29-10)

- a.** Arts and Humanities Categories: (3-24-17)
  - i.** Dance, as revised and adopted on August 11, 2016; (3-24-17)
  - ii.** Interdisciplinary Humanities, as revised and adopted on August 11, 2016; (3-24-17)
  - iii.** Media Arts, as adopted on August 11, 2016. (3-24-17)

- iv. Music, as revised and adopted on August 11, 2016; (3-24-17)
- v. Theater, as revised and adopted on August 11, 2016; (3-24-17)
- vi. Visual Arts, as revised and adopted on August 11, 2016; (3-24-17)
- vii. World languages, as revised and adopted on August 11, 2016. (3-24-17)
- b. Computer Science, adopted on November 28, 2016. (3-24-17)
- c. Driver Education, as revised and adopted on August 10, 2017. (3-28-18)
- d. English Language Arts/Literacy, as revised and adopted on November 28, 2016. (3-24-17)
- e. Health, as revised and adopted on August 11, 2016. (3-24-17)
- f. Information and Communication Technology, as revised and adopted on August 10, 2017. (3-28-18)
- g. Limited English Proficiency, as revised and adopted on August 21, 2008. (3-29-10)
- h. Mathematics, as revised and adopted on August 11, 2016. (3-24-17)
- i. Physical Education, as revised and adopted on August 11, 2016. (3-24-17)
- j. Science, as revised and adopted on August 10, 2017. (3-28-18)
- k. Social Studies, as revised and adopted on November 28, 2016. (3-24-17)
- l. College and Career Readiness Competencies adopted on June 15, 2017. (3-28-18)
- m. Career Technical Education Categories: (3-29-17)
  - i. Agricultural and Natural Resources, as revised and adopted on August ~~31, 2017~~ 16, 2018. ~~(3-28-18)~~( )
  - ii. Business and Marketing Education, as revised and adopted on August 31, 2017. (3-28-18)
  - iii. Engineering and Technology Education, as revised and adopted on August ~~31, 2017~~ 16, 2018. ~~(3-28-18)~~( )
  - iv. Health Sciences, as adopted on August ~~31, 2017~~ 16, 2018. ~~(3-28-18)~~( )
  - v. Family and Consumer Sciences, as revised and adopted on August ~~31, 2017~~ 16, 2018. ~~(3-28-18)~~( )
  - vi. Skilled and Technical Sciences, as revised and adopted on August ~~31, 2017~~ 16, 2018. ~~(3-28-18)~~( )
  - vii. Workplace Readiness, as adopted on June 16, 2016. (3-29-17)

**02. The English Language Development (ELD) Standards.** The World-Class Instructional Design and Assessment (WIDA) 2012 English Language Development (ELD) Standards as adopted by the State Board of Education on August 16, 2012. Copies of the document can be found on the WIDA website at [www.wida.us/standards/eld.aspx](http://www.wida.us/standards/eld.aspx). (4-4-13)

**03. The Limited English Proficiency Program Annual Measurable Achievement Objectives**

**(AMAOs) and Accountability Procedures.** The Limited English Proficiency Program Annual Measurable Achievement Objectives and Accountability Procedures as adopted by the State Board of Education on November 11, 2009. Copies of the document can be found on the State Department of Education website at [www.sde.idaho.gov](http://www.sde.idaho.gov). (4-7-11)

**04. The Idaho English Language Proficiency Assessment (ELPA) Achievement Standards.** The Idaho English Language Proficiency Assessment (ELPA) Achievement Standards as adopted by the State Board of Education on October 18, 2017. Copies of the document can be found on the State Board of Education website at <https://boardofed.idaho.gov>. (3-28-18)

**05. The Idaho Standards Achievement Tests (ISAT) Achievement Level Descriptors.** Achievement Level Descriptors as adopted by the State Board of Education on April 14, 2016. Copies of the document can be found on the State Board of Education website at <https://boardofed.idaho.gov>. (3-29-17)

**06. The Idaho Extended Content Standards.** The Idaho Extended Content Standards as adopted by the State Board of Education on August 10, 2017. Copies of the document can be found at the State Board of Education website at <https://boardofed.idaho.gov>. (3-28-18)

**07. The Idaho Content Standards Core Content Connectors.** The Idaho Content Standards Core Content Connectors as adopted by the State Board of Education on August 10, 2017. Copies of the document can be found at the State Board of Education website at <https://boardofed.idaho.gov>. (3-28-18)

**a.** English Language Arts, as adopted by the State Board of Education on August 10, 2017. (3-28-18)

**b.** Mathematics, as adopted by the State Board of Education on August 10, 2017. (3-28-18)

**08. The Idaho Alternate Assessment Achievement Standards.** Alternate Assessment Achievement Standards as adopted by the State Board of Education on October 18, 2017. Copies of the document can be found on the State Board of Education website at <https://boardofed.idaho.gov>. (3-28-18)

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

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

**11. The Idaho Special Education Manual.** The Idaho Special Education Manual as adopted by the State Board of Education on August 10, 2017. Copies of the document can be found on the State Board of Education website at <https://boardofed.idaho.gov>. (3-28-18)

**IDAPA 08 – STATE BOARD OF EDUCATION**  
**08.05.01 – RULES GOVERNING SEED AND PLANT CERTIFICATION**  
**DOCKET NO. 08-0501-1801**  
**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 22-1504, 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 17, 2018.

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 amendment updates the current, incorporated version of the Idaho Potato Certification Standards to the standards adopted by the Idaho Crop Improvement Association on January 16, 2018. The amendment to the standard standardizes the terminology used, changing “generation” to “field year.” Amending the terminology is intended as a first step in standardizing the terminology across states and thereby eliminating the current need for an equivalency table to keep track of the differences. “Nuclear” would become “field year” (FY) 1. “Gen 1” would be “FY2.” “Gen 2” would be “FY3” and so forth through “Gen 6,” which would become “FY7.”

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: None.

**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 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, page 56](#).

**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 amendments are to an existing document that is already incorporated by reference and is not adding a new document. The seed and crop standards are incorporated by reference due to formatting that is not consistent with the standard administrative rule format, additionally incorporation by reference is consistent with how the University of Idaho Board of Regents treats other types of standards.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tracie Bent at (208) 332-1582 or [tracie.bent@osbc.idaho.gov](mailto:tracie.bent@osbc.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 24, 2018.

Dated this 31st day of August, 2018.

Tracie Bent, Chief Planning and Policy Officer  
State Board of Education  
Phone: (208) 332-1582  
Fax: (208) 334-2632

650 W. State Street  
P.O. Box 83720  
Boise, Idaho 83720-0037

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0501-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**004. INCORPORATION BY REFERENCE.**

The following documents are incorporated by reference into this rule. The Idaho Seed and Plant Certification Standards are adopted by the Idaho Crop Improvement Association. Copies of the following documents may be obtained from the Idaho Crop Improvement Association, Inc. website at <http://www.idahocrop.com/index.aspx>, or from the Idaho Crop Improvement Association, Inc. office. (4-6-15)

**01. Prohibited Noxious Seed in Idaho Certified Seed.** The standard Prohibited Noxious Seed in Idaho Certified Seed of the Idaho Crop Improvement Association, Inc., as last modified and approved on March 17, 2015. (3-25-16)

**02. Seed Certification Fee & Application Schedule.** The Seed Certification Fee and Application Schedule of the Idaho Crop Improvement Association, Inc., as last modified and approved on July 11, 2014. (4-6-15)

**03. Idaho Alfalfa Certification Standards.** The Idaho Alfalfa Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as last modified and approved on March 17, 2015. (3-25-16)

**04. Idaho Bean Certification Standards.** The Idaho Bean Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as last modified and approved on March 17, 2015. (3-25-16)

**05. Idaho Red Clover Certification Standards.** The Idaho Red Clover Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved on March 17, 2015. (3-25-16)

**06. Idaho Chickpea Certification Standards.** The Idaho Chickpea Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved on March 17, 2015. (3-25-16)

**07. Idaho Grain Certification Standards.** The Idaho Grain Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved on February 28, 2017. (3-28-18)

**08. Idaho Grass Certification Standards.** The Idaho Grass Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved on March 17, 2015. (3-25-16)

**09. Idaho Rapeseed/Canola/Mustard Certification Standards.** The Idaho Rapeseed/Canola/Mustard Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved on April 26, 2016. (3-29-17)

**10. Idaho Potato Certification Standards.** The Idaho Potato Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved on ~~February 28, 2017~~ January 16, 2018. ~~(3-28-18)~~ ( )

**11. Pre-Variety Germplasm Certification Regulations in Idaho.** The Pre-variety Germplasm Certification Regulations adopted by the Idaho Crop Improvement Association, Inc., as amended and approved March 17, 2015. (3-25-16)

**12. Idaho Lentil Certification Standards.** The Idaho Lentil Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved March 17, 2015. (3-25-16)

**13. Idaho Blue Flax Certification Standards.** The Idaho Blue Flax Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved March 17, 2015. (3-25-16)

**14. Idaho Milkvech Certification Standards.** The Idaho Milkvech Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved March 17, 2015. (3-25-16)

**15. Idaho Pea Certification Standards.** The Idaho Pea Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved March 17, 2015. (3-25-16)

**16. Idaho Sanfoin Certification Standards.** The Idaho Sanfoin Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved March 17, 2015. (3-25-16)

**17. Idaho Birdsfoot Trefoil Certification Standards.** The Idaho Birdsfoot Trefoil Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved March 17, 2015. (3-25-16)

**18. Idaho White Clover Certification Standards.** The Idaho White Clover Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved March 17, 2015. (3-25-16)

**19. Idaho Penstemon Certification Standards.** The Idaho Penstemon Certification Standards adopted by the Idaho Crop Improvement Association, Inc., as amended and approved March 17, 2015. (3-25-16)

**IDAPA 10 – BOARD OF PROFESSIONAL ENGINEERS  
AND PROFESSIONAL LAND SURVEYORS**

**10.01.01 – RULES OF PROCEDURE**

**DOCKET NO. 10-0101-1801**

**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 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 or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 54-1208, 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 Board finds that it is in the public interest to implement the requirements of Senate Bill 1252 by a rule change to ensure the rule is consistent with the law. The Board also finds that clarifying the university requirement at the bachelor of science level for applicants with a degree from the U.K. is needed. This clarification means that applicants with a B.S. engineering degree from an accredited U.K. university is unconditionally approved. No other degree options are unconditionally approved. The clarification came out of dialog with the U.K. Engineering Council representatives during the rulemaking process.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the August 1, 2018 Idaho Administrative Bulletin, [Vol. 18-8, pages 67-73](#).

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

There is no fiscal impact to the general fund. There is minor (less than \$10,000) reduction in dedicated funds. No fiscal impact is expected because of Senate Bill 1252 as the timing of when a person takes an examination will not unduly influence when they are eligible for licensure as a 4-year experience time period governs when they will be eligible for licensure, not the examination. The discontinuance of a certificate may have a minor impact on revenue estimated as renewal or late fees will not accumulate when this option is selected.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Keith Simila at (208) 373-7210.

Dated this 24th day of August, 2018.

Keith Simila, P.E.,  
Executive Director  
1510 Watertower St., Ste 110  
Meridian, Idaho 83642  
Telephone: (208) 373-7210  
Fax: (208) 373-7213  
Email: [keith.simila@ipels.idaho.gov](mailto:keith.simila@ipels.idaho.gov)

DOCKET NO. 10-0101-1801 – ADOPTION OF PENDING RULE

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

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

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 18-8, August 5, 2018, pages 67 through 73.

This rule has been adopted as a pending rule by the Agency and is now awaiting review and final approval by the 2019 Idaho State Legislature.

017. EXAMINATIONS AND EDUCATION.

**023.** Eligibility for Examinations Licensure, Educational Requirements. The application for licensure as a professional engineer or professional land surveyor together with a passing score on the written ethics questionnaire or Idaho specific land surveying examination, shall be considered in the determination of the applicant's eligibility. Each applicant must meet the minimum requirements as set forth in Section 54-1212, Idaho Code, before being ~~assigned to any professional examination~~ licensed. Prescriptive education requirements are as follows: ~~(3-25-16)~~ ( )

*[Paragraph 017.03.b.]*

b. An applicant who has completed a four (4) year bachelor degree program in engineering not accredited by EAC/ABET or a four (4) year bachelor degree program in engineering technology, or in a related science degree program other than engineering must have completed the following before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum as required by Section 54-1212(3)(b), Idaho Code, for certification as an Engineer Intern or as required by Section 54-1212(1)(b), Idaho Code, for ~~assignment to the examination for~~ licensure as a professional engineer. ~~(3-25-16)~~ ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

*[Section 019 will be printed in full, as it was not previously published at the proposed stage]*

019. LICENSEES OR CERTIFICATE HOLDERS OF OTHER STATES, BOARDS, AND COUNTRIES.

**01.** **Interstate Licensure Evaluation.** Each application for an Idaho professional engineer license or professional land surveyor license submitted by an applicant who is licensed as a professional engineer, or licensed as a professional land surveyor, respectively, in one (1) or more states, possessions or territories or the District of Columbia, shall be considered by the Board on its merits, and the application evaluated for substantial compliance with respect to the requirements of the Idaho law related to experience, examination, and education. A minimum of four (4) years of progressive experience after graduation with a bachelor of science degree is required for licensure.

Individuals who have passed the National Council of Examiners for Engineering and Surveying (NCEES) examinations for professional engineering or professional land surveying shall be considered to have satisfied the examination requirement for issuance of a license as a professional engineer or professional land surveyor provided that land surveyor applicants also pass the Idaho specific professional land surveying examination. Prescriptive education requirements are as follows: (4-11-15)

a. Graduates from programs accredited by the Engineering Accreditation Commission of the ABET, Inc., (EAC/ABET), or graduates of university bachelor of science engineering programs accredited by the Canadian Engineering Accrediting Board, or those university bachelor of science engineering programs that are accredited by official organizations recognized by the U.K. Engineering Council, or graduates of engineering programs with coursework evaluated by the board as being substantially equivalent to EAC/ABET degrees, shall be considered to have satisfied the educational requirement for issuance of a license as a professional engineer. ~~(3-28-18)~~ ( )

b. The Board may require an independent evaluation of the engineering education of an applicant who has a non-EAC/ABET accredited four (4) year bachelor degree. Such evaluation shall be done through an organization approved by the Board and shall be done at the expense of the applicant to ensure that they have completed the coursework requirements of Subsection 019.01.c. Such evaluation shall not be required if the applicant has been licensed in another jurisdiction of the United States for a minimum of ten (10) years and has not had any disciplinary action against them and there is none pending, and possesses the education, experience and examination credentials that were specified in the applicable registration chapter in effect in this state at the time such certification was issued. The Board may table action on the application pending receipt of the evaluation, and, in the event the applicant does not provide the evaluation within one (1) year, the Board may terminate the application, in which case the application fee shall be forfeited. (4-11-15)

c. An applicant who was originally licensed in another jurisdiction after June 30, 1996, and who has completed a four (4) year bachelor degree program in engineering technology, or in a related science degree program other than engineering must have completed the following before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum as required by Section 54-1212(1)(b), Idaho Code: (4-11-15)

i. Thirty-two (32) college semester credit hours of higher mathematics and basic sciences. The credits in mathematics must be beyond algebra and trigonometry and must emphasize mathematical concepts and principles rather than computation. Courses in differential and integral calculus are required. Additional courses may include differential equations, linear algebra, numerical analysis, probability and statistics and advanced calculus. The credits in basic sciences must include at least two (2) courses. These courses must be in general chemistry, general calculus-based physics, or general biological sciences; the two (2) courses may not be in the same area. Additional basic sciences courses may include earth sciences (geology, ecology), advanced biology, advanced chemistry, and advanced physics. Computer skills and/or programming courses may not be used to satisfy mathematics or basic science requirements. Basic engineering science courses or sequence of courses in this area are acceptable for credit but may not be counted twice. (3-25-16)

ii. Sixteen (16) college credit hours in a general education component that complements the technical content of the curriculum. Examples of traditional courses in this area are philosophy, religion, history, literature, fine arts, sociology, psychology, political science, anthropology, economics (micro and macro), professional ethics, social responsibility. Examples of other general education courses deemed acceptable include management (such as organizational behavior), accounting, written and oral communications, business, and law. No more than six (6) credit hours may come from courses in management, accounting, business, or law. Courses in engineering economics, engineering management, systems engineering/ analysis, production, and industrial engineering/management will not be counted. Language courses in the applicant's native language are not acceptable for credit; no more than six (6) credit hours of foreign language courses are acceptable for credit. Native language courses in literature and civilization may be considered in this area. Courses which instill cultural values are acceptable, while routine exercises of personal craft are not. (3-25-16)

iii. Forty-eight (48) college credit hours of engineering science and engineering design courses. Courses in engineering science shall be taught within the college / faculty of engineering having their roots in mathematics and basic sciences but carry knowledge further toward creative application of engineering principles. Examples of approved engineering science courses are mechanics, thermodynamics, heat transfer, electrical and

electronic circuits, materials science, transport phenomena, and computer science (other than computer programming skills). Courses in engineering design stress the establishment of objectives and criteria, synthesis, analysis, construction, testing, and evaluation. Graduate level engineering courses may be included to fulfill curricular requirements in this area. Engineering technology courses cannot be considered to meet engineering topic requirements. (3-25-16)

**d.** In regard to educational requirements, the Board will consider as unconditionally approved only those surveying programs that are accredited either by the Engineering Accreditation Commission (EAC), the Applied and Natural Science Accreditation Commission (ANSAC) or the Engineering Technology Accreditation Commission (ETAC) of ABET, Inc. An applicant who has completed a four (4) year bachelor degree program in a related program must have completed a minimum of the following college level academic courses, or their equivalents as determined by the Board, before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year surveying curriculum as required by Section 54-1212(2)(b), Idaho Code, for licensure as a professional land surveyor: (3-29-17)

**i.** Eighteen (18) college semester credit hours of mathematics and basic sciences. A minimum of twelve (12) credits in mathematics must be beyond basic mathematics, but the credits include college algebra or higher mathematics. These courses must emphasize mathematical concepts and principles rather than computation. Mathematics courses may include college algebra, trigonometry, analytic geometry, differential and integral calculus, linear algebra, numerical analysis, probability and statistics, and advanced calculus. A minimum of six (6) credits must be in basic sciences. These courses must cover one or more of the following topics: general chemistry, advanced chemistry, life sciences (biology), earth sciences (geology, ecology), general physics, and advanced physics. Computer skills and/or programming courses may not be used to satisfy mathematics or basic science requirements; (3-29-17)

**ii.** Sixteen (16) college semester credit hours in a general education component that complements the technical content of the curriculum. Examples of traditional courses in this area are religion, history, literature, fine arts, sociology, psychology, political science, anthropology, economics, professional ethics, and social responsibility. No more than six (6) credit hours of languages other than English or other than the applicant's native language are acceptable for credit. English and foreign language courses in literature and civilization may be considered in this area. Courses that instill cultural values are acceptable, while routine exercises of personal craft are not; (3-29-17)

**iii.** Thirty (30) college semester credit hours of surveying science and surveying practice. Courses shall be taught by qualified surveying faculty. Examples of surveying courses are basic surveying, route surveying, geodesy, geographic information systems, land development design and planning, global positioning systems, photogrammetry, mapping, survey adjustment and coordinates systems, cartography, legal descriptions, and remote sensing. Required courses will include a minimum of basic surveying, route surveying, geodesy, surveying law, public land survey system and global positioning systems. Graduate-level surveying courses can be included to fulfill curricular requirements in this area. (3-29-17)

**02. International Engineering Licensure Evaluation - Countries or Jurisdictions with Board Approved Licensure Process.** The board may determine the professional engineering licensure process in other countries or jurisdictions within other countries is substantially equivalent to that required 54-1219 Idaho Code. As such, the board may waive prescriptive education and examination requirements if the applicant possesses a professional engineer license credential, attains a minimum of eight (8) years of experience after licensure, provided the applicant has no criminal or outstanding disciplinary action in any country or jurisdiction, and is in good standing with the licensing board within that country or jurisdiction. A bona fide licensing process in another country must include requirements of experience, education, testing, a code of professional responsibility, regulation of licensees including the ability take disciplinary action and the willingness, availability, and capacity of a foreign board to release information to the Idaho board in English. (4-11-15)

**03. International Engineering Licensure Evaluation - Countries or Jurisdictions without a Board Approved Licensure Process.** Each application for an Idaho professional engineer license submitted by an applicant who is licensed as a professional engineer in one (1) or more foreign countries or jurisdictions within a country, shall be considered by the Board on its merits, and the application evaluated for substantial compliance with the requirements of Idaho law with respect to experience, examination, and education. A minimum of four (4) years of progressive experience after graduation is required for licensure. The Board will require two (2) years of experience

working in the United States or two (2) years of experience working on projects requiring the knowledge and use of codes and standards similar to those utilized in the United States where the experience is validated by a professional engineer licensed in the United States. The Board may postpone acting on or deny an application for a license by comity if disciplinary or criminal action related to the applicant's practice has been taken or is pending in any country or jurisdiction. Applicants must have passed a professional engineering examination administered by NCEES. Applicants who meet the residency requirements of 54-1212, Idaho Code, may be assigned to an examination in Idaho when qualified by the Board after graduation from a program that meets the education requirements of the board. Prescriptive education requirements are as follows: (3-28-18)

**a.** Graduates of engineering university programs accredited by the Canadian Engineering Accrediting Board, or official organizations recognized by the U.K. Engineering Council, or graduates of engineering university programs accredited by EAC/ABET or evaluated by the board as being substantially equivalent to EAC/ABET programs shall be considered to have satisfied the educational requirement for issuance of a license as a professional engineer. (3-28-18)

**b.** The Board may require an independent credentials evaluation of the engineering education of an applicant educated outside the United States who has a non-EAC/ABET accredited engineering degree. Such evaluation shall be done through NCEES or another organization approved by the board and shall be done at the expense of the applicant. (3-28-18)

**c.** The Board may require an independent credentials evaluation of the education for an applicant who has completed a four (4) year bachelor degree program outside the United States in engineering technology, or in a related science degree program other than engineering and must demonstrate completion of the requirements of Subsection 019.01.c. before the Board will consider the applicant to possess the knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum as required by Section 54-1212(1)(b), Idaho Code. Such evaluation shall be done through NCEES or another organization approved by the Board and shall be done at the expense of the applicant. (4-11-15)

**04. Waiver of Prescriptive Engineering Licensure Evaluation for Unique International Expertise.** The Board may waive the prescriptive licensure evaluation requirements of 019.03 for international applicants who, in the Board's opinion, are qualified by reason of education and experience and offer unique technical expertise, provided the licensee meets the requirements of 54-1219 Idaho Code. (4-11-15)

**05. Denials or Special Examinations.** An application from a licensee of another state, possession or territory, District of Columbia, or foreign country may be denied by the Board for any just cause and the application fee retained; or the Board may approve the applicant for a special written and/or oral examination. (4-11-15)

**06. Business Entity Requirements.** No application for a certificate of authorization to practice or offer to practice professional engineering or professional land surveying, or both, in Idaho by a business entity authorized to practice professional engineering or professional land surveying, or both, in one (1) or more states, possessions or territories, District of Columbia, or foreign countries shall be considered by the Board unless such application includes the name and address of the individual or individuals, duly licensed to practice professional engineering or professional land surveying or both in this state, who will be in responsible charge of the engineering or land surveying services, or both, as applicable, to be rendered by the business entity in Idaho. The said individual or individuals must certify or indicate to the Board their willingness to assume responsible charge. (4-11-15)

**IDAPA 10 – BOARD OF PROFESSIONAL ENGINEERS  
AND PROFESSIONAL LAND SURVEYORS**

**10.01.02 – RULES OF PROFESSIONAL RESPONSIBILITY**

**DOCKET NO. 10-0102-1801**

**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 54-1208, 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 amendments will implement a requirement for professional land surveyors to notify affected adjacent landowners and the Board prior to setting a monument that represents a material discrepancy with another monument for the same property corner and potentially clouding the title of private land.

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 1, 2018 Idaho Administrative Bulletin, [Vol. 18-8, pages 74-75](#).

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

There is no fiscal impact to the general fund or the dedicated fund because the rule establishes obligations of licensed professional land surveyors to appropriately regard the public in their actions. The amendment does not increase the costs to the Board.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Keith Simila at (208) 373-7210.

Dated this 24th day of August, 2018.

Keith Simila, P.E.  
Executive Director  
1510 Watertower St.  
Meridian, Idaho 83642  
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**IDAPA 11 – IDAHO STATE POLICE  
IDAHO BRAND BOARD**

**11.02.01 – RULES OF THE IDAHO STATE BRAND BOARD**

**DOCKET NO. 11-0201-1801 (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 25-1160, 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 17, 2018.

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 Brand Board has experienced a budget shortfall dating back to FY2016. To make up this shortfall, on October 2, 2017 the Brand Board adopted a temporary rule increasing cattle brand inspection fees by twenty-five cents (\$0.25), from ninety-four cents (\$0.94) to one dollar nineteen cents (\$1.19), and the minimum brand inspection fee from ten dollars (\$10) to twenty dollars (\$20). The increase moved the Brand Board fees closer to the cap set in Section 25-1160, Idaho Code.

The notice and text of the Temporary/Proposed rulemaking published in the November 2017 Administrative Bulletin under Docket No. 11-0201-1701. The Board's intent was to complete the rulemaking and have a pending rule reviewed during the 2018 legislative session for final approval. Public hearings were requested and held and, based on ensuing discussions with constituents and legislators during the legislative session, the proposed rule under Docket No. 11-0201-1701 was vacated and a new rulemaking was initiated with the publication of the Notice of Intent to Promulgate a Rule to conduct additional negotiated rulemaking. The temporary rule adopted and promulgated under Docket No. 11-0201-1701 was extended and is currently in effect.

The Brand Board's shortfall of inadequate funds still exists. The FY2018 and FY2019 budget line items included increases in personnel costs, health care and benefit costs, cyber security liability insurance costs and an increased personnel and equipment costs. This, combined with lower market induced inspection count, has eroded the Brand Board's sustainable operating revenue. Without this fee increase the Brand Board faces a budget shortfall for FY2019 and beyond, which will result in a loss of required regulatory services.

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

The proposed rulemaking increases the cattle brand inspection fee by twenty-five cents (\$0.25), from ninety-four cents (\$0.94) to one dollar nineteen cents (\$1.19) and the minimum brand inspection fee from ten dollars (\$10) to twenty dollars (\$20). The fee increase moves the Brand Board cattle brand inspection fee closer to the maximum of one dollar twenty-five cents (\$1.25) set in Section 25-1160(1)(a), Idaho Code. For clarification purposes, the increase in cattle brand inspection fee also affects the fee schedule for the courtesy brand inspection fee, increasing it from ninety-four cents (\$0.94) to one dollar nineteen cents (\$1.19) and the Idaho livestock to pasture fee from forty-seven cents (\$0.47) to sixty cents (\$0.60). The Brand Board has not imposed a cattle brand inspection fee increase since FY2006.

According to Title 25-1160(5) "The state brand board may adopt a schedule or schedules of fees which are below the maximum fees and may adjust such schedule or schedules from time to time whenever such board finds that the cost of administering and enforcing the laws of the state of Idaho for brand inspection of livestock can be maintained with such below-maximum fees."

**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:

An estimated \$473,000 will be generated to the Brand Board from the Idaho livestock industry.

**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 June 6, 2018 Idaho Administrative Bulletin, [Vol. 18-6, Page 44](#).

**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 Cody Burlile, (208) 884-7070.

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 24, 2018.

Dated this 30th day of August, 2018.

Cody D. Burlile  
State Brand Inspector  
Idaho State Brand Board  
700 S. Stratford Dr.  
P.O. Box 1177  
Meridian, ID 83680-1177  
Phone: (208) 884-7070  
Fax: (208) 884-7097

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-0201-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**004. OFFICES, MAILING ADDRESS, ~~AND~~ OFFICE HOURS, WEB ADDRESS, AND FORMS.**

- 01. Office Hours.** Office hours are Monday through Friday, 8 a.m. to 5 p.m. ( )
- 02. Mailing Address.** The mailing address of the Idaho State Brand Board is P.O. Box 1177, Meridian, Idaho 83680-1177. ( )
- 03. Main Office and District Offices – Street Addresses and Phone Numbers.** ( )
- a. Main Office.** 700 S. Stratford, Meridian, Idaho 83642. Phone Number - 208-884-7070. ( )
- b. Lewiston Office.** 1118 F St, Lewiston, Idaho 83501. Phone Number - 208-799-5019. ( )
- c. Caldwell Office.** 1900 E. Chicago, Caldwell, Idaho 83605. Phone Number - 208-459-4231. ( )
- d. Twin Falls Office.** 630 Railroad Avenue, Twin Falls, Idaho 83301. Phone Number - 208-733-8270. ( )
- e. Idaho Falls Office.** 701 Northgate Mile, Idaho Falls, Idaho 83401. Phone Number - 208-522-6676. ( )

**04. Internet Address.** <https://www.isp.idaho.gov/brands/index.html>. ( )

**05. Forms.** ~~Any or all~~ Forms used by the Idaho State Brand Board are available *for inspection* during office hours ~~at 700 S. Stratford, Meridian, Idaho 83642~~ at the main Board office and at the district offices. (3-30-01)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**034. SCHEDULE OF FEES FOR THE IDAHO STATE BRAND BOARD.**

**01. Fees.** Fees authorized by the State Brand Board and to be collected by the State Brand Inspector are as follows:

SCHEDULE OF FEES		
<b>Recording of a Brand</b>	<b>\$50 initial recording fee plus a \$20 per year prorated staggered renewal fee every year thereafter</b>	
Transfer of a recorded brand	\$50.00	
Renewal of a recorded brand (every five years)	\$100.00	
Duplicate brand registration certificate	\$1.50	
Ownership and transportation certificate	\$35.00	
Duplicate ownership and transportation certificate	\$5.00	
Annual inspection equine or bovine	\$5.00	
	<b>CATTLE</b>	<b>HORSES</b>
Brand inspection (per head)	<del>\$.94</del> 1.19	\$1.50
Idaho livestock to pasture (per head)	<del>\$.47</del> .60	\$.75
Minimum auction fee (per day)	\$50.00	\$50.00
Minimum field brand inspection fee	<del>\$10</del> 20.00	<del>\$10</del> 20.00
Courtesy brand inspection	<del>\$.94</del> 1.19	\$1.50

Fees To Be Collected By The State Brand Inspector For Other State Agencies:	
Idaho Beef Council (per head)	\$1.50
Idaho Horse Board (per head)	\$3.00
Idaho Department of Agriculture:	
Animal health (per head)	\$.22
Predator control (per head)	\$.05

(3-27-13)( )

**02. Due and Payable.** Pursuant to Section 25-1160(5), Idaho Code, all brand inspection fees, and all other fees required to be collected by the Brand Inspector are due and payable at the time of inspection, except that

livestock owners may make arrangements with a deputy brand inspector to pay for all accumulated brand inspection fees within each seven (7) day period. Failure to comply with this rule will cancel the previously approved schedule and shall make all fees immediately due and payable. Feedlots, currently approved by the Idaho Department of Agriculture, and slaughter plants are exempt from the minimum brand inspection fee. Other minimum brand inspection fees may be waived at the discretion of the State Brand Inspector or District Brand Supervisor. (3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**041. -- ~~049~~50. (RESERVED)**

**~~050. LOCATIONS OF THE OFFICES OF THE IDAHO STATE BRAND BOARD.~~**

- |                |   |                      |
|----------------|---|----------------------|
| <del>01.</del> | <del>Main Office, 700 S. Stratford, Meridian, Idaho 83642.</del>            | <del>(3-30-01)</del> |
| <del>02.</del> | <del>District Brand Offices.</del>  | <del>(7-1-93)</del>  |
| <del>a.</del>  | <del>Lewiston, 2780 North &amp; South Highway, Lewiston, Idaho 83501.</del> | <del>(7-1-93)</del>  |
| <del>b.</del>  | <del>Caldwell, 1900 E. Chicago, Caldwell, Idaho 83605.</del>                | <del>(3-30-01)</del> |
| <del>c.</del>  | <del>Twin Falls, 630 Railroad Avenue, Twin Falls, Idaho 83301.</del>        | <del>(7-1-93)</del>  |
| <del>d.</del>  | <del>Idaho Falls, 701 Northgate Mile, Idaho Falls, Idaho 83401.</del>       | <del>(7-1-93)</del>  |

**IDAPA 13 – IDAHO FISH AND GAME COMMISSION**

**13.01.07 – RULES GOVERNING THE TAKING OF UPLAND GAME ANIMALS**

**DOCKET NO. 13-0107-1801AP**

**NOTICE OF AMENDED PROCLAMATION**

**AUTHORITY:** In compliance with Section 36-105(3), Idaho Code, notice is hereby given that the agency has adopted by amended proclamation the 2018-2019 Upland Game Seasons, with the amendments establishing inaugural 2018-2019 hunting seasons and limits in Idaho for red squirrel (also known as pine squirrel). Previously approved 2018-2019 Upland Game seasons (rabbits and hares) and rules are otherwise unaffected.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the amended proclamation, contact Owen Moroney at (208) 334-3715.

## IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME

### 13.01.08 – RULES GOVERNING THE TAKING OF BIG GAME ANIMALS IN THE STATE OF IDAHO

DOCKET NO. 13-0108-1802

#### 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 and 36-405, 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 17, 2018.

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 being proposed that IDAPA 13.01.08.260 be changed to exclude any moose, bighorn sheep, mountain goat, or grizzly bear controlled hunt tag drawn by a parent or grandparent from designation to their child or grandchild.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: This proposed rule change has no associated fee.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was initiated. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin, **Vol. 18-6, page 46**. However, the polarity of comments within the scope of rulemaking demonstrated that further negotiation would not lead to consensus and the Fish and Game Commission declared negotiated rulemaking 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: This proposed rule does not include an incorporation by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sharon W. Kiefer, (208) 334-3771.

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 24, 2018.

Dated this 27th day of August, 2018.

Sharon W. Kiefer  
Deputy Director  
Idaho Department of Fish and Game  
600 S. Walnut Street  
P.O. Box 25  
Boise, ID 83707  
Phone: (208) 334-3771  
Fax: (208) 334-4885

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0108-1802**  
**(Only Those Sections With Amendments Are Shown.)**

**260. TAGS FOR CONTROLLED HUNTS.**

**01. Use of Controlled Hunt Tags.** No person may hunt in any controlled hunt without having a valid controlled hunt tag in possession. (4-7-11)

**a.** A controlled hunt area with an “X” suffix is an extra tag hunt. (10-26-94)

**b.** In the event a tag is issued based on erroneous information, the tag will be invalidated by the Department and may NOT be used. The Department will notify the hunter of the invalidation of the tag. The person will remain on the drawn list, and if there is a waiting period in a succeeding year, the person will be required to wait the specified time period. (4-7-11)

**c.** Any person who draws a controlled hunt tag for deer is prohibited from hunting in any other deer hunt--archery, muzzleloader, or general; EXCEPT: (4-7-11)

**i.** The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first deer drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**ii.** If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**iii.** The holder of a deer controlled hunt tag may purchase a nonresident general season tag as a second tag and may purchase a controlled hunt extra tag for deer. (4-7-11)

**iv.** Any person who draws a controlled hunt extra tag for deer may hunt in any other deer hunt--archery, muzzleloader, general or controlled hunt. (4-7-11)

**d.** Any person who draws a controlled hunt tag for elk is prohibited from hunting in any other elk hunt--archery, muzzleloader, or general; EXCEPT: (4-7-11)

**i.** The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first elk drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**ii.** If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**iii.** The holder of an elk controlled hunt tag may purchase a nonresident general season tag as a second tag and may purchase a controlled hunt extra tag for elk. (4-7-11)

**iv.** Any person who draws a controlled hunt extra tag for elk may hunt in any other elk hunt--archery, muzzleloader, general or controlled hunt. (4-7-11)

**e.** Any person who draws a controlled hunt tag for pronghorn is prohibited from hunting in any other pronghorn hunt; EXCEPT: (4-7-11)

**i.** The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule

for the first pronghorn drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

ii. If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

iii. The holder of a pronghorn controlled hunt tag may purchase a controlled hunt extra tag for pronghorn. (4-7-11)

iv. Any person who draws a pronghorn controlled hunt extra tag may apply for a controlled hunt tag for pronghorn. (4-7-11)

f. Any person who draws a spring controlled hunt tag for black bear, may choose to purchase the controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a Department office to exchange the tag for the appropriate controlled hunt tag. (4-7-11)

g. Any person who draws a fall controlled hunt tag may choose to purchase the controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a Department office to exchange the tag for the appropriate controlled hunt tag; EXCEPT; the hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the fall bear drawing. (4-7-11)

h. Any resident adult person who possesses any controlled hunt tag EXCEPT a moose, bighorn sheep, mountain goat, or grizzly bear tag, may designate the controlled hunt tag to his or her resident minor child or grandchild who is qualified to participate in the hunt. ~~(3-20-14)~~( )

i. Rules for use of controlled hunt tags in Sections 260 and 261 apply to any resident adult person who possesses and designates a control hunt tag to his or her resident minor child or grandchild. Rules for eligibility in Section 260 apply to any resident adult person who possesses and designates a control hunt tag and to the designated resident minor child or grandchild. ~~except that 260.03.d., 03.f., 03.g. and 03.h. apply to the designated child or grandchild.~~ Mandatory school as provided in Section 270 shall apply to the designated resident minor child or grandchild. ~~(3-25-16)~~( )

ii. Designation of the controlled hunt tag shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (4-4-13)

iii. Any resident child or grandchild cannot be designated more than one control hunt tag per species per calendar year. (4-4-13)

iv. Designation of a controlled hunt tag shall be completed before the first opening hunt date for the tag. (4-4-13)

i. Any nonresident adult person who possesses any controlled hunt tag EXCEPT a moose, bighorn sheep, mountain goat, or grizzly bear tag, may designate the controlled hunt tag to his or her nonresident minor child or grandchild who is qualified to participate in the hunt. ~~(3-20-14)~~( )

i. Rules for use of controlled hunt tags in Sections 260 and 261 apply to any nonresident adult person who possesses and designates his or her control hunt tag to his or her nonresident minor child or grandchild. Rules for eligibility in Section 260 apply to any nonresident adult person who possesses and designates a control hunt tag and to the designated nonresident minor child or grandchild ~~except that 260.03.d., 03.f., 03.g., and 03.h. apply to the designated child or grandchild.~~ Mandatory school as provided in Section 270 shall apply to the designated nonresident minor child or grandchild. ~~(3-25-16)~~( )

ii. Designation of the controlled hunt tag shall be made on a form prescribed by the Department and

may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (4-4-13)

iii. Any nonresident child or grandchild cannot be designated more than one control hunt tag per species per calendar year. (4-4-13)

iv. Designation of a controlled hunt tag shall be completed before the first opening hunt date for the tag. (4-4-13)

**02. Nonresident Tag Limitations.** (4-7-11)

a. In controlled hunts with ten (10) or fewer tags, not more than one (1) nonresident tag will be issued. In controlled hunts, EXCEPT unlimited controlled hunts, with more than ten (10) tags, not more than ten percent (10%) of the tags will be issued to nonresidents. This rule shall be applied to each uniquely numbered controlled hunt and to the controlled hunts for each species. (4-7-11)

b. In unlimited controlled hunts, the Commission may limit the number of tags available for nonresident hunters to no less than ten percent (10%) of the average number of tags drawn annually during the previous five (5) year period. (3-28-18)

c. Outfitter allocated hunts are exempt from the limitation of Subsection 260.02.a. (3-20-04)

d. For each species, the total number of outfitter allocated controlled hunt tags shall be subtracted from the result of ten percent (10%) of the sum of all controlled hunt tags; including outfitter allocated controlled hunts, but excluding all unlimited controlled hunts. In addition to the limitations of Subsection 260.02.a., the resulting net number shall be the maximum number of controlled hunt tags that may be issued to nonresidents for all controlled hunts except outfitter allocated and unlimited controlled hunts. (4-7-11)

e. Governor's Wildlife Partnership Tags for deer, elk, pronghorn, bighorn sheep, mountain goat, and moose shall be taken from the nonresident tag quota and availability is subject to Nonresident Tag Limitations. (4-4-13)

**03. Eligibility.** Any person possessing a valid Idaho hunting license is eligible to apply for controlled hunts subject to the following restrictions: (7-1-93)

a. Holders of a Nongame Hunting License (Type 208) may not apply for any controlled hunt. (4-6-05)

b. Any person whose name was drawn on a controlled hunt for either sub-species of bighorn sheep may not apply for any bighorn tag for two (2) years. Except that a person may apply for a bighorn tag in the second application period or a leftover bighorn tag the following year. Any person whose name was drawn on a controlled hunt for mountain goat may not apply for a mountain goat tag for two (2) years. Except that a person may apply for a mountain goat tag in the second application period or a leftover mountain goat tag the following year. Any person whose name was drawn on a controlled hunt for moose may not apply for a moose permit for two (2) years. Except that a person may apply for a moose tag in the second application period or a leftover moose tag the following year. Any person whose name was drawn on a controlled antlered-only deer hunt may NOT apply for any other controlled antlered-only deer hunt for one (1) year. Except that a person may apply for an antlered-only deer tag in the second application period or a leftover antlered-only deer tag the following year. Any person whose name was drawn on a controlled antlered-only elk hunt may NOT apply for any other controlled antlered-only elk hunt for one (1) year. Except that a person may apply for an antlered-only elk tag in the second application period or a leftover antlered-only elk tag the following year. The one (1) year waiting period does NOT apply to controlled hunts with an unlimited number of tags, Landowner Appreciation Program tags, or Governor's Wildlife Partnership Tags. (2-21-18)

c. Any person applying for a bighorn sheep, mountain goat, or moose controlled hunt may NOT apply for any other controlled hunt in the same year EXCEPT Unlimited Controlled Hunts, a controlled black bear hunt, a controlled gray wolf hunt, or a designated depredation or extra tag hunt for deer, elk or pronghorn. In addition, unsuccessful applicants for bighorn sheep, mountain goat or moose controlled hunts are eligible to participate in

second application period for deer, elk, and pronghorn and the first-come, first-served deer, elk and pronghorn controlled hunt permit sales. (4-7-11)

**d.** Any person who has killed a California bighorn ram or a Rocky Mountain bighorn ram on any controlled hunt may not apply for a tag for the same subspecies, EXCEPT any person who has killed a California bighorn ram south of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a Rocky Mountain bighorn ram tag for any hunt north of Interstate Highway 84. Any person who has killed a Rocky Mountain bighorn ram north of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a California bighorn ram tag for any hunt south of Interstate Highway 84. Bighorn sheep auction tag recipients under IDAPA 13.01.04.700 and lottery tag recipients under IDAPA 13.01.04.800 are exempt from the once-in-a-lifetime restrictions on killing bighorn sheep of either subspecies. (4-4-13)

**e.** No person applying for a Rocky Mountain bighorn sheep controlled hunt as a first choice shall apply for a California bighorn sheep controlled hunt as a second choice. No person applying for a California bighorn sheep controlled hunt as a first choice shall apply for a Rocky Mountain bighorn sheep controlled hunt as a second choice. No person shall apply for both a Rocky Mountain and a California bighorn the same year. (7-1-93)

**f.** Any person who kills a bighorn ewe may not apply for another bighorn ewe controlled hunt tag for five (5) years. The harvest of a bighorn ewe does not make the hunter ineligible to apply for a tag to take a California bighorn ram or a Rocky Mountain bighorn ram. Any person who applies for a bighorn ewe may not apply for any bighorn ram the same year. (4-7-11)

**g.** Any person who has killed a mountain goat since 1977 may not apply for a mountain goat tag. (4-7-11)

**h.** Any person who has killed an antlered moose in Idaho may not apply for a moose tag for antlered moose, and any person who has killed an antlerless moose in Idaho may not apply for a tag for antlerless moose EXCEPT that any person may apply for tags remaining unfilled after the controlled hunt draw. (4-7-11)

**i.** Any person who has killed a grizzly bear in Idaho may not apply for a grizzly bear tag. (3-29-17)

**j.** Any person applying for a landowner permission hunt must have a signed permission slip from a landowner who owns more than one hundred fifty-nine (159) acres in the hunt area. The permission slip must have the landowner's name and address on it along with the landowner's signature. (7-1-98)

**k.** Any person may apply for both a controlled hunt tag and a controlled hunt extra tag. (4-7-11)

**l.** Nonresident hound hunters applying for controlled black bear hunts must first obtain a Hound Hunter Permit pursuant to IDAPA 13.01.15.200.04, "Rules Governing the Use of Dogs." (7-1-99)

**m.** Any person applying for an outfitter allocated controlled hunt must have a written agreement with the outfitter before submitting the controlled hunt application. (4-11-06)

**n.** The Commission establishes youth only controlled hunts by proclamation. Only hunters ten (10) to seventeen (17) years of age with a valid license may apply for youth only controlled hunts, EXCEPT hunters sixty-five (65) years of age or older or hunters with a senior combination hunting license or a disabled combination hunting license or a nonresident disabled American Veteran hunting license may apply for first-come, first-served leftover youth only controlled hunt permits. (3-25-16)

**04. Applications.** Individual applications or group applications for controlled hunts may be submitted electronically through the automated licensing system at any vendor location, through the Internet, over the telephone, or by mail to the Headquarters Office of the Idaho Department of Fish and Game or any Idaho Fish and Game Regional Office and shall be submitted with a postmarked not later than the annual dates shown below. Any individual application or group application which is unreadable, has incomplete or incorrect hunt or license numbers, or which lacks the required information or fee will be declared void and will not be entered in the drawing. All applications will be considered final; EXCEPT: applicants who would like to change their submitted controlled hunt application may request the original application be canceled to resubmit a new controlled hunt application during the

applicable application period. The new application is subject to the appropriate application fees. (4-7-11)

- a. Spring black bear, spring grizzly bear -- Application period - January 15 - February 15. (3-29-17)
- b. Moose, bighorn sheep, and mountain goat -- Application period for first drawing - April 1 - 30. (4-6-05)
- c. Deer, elk, pronghorn, fall black bear, fall grizzly bear, and gray wolves -- Application period for first drawing -- May 1-June 5. (3-29-17)
- d. Moose, bighorn sheep, and mountain goat - Application period for second drawing, if applicable - June 15-25. (4-6-05)
- e. Deer, elk, pronghorn, fall black bear, fall grizzly bear, and gray wolves -- Application period for second drawing -- August 5-15. (3-29-17)

**05. Applicant Requirements.** Applicants must comply with the following requirements: (7-1-93)

- a. Only one (1) application, per person or group, will be accepted for the same species, EXCEPT a person or group may submit one additional application for a controlled hunt extra tag for the same species. Additional applications for the same person or group for the same species will result in all applicants being declared ineligible. (4-7-11)
- b. Only one (1) controlled hunt extra tag will be issued for each person on any application submitted. (4-7-11)
- c. Several applications may be submitted in a single envelope so long as each application is for a single species, a single applicant or group, and both hunts on an application must be controlled hunt tag hunts or controlled hunt extra tag hunts. (4-7-11)
- d. Fees must be submitted with each application. A single payment (either cashier's check, money order, certified check, or a personal check) may be submitted to cover fees for all applications in the same envelope. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. The application fee is set by Section 36-416, Idaho Code, per person per hunt, for deer, elk, pronghorn, moose, bighorn sheep, mountain goat, black bear, and gray wolf, applied for and is NOT refundable. The tag fees are not to be submitted with either the telephone or mail-in-application for deer, elk, pronghorn, black bear, or gray wolf. Persons applying for moose, bighorn sheep, or mountain goat controlled hunts must submit the tag fee and application fee with their application. Applicants successful in drawing for a moose, bighorn sheep, or mountain goat will receive a tag in the mail. (4-7-11)
- e. Any controlled hunt tags, EXCEPT unlimited controlled hunts that remain unsold after the controlled hunt drawings may be sold by any Point-of-Sale vendor, through the Internet, or over the telephone on a first-come, first-served basis on the dates below UNLESS such day is a Sunday or legal holiday, in which case the permits will go on sale the next legal business day. A controlled hunt application and tag will be issued to successful controlled hunt purchasers. The ten percent (10%) nonresident limitation shall not apply. Applicants with a tag already in possession must return their tag to a Department office to be exchanged for the appropriate controlled hunt tag. (4-7-11)
  - i. Spring Turkey and Spring Bear - April 1. (4-7-11)
  - ii. Moose, Bighorn Sheep and Mountain Goat - July 10. (4-7-11)
  - iii. Deer, Elk, Pronghorn and Fall Bear - August 25. (4-7-11)
- f. A "group application" for deer, elk, and pronghorn is defined as two, three, or four (2, 3, or 4) hunters applying for the same controlled hunt on the same application. All hunters must comply with all rules and complete applications properly. All applicants must abide by the same first and second hunt choices. (4-7-11)

**g.** A “group application” for moose, bighorn sheep, mountain goat, black bear, and gray wolf, is defined as two (2) hunters applying for the same controlled hunt on the same application. Both hunters must comply with all rules and complete applications properly. Both applicants must abide by the same first and second hunt choices. (3-29-10)

**h.** If a group application exceeds the number of tags available in a hunt that group application will not be selected for that hunt. (4-7-11)

**i.** Landowner permission hunt tags will be sold first-come, first-served basis at the Headquarters or regional offices of the Idaho Department of Fish and Game after July 15. (4-7-11)

**j.** Deer and elk unlimited controlled hunts as identified by the Fish and Game Commission's Big Game Season Proclamation as “first-choice only” may be applied for only as a first choice controlled hunt during the controlled hunt application process. The Proclamation is published in a brochure available at department offices and license vendors. (4-11-15)

**06. Refunds of Controlled Hunt Fees.** (7-1-93)

**a.** Controlled hunt tag fees will be refunded to the unsuccessful or ineligible applicants for moose, sheep, and mountain goat. Unsuccessful applicants may donate all or a portion of their tag fee for moose, bighorn sheep, and mountain goat to Citizens Against Poaching by checking the appropriate box on the application. One dollar (\$1) of the non-refundable application fee will go to Citizens Against Poaching unless the applicant instructs otherwise. (3-20-97)

**b.** Fees for hunting licenses will NOT be refunded to unsuccessful or ineligible applicants. (10-26-94)

**c.** Fees for deer or elk tags purchased prior to the drawing will NOT be refunded to unsuccessful or ineligible applicants. (10-26-94)

**d.** Overpayment of fees of more than five dollars (\$5) will be refunded. Overpayment of five dollars (\$5) or less will NOT be refunded and will be retained by the Department. (7-1-93)

**e.** Application fees are nonrefundable. (4-7-11)

**f.** Fees for resident and nonresident adult control hunt tags that are subsequently designated to a minor child or grandchild are not refundable. (4-4-13)

**07. Controlled Hunt Drawing.** Single or group applications which are not drawn for the first choice hunt will automatically be entered into a second choice drawing, provided the second choice hunt applied for has not been filled. (7-1-93)

**08. Unclaimed Tags.** Successful applicants for the first deer, elk, black bear, gray wolf, or pronghorn controlled hunt drawing must purchase and pick up their controlled hunt tag by August 1. All controlled hunt tags not purchased and picked up will be entered into a second controlled hunt drawing. Any controlled hunt tags left over or unclaimed after the second controlled hunt drawing will be sold on a first-come, first-served basis. (4-7-11)

**09. Second Drawing Exclusion.** The Director may designate certain leftover controlled hunt tags to become immediately available on a first-come, first-served over-the-counter basis due to the dates of the hunt. (3-29-10)

## IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME

### 13.01.08 – RULES GOVERNING THE TAKING OF BIG GAME ANIMALS IN THE STATE OF IDAHO

DOCKET NO. 13-0108-1803

#### 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 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 17, 2018.

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 being proposed that IDAPA 13.01.08.260 be changed to allow hunters 65 years of age or older or hunters with a senior combination hunting license or a disabled combination license or a nonresident disabled American Veteran hunting license to be eligible to participate in any second application period for youth only controlled hunts.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: This proposed rule change has no associated fee.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was initiated. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin, [Vol. 18-6, page 47](#). However, the polarity of comments within the scope of rulemaking demonstrated that further negotiation would not lead to consensus and the Fish and Game Commission declared negotiated rulemaking 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: This proposed rule does not include an incorporation by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sharon W. Kiefer, (208) 334-3771.

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 24, 2018.

Dated this 27th day of August, 2018.

Sharon W. Kiefer  
Deputy Director  
Idaho Department of Fish and Game  
600 S. Walnut, P.O. Box 25  
Boise, ID 83707  
Phone: (208) 334-3771  
Fax: (208) 334-4885

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0108-1803**  
**(Only Those Sections With Amendments Are Shown.)**

**260. TAGS FOR CONTROLLED HUNTS.**

**01. Use of Controlled Hunt Tags.** No person may hunt in any controlled hunt without having a valid controlled hunt tag in possession. (4-7-11)

**a.** A controlled hunt area with an “X” suffix is an extra tag hunt. (10-26-94)

**b.** In the event a tag is issued based on erroneous information, the tag will be invalidated by the Department and may NOT be used. The Department will notify the hunter of the invalidation of the tag. The person will remain on the drawn list, and if there is a waiting period in a succeeding year, the person will be required to wait the specified time period. (4-7-11)

**c.** Any person who draws a controlled hunt tag for deer is prohibited from hunting in any other deer hunt--archery, muzzleloader, or general; EXCEPT: (4-7-11)

**i.** The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first deer drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**ii.** If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**iii.** The holder of a deer controlled hunt tag may purchase a nonresident general season tag as a second tag and may purchase a controlled hunt extra tag for deer. (4-7-11)

**iv.** Any person who draws a controlled hunt extra tag for deer may hunt in any other deer hunt--archery, muzzleloader, general or controlled hunt. (4-7-11)

**d.** Any person who draws a controlled hunt tag for elk is prohibited from hunting in any other elk hunt--archery, muzzleloader, or general; EXCEPT: (4-7-11)

**i.** The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first elk drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**ii.** If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**iii.** The holder of an elk controlled hunt tag may purchase a nonresident general season tag as a second tag and may purchase a controlled hunt extra tag for elk. (4-7-11)

**iv.** Any person who draws a controlled hunt extra tag for elk may hunt in any other elk hunt--archery, muzzleloader, general or controlled hunt. (4-7-11)

**e.** Any person who draws a controlled hunt tag for pronghorn is prohibited from hunting in any other pronghorn hunt; EXCEPT: (4-7-11)

**i.** The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule

for the first pronghorn drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

ii. If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

iii. The holder of a pronghorn controlled hunt tag may purchase a controlled hunt extra tag for pronghorn. (4-7-11)

iv. Any person who draws a pronghorn controlled hunt extra tag may apply for a controlled hunt tag for pronghorn. (4-7-11)

f. Any person who draws a spring controlled hunt tag for black bear, may choose to purchase the controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a Department office to exchange the tag for the appropriate controlled hunt tag. (4-7-11)

g. Any person who draws a fall controlled hunt tag may choose to purchase the controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a Department office to exchange the tag for the appropriate controlled hunt tag; EXCEPT; the hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the fall bear drawing. (4-7-11)

h. Any resident adult person who possesses any controlled hunt tag may designate the controlled hunt tag to his or her resident minor child or grandchild who is qualified to participate in the hunt. (3-20-14)

i. Rules for use of controlled hunt tags in Sections 260 and 261 apply to any resident adult person who possesses and designates a control hunt tag to his or her resident minor child or grandchild. Rules for eligibility in Section 260 apply to any resident adult person who possesses and designates a control hunt tag and to the designated resident minor child or grandchild, except that 260.03.d., 03.f., 03.g. and 03.h. apply to the designated child or grandchild. Mandatory school as provided in Section 270 shall apply to the designated resident minor child or grandchild. (3-25-16)

ii. Designation of the controlled hunt tag shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (4-4-13)

iii. Any resident child or grandchild cannot be designated more than one control hunt tag per species per calendar year. (4-4-13)

iv. Designation of a controlled hunt tag shall be completed before the first opening hunt date for the tag. (4-4-13)

i. Any nonresident adult person who possesses any controlled hunt tag may designate the controlled hunt tag to his or her nonresident minor child or grandchild who is qualified to participate in the hunt. (3-20-14)

i. Rules for use of controlled hunt tags in Sections 260 and 261 apply to any nonresident adult person who possesses and designates his or her control hunt tag to his or her nonresident minor child or grandchild. Rules for eligibility in Section 260 apply to any nonresident adult person who possesses and designates a control hunt tag and to the designated nonresident minor child or grandchild except that 260.03.d., 03.f., 03.g., and 03.h. apply to the designated child or grandchild. Mandatory school as provided in Section 270 shall apply to the designated nonresident minor child or grandchild. (3-25-16)

ii. Designation of the controlled hunt tag shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (4-4-13)

iii. Any nonresident child or grandchild cannot be designated more than one control hunt tag per species per calendar year. (4-4-13)

iv. Designation of a controlled hunt tag shall be completed before the first opening hunt date for the tag. (4-4-13)

**02. Nonresident Tag Limitations.** (4-7-11)

a. In controlled hunts with ten (10) or fewer tags, not more than one (1) nonresident tag will be issued. In controlled hunts, EXCEPT unlimited controlled hunts, with more than ten (10) tags, not more than ten percent (10%) of the tags will be issued to nonresidents. This rule shall be applied to each uniquely numbered controlled hunt and to the controlled hunts for each species. (4-7-11)

b. In unlimited controlled hunts, the Commission may limit the number of tags available for nonresident hunters to no less than ten percent (10%) of the average number of tags drawn annually during the previous five (5) year period. (3-28-18)

c. Outfitter allocated hunts are exempt from the limitation of Subsection 260.02.a. (3-20-04)

d. For each species, the total number of outfitter allocated controlled hunt tags shall be subtracted from the result of ten percent (10%) of the sum of all controlled hunt tags; including outfitter allocated controlled hunts, but excluding all unlimited controlled hunts. In addition to the limitations of Subsection 260.02.a., the resulting net number shall be the maximum number of controlled hunt tags that may be issued to nonresidents for all controlled hunts except outfitter allocated and unlimited controlled hunts. (4-7-11)

e. Governor's Wildlife Partnership Tags for deer, elk, pronghorn, bighorn sheep, mountain goat, and moose shall be taken from the nonresident tag quota and availability is subject to Nonresident Tag Limitations. (4-4-13)

**03. Eligibility.** Any person possessing a valid Idaho hunting license is eligible to apply for controlled hunts subject to the following restrictions: (7-1-93)

a. Holders of a Nongame Hunting License (Type 208) may not apply for any controlled hunt.(4-6-05)

b. Any person whose name was drawn on a controlled hunt for either sub-species of bighorn sheep may not apply for any bighorn tag for two (2) years. Except that a person may apply for a bighorn tag in the second application period or a leftover bighorn tag the following year. Any person whose name was drawn on a controlled hunt for mountain goat may not apply for a mountain goat tag for two (2) years. Except that a person may apply for a mountain goat tag in the second application period or a leftover mountain goat tag the following year. Any person whose name was drawn on a controlled hunt for moose may not apply for a moose permit for two (2) years. Except that a person may apply for a moose tag in the second application period or a leftover moose tag the following year. Any person whose name was drawn on a controlled antlered-only deer hunt may NOT apply for any other controlled antlered-only deer hunt for one (1) year. Except that a person may apply for an antlered-only deer tag in the second application period or a leftover antlered-only deer tag the following year. Any person whose name was drawn on a controlled antlered-only elk hunt may NOT apply for any other controlled antlered-only elk hunt for one (1) year. Except that a person may apply for an antlered-only elk tag in the second application period or a leftover antlered-only elk tag the following year. The one (1) year waiting period does NOT apply to controlled hunts with an unlimited number of tags, Landowner Appreciation Program tags, or Governor's Wildlife Partnership Tags. (2-21-18)

c. Any person applying for a bighorn sheep, mountain goat, or moose controlled hunt may NOT apply for any other controlled hunt in the same year EXCEPT Unlimited Controlled Hunts, a controlled black bear hunt, a controlled gray wolf hunt, or a designated depredation or extra tag hunt for deer, elk or pronghorn. In addition, unsuccessful applicants for bighorn sheep, mountain goat or moose controlled hunts are eligible to participate in second application period for deer, elk, and pronghorn and the first-come, first-served deer, elk and pronghorn controlled hunt permit sales. (4-7-11)

**d.** Any person who has killed a California bighorn ram or a Rocky Mountain bighorn ram on any controlled hunt may not apply for a tag for the same subspecies, EXCEPT any person who has killed a California bighorn ram south of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a Rocky Mountain bighorn ram tag for any hunt north of Interstate Highway 84. Any person who has killed a Rocky Mountain bighorn ram north of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a California bighorn ram tag for any hunt south of Interstate Highway 84. Bighorn sheep auction tag recipients under IDAPA 13.01.04.700 and lottery tag recipients under IDAPA 13.01.04.800 are exempt from the once-in-a-lifetime restrictions on killing bighorn sheep of either subspecies. (4-4-13)

**e.** No person applying for a Rocky Mountain bighorn sheep controlled hunt as a first choice shall apply for a California bighorn sheep controlled hunt as a second choice. No person applying for a California bighorn sheep controlled hunt as a first choice shall apply for a Rocky Mountain bighorn sheep controlled hunt as a second choice. No person shall apply for both a Rocky Mountain and a California bighorn the same year. (7-1-93)

**f.** Any person who kills a bighorn ewe may not apply for another bighorn ewe controlled hunt tag for five (5) years. The harvest of a bighorn ewe does not make the hunter ineligible to apply for a tag to take a California bighorn ram or a Rocky Mountain bighorn ram. Any person who applies for a bighorn ewe may not apply for any bighorn ram the same year. (4-7-11)

**g.** Any person who has killed a mountain goat since 1977 may not apply for a mountain goat tag. (4-7-11)

**h.** Any person who has killed an antlered moose in Idaho may not apply for a moose tag for antlered moose, and any person who has killed an antlerless moose in Idaho may not apply for a tag for antlerless moose EXCEPT that any person may apply for tags remaining unfilled after the controlled hunt draw. (4-7-11)

**i.** Any person who has killed a grizzly bear in Idaho may not apply for a grizzly bear tag. (3-29-17)

**j.** Any person applying for a landowner permission hunt must have a signed permission slip from a landowner who owns more than one hundred fifty-nine (159) acres in the hunt area. The permission slip must have the landowner's name and address on it along with the landowner's signature. (7-1-98)

**k.** Any person may apply for both a controlled hunt tag and a controlled hunt extra tag. (4-7-11)

**l.** Nonresident hound hunters applying for controlled black bear hunts must first obtain a Hound Hunter Permit pursuant to IDAPA 13.01.15.200.04, "Rules Governing the Use of Dogs." (7-1-99)

**m.** Any person applying for an outfitter allocated controlled hunt must have a written agreement with the outfitter before submitting the controlled hunt application. (4-11-06)

**n.** The Commission establishes youth only controlled hunts by proclamation. Only hunters ten (10) to seventeen (17) years of age with a valid license may apply for youth only controlled hunts, EXCEPT hunters sixty-five (65) years of age or older or hunters with a senior combination hunting license or a disabled combination hunting license or a nonresident disabled American Veteran hunting license may apply during a second application period for youth-only controlled hunts or for first-come, first-served leftover youth only controlled hunt permits tags. (3-25-16)( )

**04. Applications.** Individual applications or group applications for controlled hunts may be submitted electronically through the automated licensing system at any vendor location, through the Internet, over the telephone, or by mail to the Headquarters Office of the Idaho Department of Fish and Game or any Idaho Fish and Game Regional Office and shall be submitted with a postmarked not later than the annual dates shown below. Any individual application or group application which is unreadable, has incomplete or incorrect hunt or license numbers, or which lacks the required information or fee will be declared void and will not be entered in the drawing. All applications will be considered final; EXCEPT: applicants who would like to change their submitted controlled hunt application may request the original application be canceled to resubmit a new controlled hunt application during the applicable application period. The new application is subject to the appropriate application fees. (4-7-11)

- a. Spring black bear, spring grizzly bear -- Application period - January 15 - February 15. (3-29-17)
- b. Moose, bighorn sheep, and mountain goat -- Application period for first drawing - April 1 - 30. (4-6-05)
- c. Deer, elk, pronghorn, fall black bear, fall grizzly bear, and gray wolves -- Application period for first drawing -- May 1-June 5. (3-29-17)
- d. Moose, bighorn sheep, and mountain goat - Application period for second drawing, if applicable - June 15-25. (4-6-05)
- e. Deer, elk, pronghorn, fall black bear, fall grizzly bear, and gray wolves -- Application period for second drawing -- August 5-15. (3-29-17)
- 05. Applicant Requirements.** Applicants must comply with the following requirements: (7-1-93)
  - a. Only one (1) application, per person or group, will be accepted for the same species, EXCEPT a person or group may submit one additional application for a controlled hunt extra tag for the same species. Additional applications for the same person or group for the same species will result in all applicants being declared ineligible. (4-7-11)
  - b. Only one (1) controlled hunt extra tag will be issued for each person on any application submitted. (4-7-11)
  - c. Several applications may be submitted in a single envelope so long as each application is for a single species, a single applicant or group, and both hunts on an application must be controlled hunt tag hunts or controlled hunt extra tag hunts. (4-7-11)
  - d. Fees must be submitted with each application. A single payment (either cashier's check, money order, certified check, or a personal check) may be submitted to cover fees for all applications in the same envelope. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. The application fee is set by Section 36-416, Idaho Code, per person per hunt, for deer, elk, pronghorn, moose, bighorn sheep, mountain goat, black bear, and gray wolf, applied for and is NOT refundable. The tag fees are not to be submitted with either the telephone or mail-in-application for deer, elk, pronghorn, black bear, or gray wolf. Persons applying for moose, bighorn sheep, or mountain goat controlled hunts must submit the tag fee and application fee with their application. Applicants successful in drawing for a moose, bighorn sheep, or mountain goat will receive a tag in the mail. (4-7-11)
  - e. Any controlled hunt tags, EXCEPT unlimited controlled hunts that remain unsold after the controlled hunt drawings may be sold by any Point-of-Sale vendor, through the Internet, or over the telephone on a first-come, first-served basis on the dates below UNLESS such day is a Sunday or legal holiday, in which case the permits will go on sale the next legal business day. A controlled hunt application and tag will be issued to successful controlled hunt purchasers. The ten percent (10%) nonresident limitation shall not apply. Applicants with a tag already in possession must return their tag to a Department office to be exchanged for the appropriate controlled hunt tag. (4-7-11)
    - i. Spring Turkey and Spring Bear - April 1. (4-7-11)
    - ii. Moose, Bighorn Sheep and Mountain Goat - July 10. (4-7-11)
    - iii. Deer, Elk, Pronghorn and Fall Bear - August 25. (4-7-11)
  - f. A "group application" for deer, elk, and pronghorn is defined as two, three, or four (2, 3, or 4) hunters applying for the same controlled hunt on the same application. All hunters must comply with all rules and complete applications properly. All applicants must abide by the same first and second hunt choices. (4-7-11)

**g.** A “group application” for moose, bighorn sheep, mountain goat, black bear, and gray wolf, is defined as two (2) hunters applying for the same controlled hunt on the same application. Both hunters must comply with all rules and complete applications properly. Both applicants must abide by the same first and second hunt choices. (3-29-10)

**h.** If a group application exceeds the number of tags available in a hunt that group application will not be selected for that hunt. (4-7-11)

**i.** Landowner permission hunt tags will be sold first-come, first-served basis at the Headquarters or regional offices of the Idaho Department of Fish and Game after July 15. (4-7-11)

**j.** Deer and elk unlimited controlled hunts as identified by the Fish and Game Commission's Big Game Season Proclamation as “first-choice only” may be applied for only as a first choice controlled hunt during the controlled hunt application process. The Proclamation is published in a brochure available at department offices and license vendors. (4-11-15)

**06. Refunds of Controlled Hunt Fees.** (7-1-93)

**a.** Controlled hunt tag fees will be refunded to the unsuccessful or ineligible applicants for moose, sheep, and mountain goat. Unsuccessful applicants may donate all or a portion of their tag fee for moose, bighorn sheep, and mountain goat to Citizens Against Poaching by checking the appropriate box on the application. One dollar (\$1) of the non-refundable application fee will go to Citizens Against Poaching unless the applicant instructs otherwise. (3-20-97)

**b.** Fees for hunting licenses will NOT be refunded to unsuccessful or ineligible applicants. (10-26-94)

**c.** Fees for deer or elk tags purchased prior to the drawing will NOT be refunded to unsuccessful or ineligible applicants. (10-26-94)

**d.** Overpayment of fees of more than five dollars (\$5) will be refunded. Overpayment of five dollars (\$5) or less will NOT be refunded and will be retained by the Department. (7-1-93)

**e.** Application fees are nonrefundable. (4-7-11)

**f.** Fees for resident and nonresident adult control hunt tags that are subsequently designated to a minor child or grandchild are not refundable. (4-4-13)

**07. Controlled Hunt Drawing.** Single or group applications which are not drawn for the first choice hunt will automatically be entered into a second choice drawing, provided the second choice hunt applied for has not been filled. (7-1-93)

**08. Unclaimed Tags.** Successful applicants for the first deer, elk, black bear, gray wolf, or pronghorn controlled hunt drawing must purchase and pick up their controlled hunt tag by August 1. All controlled hunt tags not purchased and picked up will be entered into a second controlled hunt drawing. Any controlled hunt tags left over or unclaimed after the second controlled hunt drawing will be sold on a first-come, first-served basis. (4-7-11)

**09. Second Drawing Exclusion.** The Director may designate certain leftover controlled hunt tags to become immediately available on a first-come, first-served over-the-counter basis due to the dates of the hunt. (3-29-10)

## IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME

### 13.01.08 – RULES GOVERNING THE TAKING OF BIG GAME ANIMALS IN THE STATE OF IDAHO

DOCKET NO. 13-0108-1804

#### 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 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 17, 2018.

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 being proposed that IDAPA 13.01.08.410 be changed to allow certain caliber airguns using pre-charged pneumatic power as a method of take for big game, including in short-range weapon seasons.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: This proposed rule change has no associated fee.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was initiated. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin, [Vol. 18-6, page 48](#). However, the comments within the scope of rulemaking demonstrated that further negotiation would not lead to consensus and the Fish and Game Commission declared negotiated rulemaking 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: This proposed rule does not include an incorporation by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Greg Wooten, (208) 334-3736.

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 24, 2018.

Dated this 27th day of August, 2018.

Greg Wooten, Chief  
Bureau of Enforcement  
Idaho Department of Fish and Game  
600 S. Walnut Street  
P.O. Box 25  
Boise, ID 83707  
Phone: (208) 334-3736  
Fax: (208) 334-2114

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0108-1804**  
**(Only Those Sections With Amendments Are Shown.)**

**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 and trapped gray wolf. (4-4-13)

**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, Airguns, 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)
- o.** With any airgun using pre-charged pneumatic power to propel a projectile (excluding shot and arrows) with unignited compressed air or gas and projectiles less than thirty-five (0.35) caliber for deer, pronghorn antelope, mountain lion, or gray wolf, or less than forty-five (0.45) caliber for elk, moose, bighorn sheep, mountain goat, or black or grizzly bear. ( )
- 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 a~~Any shotgun using any slug or double-aught (#00) or larger buckshot. (~~7-1-99~~)( )
- b. ~~With a~~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 a~~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 a~~Any handgun using straight wall centerfire cartridges not originally developed for rifles. (~~3-29-10~~)( )
- e. Any airgun using pre-charged pneumatic power to propel a projectile (excluding shot and arrows) with unignited compressed air or gas and projectiles at least thirty-five (0.35) caliber for deer and pronghorn antelope or at least forty-five (0.45) caliber for elk and moose. ( )

**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 and gray wolf trapping. See Rules of the Idaho Fish and Game Commission, IDAPA 13.01.17, "Rules Governing the Use of Bait and Trapping for Taking Big Game Animals". (4-4-13)
- 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 13.01.17, "Rules Governing the Use of Bait and Trapping for Taking Big Game Animals." (4-4-13)
- 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)

## IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME

### 13.01.08 – RULES GOVERNING THE TAKING OF BIG GAME ANIMALS IN THE STATE OF IDAHO

DOCKET NO. 13-0108-1805

#### NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is December 1, 2018.

**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, 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 17, 2018.

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:

It is being proposed that IDAPA 13.01.08.260 be changed to not allow mail as a method to submit regular controlled hunt applications.

**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:

Temporary rulemaking confers a benefit because it allows the Department to provide timely and proactive outreach to hunters applying for regular controlled hunts in 2019.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: The temporary and proposed rule change has no associated fee.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Department was unable to determine persons who would use mail in 2019 to submit a controlled hunt application so there was a lack of identifiable representatives of affected interests.

**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: This temporary and proposed rule does not include an incorporation by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Sharon W. Kiefer, (208) 334-3771.

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 24, 2018.

Dated this 30th day of August, 2018.

Sharon W. Kiefer, Deputy Director  
Idaho Department of Fish and Game  
Phone: (208) 334-3771 / Fax: (208) 334-4885

600 S. Walnut Street  
P.O. Box 25  
Boise, ID 83707

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 13-0108-1805  
(Only Those Sections With Amendments Are Shown.)**

**260. TAGS FOR CONTROLLED HUNTS.**

**01. Use of Controlled Hunt Tags.** No person may hunt in any controlled hunt without having a valid controlled hunt tag in possession. (4-7-11)

**a.** A controlled hunt area with an “X” suffix is an extra tag hunt. (10-26-94)

**b.** In the event a tag is issued based on erroneous information, the tag will be invalidated by the Department and may NOT be used. The Department will notify the hunter of the invalidation of the tag. The person will remain on the drawn list, and if there is a waiting period in a succeeding year, the person will be required to wait the specified time period. (4-7-11)

**c.** Any person who draws a controlled hunt tag for deer is prohibited from hunting in any other deer hunt--archery, muzzleloader, or general; EXCEPT: (4-7-11)

**i.** The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first deer drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**ii.** If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**iii.** The holder of a deer controlled hunt tag may purchase a nonresident general season tag as a second tag and may purchase a controlled hunt extra tag for deer. (4-7-11)

**iv.** Any person who draws a controlled hunt extra tag for deer may hunt in any other deer hunt--archery, muzzleloader, general or controlled hunt. (4-7-11)

**d.** Any person who draws a controlled hunt tag for elk is prohibited from hunting in any other elk hunt--archery, muzzleloader, or general; EXCEPT: (4-7-11)

**i.** The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first elk drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**ii.** If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

**iii.** The holder of an elk controlled hunt tag may purchase a nonresident general season tag as a second tag and may purchase a controlled hunt extra tag for elk. (4-7-11)

**iv.** Any person who draws a controlled hunt extra tag for elk may hunt in any other elk hunt--archery, muzzleloader, general or controlled hunt. (4-7-11)

**e.** Any person who draws a controlled hunt tag for pronghorn is prohibited from hunting in any other pronghorn hunt; EXCEPT: (4-7-11)

i. The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first pronghorn drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

ii. If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

iii. The holder of a pronghorn controlled hunt tag may purchase a controlled hunt extra tag for pronghorn. (4-7-11)

iv. Any person who draws a pronghorn controlled hunt extra tag may apply for a controlled hunt tag for pronghorn. (4-7-11)

f. Any person who draws a spring controlled hunt tag for black bear, may choose to purchase the controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a Department office to exchange the tag for the appropriate controlled hunt tag. (4-7-11)

g. Any person who draws a fall controlled hunt tag may choose to purchase the controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a Department office to exchange the tag for the appropriate controlled hunt tag; EXCEPT; the hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the fall bear drawing. (4-7-11)

h. Any resident adult person who possesses any controlled hunt tag may designate the controlled hunt tag to his or her resident minor child or grandchild who is qualified to participate in the hunt. (3-20-14)

i. Rules for use of controlled hunt tags in Sections 260 and 261 apply to any resident adult person who possesses and designates a control hunt tag to his or her resident minor child or grandchild. Rules for eligibility in Section 260 apply to any resident adult person who possesses and designates a control hunt tag and to the designated resident minor child or grandchild, except that 260.03.d., 03.f., 03.g. and 03.h. apply to the designated child or grandchild. Mandatory school as provided in Section 270 shall apply to the designated resident minor child or grandchild. (3-25-16)

ii. Designation of the controlled hunt tag shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (4-4-13)

iii. Any resident child or grandchild cannot be designated more than one control hunt tag per species per calendar year. (4-4-13)

iv. Designation of a controlled hunt tag shall be completed before the first opening hunt date for the tag. (4-4-13)

i. Any nonresident adult person who possesses any controlled hunt tag may designate the controlled hunt tag to his or her nonresident minor child or grandchild who is qualified to participate in the hunt. (3-20-14)

i. Rules for use of controlled hunt tags in Sections 260 and 261 apply to any nonresident adult person who possesses and designates his or her control hunt tag to his or her nonresident minor child or grandchild. Rules for eligibility in Section 260 apply to any nonresident adult person who possesses and designates a control hunt tag and to the designated nonresident minor child or grandchild except that 260.03.d., 03.f., 03.g., and 03.h. apply to the designated child or grandchild. Mandatory school as provided in Section 270 shall apply to the designated nonresident minor child or grandchild. (3-25-16)

ii. Designation of the controlled hunt tag shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License

Supervisor at P.O. Box 25, Boise, ID 83707. (4-4-13)

iii. Any nonresident child or grandchild cannot be designated more than one control hunt tag per species per calendar year. (4-4-13)

iv. Designation of a controlled hunt tag shall be completed before the first opening hunt date for the tag. (4-4-13)

**02. Nonresident Tag Limitations.** (4-7-11)

a. In controlled hunts with ten (10) or fewer tags, not more than one (1) nonresident tag will be issued. In controlled hunts, EXCEPT unlimited controlled hunts, with more than ten (10) tags, not more than ten percent (10%) of the tags will be issued to nonresidents. This rule shall be applied to each uniquely numbered controlled hunt and to the controlled hunts for each species. (4-7-11)

b. In unlimited controlled hunts, the Commission may limit the number of tags available for nonresident hunters to no less than ten percent (10%) of the average number of tags drawn annually during the previous five (5) year period. (3-28-18)

c. Outfitter allocated hunts are exempt from the limitation of Subsection 260.02.a. (3-20-04)

d. For each species, the total number of outfitter allocated controlled hunt tags shall be subtracted from the result of ten percent (10%) of the sum of all controlled hunt tags; including outfitter allocated controlled hunts, but excluding all unlimited controlled hunts. In addition to the limitations of Subsection 260.02.a., the resulting net number shall be the maximum number of controlled hunt tags that may be issued to nonresidents for all controlled hunts except outfitter allocated and unlimited controlled hunts. (4-7-11)

e. Governor's Wildlife Partnership Tags for deer, elk, pronghorn, bighorn sheep, mountain goat, and moose shall be taken from the nonresident tag quota and availability is subject to Nonresident Tag Limitations. (4-4-13)

**03. Eligibility.** Any person possessing a valid Idaho hunting license is eligible to apply for controlled hunts subject to the following restrictions: (7-1-93)

a. Holders of a Nongame Hunting License (Type 208) may not apply for any controlled hunt. (4-6-05)

b. Any person whose name was drawn on a controlled hunt for either sub-species of bighorn sheep may not apply for any bighorn tag for two (2) years. Except that a person may apply for a bighorn tag in the second application period or a leftover bighorn tag the following year. Any person whose name was drawn on a controlled hunt for mountain goat may not apply for a mountain goat tag for two (2) years. Except that a person may apply for a mountain goat tag in the second application period or a leftover mountain goat tag the following year. Any person whose name was drawn on a controlled hunt for moose may not apply for a moose permit for two (2) years. Except that a person may apply for a moose tag in the second application period or a leftover moose tag the following year. Any person whose name was drawn on a controlled antlered-only deer hunt may NOT apply for any other controlled antlered-only deer hunt for one (1) year. Except that a person may apply for an antlered-only deer tag in the second application period or a leftover antlered-only deer tag the following year. Any person whose name was drawn on a controlled antlered-only elk hunt may NOT apply for any other controlled antlered-only elk hunt for one (1) year. Except that a person may apply for an antlered-only elk tag in the second application period or a leftover antlered-only elk tag the following year. The one (1) year waiting period does NOT apply to controlled hunts with an unlimited number of tags, Landowner Appreciation Program tags, or Governor's Wildlife Partnership Tags. (2-21-18)

c. Any person applying for a bighorn sheep, mountain goat, or moose controlled hunt may NOT apply for any other controlled hunt in the same year EXCEPT Unlimited Controlled Hunts, a controlled black bear hunt, a controlled gray wolf hunt, or a designated depredation or extra tag hunt for deer, elk or pronghorn. In addition, unsuccessful applicants for bighorn sheep, mountain goat or moose controlled hunts are eligible to participate in second application period for deer, elk, and pronghorn and the first-come, first-served deer, elk and pronghorn

controlled hunt permit sales. (4-7-11)

**d.** Any person who has killed a California bighorn ram or a Rocky Mountain bighorn ram on any controlled hunt may not apply for a tag for the same subspecies, EXCEPT any person who has killed a California bighorn ram south of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a Rocky Mountain bighorn ram tag for any hunt north of Interstate Highway 84. Any person who has killed a Rocky Mountain bighorn ram north of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a California bighorn ram tag for any hunt south of Interstate Highway 84. Bighorn sheep auction tag recipients under IDAPA 13.01.04.700 and lottery tag recipients under IDAPA 13.01.04.800 are exempt from the once-in-a-lifetime restrictions on killing bighorn sheep of either subspecies. (4-4-13)

**e.** No person applying for a Rocky Mountain bighorn sheep controlled hunt as a first choice shall apply for a California bighorn sheep controlled hunt as a second choice. No person applying for a California bighorn sheep controlled hunt as a first choice shall apply for a Rocky Mountain bighorn sheep controlled hunt as a second choice. No person shall apply for both a Rocky Mountain and a California bighorn the same year. (7-1-93)

**f.** Any person who kills a bighorn ewe may not apply for another bighorn ewe controlled hunt tag for five (5) years. The harvest of a bighorn ewe does not make the hunter ineligible to apply for a tag to take a California bighorn ram or a Rocky Mountain bighorn ram. Any person who applies for a bighorn ewe may not apply for any bighorn ram the same year. (4-7-11)

**g.** Any person who has killed a mountain goat since 1977 may not apply for a mountain goat tag. (4-7-11)

**h.** Any person who has killed an antlered moose in Idaho may not apply for a moose tag for antlered moose, and any person who has killed an antlerless moose in Idaho may not apply for a tag for antlerless moose EXCEPT that any person may apply for tags remaining unfilled after the controlled hunt draw. (4-7-11)

**i.** Any person who has killed a grizzly bear in Idaho may not apply for a grizzly bear tag. (3-29-17)

**j.** Any person applying for a landowner permission hunt must have a signed permission slip from a landowner who owns more than one hundred fifty-nine (159) acres in the hunt area. The permission slip must have the landowner's name and address on it along with the landowner's signature. (7-1-98)

**k.** Any person may apply for both a controlled hunt tag and a controlled hunt extra tag. (4-7-11)

**l.** Nonresident hound hunters applying for controlled black bear hunts must first obtain a Hound Hunter Permit pursuant to IDAPA 13.01.15.200.04, "Rules Governing the Use of Dogs." (7-1-99)

**m.** Any person applying for an outfitter allocated controlled hunt must have a written agreement with the outfitter before submitting the controlled hunt application. (4-11-06)

**n.** The Commission establishes youth only controlled hunts by proclamation. Only hunters ten (10) to seventeen (17) years of age with a valid license may apply for youth only controlled hunts, EXCEPT hunters sixty-five (65) years of age or older or hunters with a senior combination hunting license or a disabled combination hunting license or a nonresident disabled American Veteran hunting license may apply for first-come, first-served leftover youth only controlled hunt permits. (3-25-16)

**04. Applications.** Individual applications or group applications for controlled hunts may be submitted electronically through the automated licensing system at any vendor location, [including Idaho Department of Fish and Game regional offices or the headquarters office](#), through the Internet, [or](#) over the telephone, [or by mail to the Headquarters Office of the Idaho Department of Fish and Game or any Idaho Fish and Game Regional Office and shall be submitted with a postmarked](#) not later than the annual dates shown below. Any individual application or group application which is unreadable, has incomplete or incorrect hunt or license numbers, or which lacks the required information or fee will be declared void and will not be entered in the drawing. All applications will be considered final; EXCEPT: applicants who would like to change their submitted controlled hunt application may request the original application be canceled to resubmit a new controlled hunt application during the applicable

application period. The new application is subject to the appropriate application fees.

~~(4-7-11)~~(12-1-18)T

- a. Spring black bear, spring grizzly bear -- Application period - January 15 - February 15. (3-29-17)
  - b. Moose, bighorn sheep, and mountain goat -- Application period for first drawing - April 1 - 30. (4-6-05)
  - c. Deer, elk, pronghorn, fall black bear, fall grizzly bear, and gray wolves -- Application period for first drawing -- May 1-June 5. (3-29-17)
  - d. Moose, bighorn sheep, and mountain goat - Application period for second drawing, if applicable - June 15-25. (4-6-05)
  - e. Deer, elk, pronghorn, fall black bear, fall grizzly bear, and gray wolves -- Application period for second drawing -- August 5-15. (3-29-17)
- 05. Applicant Requirements.** Applicants must comply with the following requirements: (7-1-93)
- a. Only one (1) application, per person or group, will be accepted for the same species, EXCEPT a person or group may submit one additional application for a controlled hunt extra tag for the same species. Additional applications for the same person or group for the same species will result in all applicants being declared ineligible. (4-7-11)
  - b. Only one (1) controlled hunt extra tag will be issued for each person on any application submitted. (4-7-11)
  - c. Several applications may be submitted ~~in a single envelope~~ so long as each application is for a single species, a single applicant or group, and both hunts on an application must be controlled hunt tag hunts or controlled hunt extra tag hunts. ~~(4-7-11)~~(12-1-18)T
  - d. Fees must be submitted with each application. A single payment (either cashier's check, money order, certified check, or a personal check) may be submitted to cover fees for all applications ~~in the same envelope~~. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. The application fee is set by Section 36-416, Idaho Code, per person per hunt, for deer, elk, pronghorn, moose, bighorn sheep, mountain goat, black bear, and gray wolf, applied for and is NOT refundable. The tag fees are not to be submitted ~~with either the telephone or mail-in application~~ for deer, elk, pronghorn, black bear, or gray wolf. Persons applying for moose, bighorn sheep, or mountain goat controlled hunts must submit the tag fee and application fee with their application. Applicants successful in drawing for a moose, bighorn sheep, or mountain goat will receive a tag in the mail. ~~(4-7-11)~~(12-1-18)T
  - e. Any controlled hunt tags, EXCEPT unlimited controlled hunts that remain unsold after the controlled hunt drawings may be sold by any Point-of-Sale vendor, through the Internet, or over the telephone on a first-come, first-served basis on the dates below UNLESS such day is a Sunday or legal holiday, in which case the permits will go on sale the next legal business day. A controlled hunt application and tag will be issued to successful controlled hunt purchasers. The ten percent (10%) nonresident limitation shall not apply. Applicants with a tag already in possession must return their tag to a Department office to be exchanged for the appropriate controlled hunt tag. (4-7-11)
  - i. Spring Turkey and Spring Bear - April 1. (4-7-11)
  - ii. Moose, Bighorn Sheep and Mountain Goat - July 10. (4-7-11)
  - iii. Deer, Elk, Pronghorn and Fall Bear - August 25. (4-7-11)
  - f. A "group application" for deer, elk, and pronghorn is defined as two, three, or four (2, 3, or 4) hunters applying for the same controlled hunt on the same application. All hunters must comply with all rules and complete applications properly. All applicants must abide by the same first and second hunt choices. (4-7-11)

**g.** A “group application” for moose, bighorn sheep, mountain goat, black bear, and gray wolf, is defined as two (2) hunters applying for the same controlled hunt on the same application. Both hunters must comply with all rules and complete applications properly. Both applicants must abide by the same first and second hunt choices. (3-29-10)

**h.** If a group application exceeds the number of tags available in a hunt that group application will not be selected for that hunt. (4-7-11)

**i.** Landowner permission hunt tags will be sold first-come, first-served basis at the Headquarters or regional offices of the Idaho Department of Fish and Game after July 15. (4-7-11)

**j.** Deer and elk unlimited controlled hunts as identified by the Fish and Game Commission's Big Game Season Proclamation as “first-choice only” may be applied for only as a first choice controlled hunt during the controlled hunt application process. The Proclamation is published in a brochure available at department offices and license vendors. (4-11-15)

**IDAPA 13 – IDAHO FISH AND GAME COMMISSION**

**13.01.09 – RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO**

**DOCKET NO. 13-0109-1804P**

**NOTICE OF PROCLAMATION**

**AUTHORITY:** In compliance with Section 36-105(3), Idaho Code, notice is hereby given that this agency has adopted by proclamation the 2018 Sage Grouse Season establishing season and limits for hunting in Idaho.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed proclamation, contact Owen Moroney at (208) 334-3715.

## IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME

### 13.01.09 – RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

DOCKET NO. 13-0109-1805

#### 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, 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 17, 2018.

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 being proposed that IDAPA 13.01.09.100 be changed create the administrative framework for the Fish and Game Commission to adopt Landowner Permission Hunt (LPH) seasons for turkeys in areas of the state to manage turkey depredation on private lands and to provide landowners with turkey hunting opportunities where turkey hunting is controlled.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: This proposed rule change has no associated fee.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the agency does not have contacts for landowners who are interested in turkey LPH so there is a lack of identifiable representatives of affected interests to participate in negotiated rulemaking.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: This proposed rule does not include an incorporation by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jeff Knetter, (208) 334-2920.

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 24, 2018.

Dated this 30th day of August, 2018.

Jeff Knetter  
Upland Game/Migratory Bird Coordinator  
600 S. Walnut Street  
P.O. Box 25  
Boise, ID 83707  
Phone: (208) 334-2920  
Fax: (208) 334-2114

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0109-1805**  
**(Only Those Sections With Amendments Are Shown.)**

**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, 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. (3-29-12)

**a.** Tag validation and attachment: Immediately after any sandhill crane is killed, the sandhill crane tag must be validated and securely attached to the sandhill crane. (4-4-13)

**b.** 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. (4-4-13)

**c.** The tag must remain attached so long as the sandhill crane is in transit or storage. (4-4-13)

**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 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. (3-29-12)

**b.** Permits for Controlled Hunts: Any person who receives a controlled hunt permit for wild turkey is prohibited from using that permit to hunt in any other wild turkey controlled hunt. (3-29-12)

**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)

**iii.** Any person applying for a landowner permission hunt must have a signed permission slip from a landowner who owns more than seventy-nine (79) acres in the hunt area. The permission slip must have the landowner's name and address on it along with the landowner's signature. ( )

**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 general and controlled hunts by proclamation. Youth-only general hunts are limited to participation by hunters who are ten (10) to seventeen (17) years of age with a valid license. Only hunters nine (9) to seventeen (17) years of age with a valid license may apply for youth-only controlled hunts, provided they are ten (10) to seventeen (17) 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. (3-29-17)

k. Any resident adult person who possesses a controlled hunt permit may designate the controlled hunt permit to his or her resident minor child or grandchild who is qualified to participate in the hunt. The designated child or grandchild shall possess the appropriate tag for the hunt. (3-20-14)

i. Designation of the controlled hunt permit shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (4-4-13)

ii. Any resident child or grandchild cannot be designated more than one (1) control hunt permit per calendar year. (4-4-13)

iii. Designation of a controlled hunt permit shall be completed before the first opening hunt date for the permit. (4-4-13)

**l.** Any nonresident adult person who possesses a controlled hunt permit may designate the controlled hunt permit to his or her nonresident minor child or grandchild who is qualified to participate in the hunt. The designated child or grandchild shall possess the appropriate tag for the hunt. (3-20-14)

i. Designation of the controlled hunt tag shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (4-4-13)

ii. Any nonresident child or grandchild cannot be designated more than one (1) control hunt permit per calendar year. (3-29-17)

iii. Designation of a controlled hunt permit shall be completed before the first opening hunt date for the permit. (4-4-13)

**m.** Landowner permission hunt tags will be sold on a first-come, first-served basis at the Headquarters or regional offices of the Idaho Department of Fish and Game after March 20 for spring hunts and July 10 for fall hunts. ( )

**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. (3-29-12)

## IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME

### 13.01.10 – RULES GOVERNING THE IMPORTATION, POSSESSION, RELEASE, SALE, OR SALVAGE OF WILDLIFE

DOCKET NO. 13-0110-1802

#### NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is September 28, 2018.

**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 36-103, 36-104, and 36-502, 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 17, 2018.

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:

It is being proposed that IDAPA 13.01.10 be changed to prohibit, with certain exceptions, the importation of carcasses or other parts of deer, elk, or moose from another state, province of Canada, or country with any documented case of Chronic Wasting Disease (CWD) and to create additional transport prohibitions if the Idaho Fish and Game Commission designates any part of Idaho as a CWD Management Zone. These provisions are adopted to proactively reduce transmission risk of CWD into Idaho.

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

Implementation of this rule to affect the 2018 hunting season conveys a benefit to managing risk of CWD entering Idaho.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: The temporary and proposed rule change has no associated fee.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Department is unable to determine which Idaho hunters might hunt in states that have documented cases of CWD so there is a lack of identifiable representatives of affected interests to participate in negotiated rulemaking.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: This temporary and proposed rule does not include incorporation by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Toby Boudreau, (208) 334-2920.

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 24, 2018.

Dated this 27th day of August, 2018.

Toby Boudreau  
Assistant Chief, Bureau of Wildlife  
Idaho Department of Fish and Game  
600 S. Walnut Street  
P.O. Box 25  
Boise, ID 83707  
Phone: (208) 334-2920  
Fax: (208) 334-2114

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 13-0110-1802  
(Only Those Sections With Amendments Are Shown.)**

**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~~ **in this Chapter** and as provided in Chapter 5, Title 36, Idaho Code. ~~(3-23-94)~~**(9-28-18)T**

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. (3-29-12)

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. (3-29-12)

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. (3-29-12)

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. (3-29-12)

**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 possession or sale is not prohibited in Idaho or the state, province or country where taken, or by federal law or regulation; ~~(3-23-94)~~(9-28-18)T

**301. PROHIBITION ON POSSESSION, IMPORTATION, AND TRANSPORTATION OF CERVID CARCASSES OR PARTS FROM AREAS WITH CHRONIC WASTING DISEASE (CWD).**

**01. Prohibitions. It is unlawful to:** (9-28-18)T

**a. Import into Idaho the carcass or any part of a deer, elk, or moose from another state, province of Canada, or country (other than Canada) with any documented case of CWD;** (9-28-18)T

**b. Transport the carcass or any part of a deer, elk, or moose out of any CWD Management Zone designated by the Idaho Fish and Game Commission to any portion of the state that is not a designated CWD Management Zone; or** (9-28-18)T

**c. Possess the carcass or any part of a deer, elk, or moose that: has been imported from another state, province or country (other than Canada) with a documented case of CWD; or transported out of any CWD Management Zone designated by the Idaho Fish and Game Commission to any part of the state that is not a designated CWD Management Zone.** (9-28-18)T

**02. Exceptions. This section does not apply to the following animal parts:** (9-28-18)T

**a. Meat that is cut and wrapped;** (9-28-18)T



## IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME

### 13.01.16 – THE TRAPPING OF PREDATORY AND UNPROTECTED WILDLIFE AND THE TAKING OF FURBEARING ANIMALS

DOCKET NO. 13-0116-1802

#### 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 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 17, 2018.

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 being proposed that IDAPA 13.01.16.400 be changed to revise the distance that ground sets for trapping furbearing animals, or predatory or unprotected wildlife, may be placed from maintained public trails that are paved or unpaved.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: This proposed rule change has no associated fee.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was initiated. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin, [Vol. 18-6, page 50](#). However, the polarity of comments within the scope of rulemaking demonstrated that further negotiation would not lead to consensus and the Fish and Game Commission declared negotiated rulemaking 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: This proposed rule does not include an incorporation by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cory Mosby, (208) 334-2920.

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 24, 2018.

Dated this 27th day of August, 2018.

Cory Mosby  
Furbearer Staff Biologist  
Idaho Department of Fish and Game  
600 S. Walnut Street  
P.O. Box 25  
Boise, ID 83707  
Phone: (208) 334-2920  
Fax: (208) 334-2114

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0116-1802**  
**(Only Those Sections With Amendments Are Shown.)**

**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)~~ ten (10) feet of ~~center line the~~ edge of any maintained unpaved 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, paved trail, or picnic area. Cage or box live traps are permitted within three hundred (300) feet of designated public campgrounds, trailheads, paved trails, or picnic areas as allowed by city, county, state, and federal law. ~~(3-29-12)~~ ( )

- h.** Place or set any ground set snare without a break-away device or cable stop incorporated within the loop of the snare. (3-29-12)
- i.** Place any ground set incorporating a foothold trap with an inside jaw spread greater than nine (9) inches. (3-29-12)

## IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME

### 13.01.17 – RULES GOVERNING THE USE OF BAIT AND TRAPPING FOR TAKING BIG GAME ANIMALS

DOCKET NO. 13-0117-1801

#### 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 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 17, 2018.

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 being proposed that IDAPA 13.01.17.400 be changed to revise the distance that ground sets for trapping gray wolves may be placed from maintained public trails that are paved or unpaved.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: This proposed rule change has no associated fee.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was initiated. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin, [Vol 18-6, page 51](#). However, the polarity of comments within the scope of rulemaking demonstrated that further negotiation would not lead to consensus and the Fish and Game Commission declared negotiated rulemaking 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: This proposed rule does not include an incorporation by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cory Mosby, (208) 334-2920.

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 24, 2018.

Dated this 27th day of August, 2018.

Cory Mosby  
Furbearer Staff Biologist  
Idaho Department of Fish and Game  
600 S. Walnut Street  
P.O. Box 25  
Boise, ID 83707  
Phone: (208) 334-2920  
Fax: (208) 334-2114

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0117-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**400. TRAPPING BIG GAME ANIMALS.**

Trapping may be used to take ONLY gray wolf and ONLY under the following conditions. (4-4-13)

**01. Defined Terms.** (4-4-13)

**a.** ‘Bait’ for trapping purposes is defined as any animal parts; except bleached bones or liquid scent. (4-4-13)

**b.** ‘Ground set’ is defined as any foothold trap, body-gripping trap, or snare originally set in or on the land (soil, rock, etc.). This includes any traps elevated up to a maximum of thirty-six (36) inches above the natural ground level. (4-4-13)

**c.** For trapping purposes, a ‘public trail’ is defined as any trail designated by any city, county, state, or federal transportation or land management agency on the most current official map of the agency. (4-4-13)

**02. Methods of Take When Trapping.** No person trapping gray wolf shall: (4-4-13)

**a.** Use any set, EXCEPT a ground set. (4-4-13)

**b.** 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; EXCEPT: (4-4-13)

**i.** Gray wolves may be trapped near a big game animal that has died naturally and the carcass has not been repositioned for trapping purposes. Natural causes shall not include any man-caused mortality. (4-4-13)

**ii.** Gray wolves may be trapped using a carcass of a legally taken gray wolf with the hide removed. (4-4-13)

**iii.** Gray wolves may be trapped using the parts of accidentally killed wildlife salvaged in accordance with IDAPA 13.01.10, “Rules Governing the Importation, Possession, Release, Sale or Salvage of Wildlife,” Subsections 300.02.c. and 300.02.d. in Game Management Units as identified by the Commission’s Big Game Season Proclamation. The Proclamation is published in a brochure available at department offices and license vendors. (4-4-13)

**c.** Use any set within thirty (30) feet of any visible bait; including bait allowed in Subsection 400.02.b.i., 400.02.b.ii., and 400.02.b.iii. (4-4-13)

**d.** 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. (4-4-13)

**e.** Use live animals as a bait or attractant. (4-4-13)

**f.** Place any ground set on, across, or within ~~five (5)~~ **ten (10)** feet of ~~center line~~ **the edge** of any maintained **unpaved** public trail. (4-4-13)(    )

**g.** 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. (4-4-13)

**h.** Place any ground set incorporating snare, trap, or attached materials within three hundred (300) feet

of any designated public campground, trailhead, paved trail, or picnic area. Cage or box live traps are permitted within three hundred (300) feet of designated public campgrounds, trailheads, paved trails, or picnic areas as allowed by city, county, state, and federal law. ~~(4-4-13)~~( )

**i.** Place or set any ground set snare without a diverter; or without a break-away device or cable stop incorporated within the loop of the snare. (4-4-13)

**j.** Place any ground set incorporating a foothold trap with an inside jaw spread greater than nine (9) inches. (4-4-13)

**k.** Trap any gray wolf within one-half (1/2) mile of any active Department of Fish and Game big game feeding site. (4-4-13)

**l.** Trap gray wolf within two hundred (200) yards of the perimeter of any designated dump ground or sanitary landfill. (4-4-13)

**03. Trapping Hours.** Trapped gray wolves may be dispatched any time of day or night. (4-4-13)

**04. Wounding and Retrieving.** No person shall wound or kill any big game animal without making a reasonable effort to retrieve it and reduce it to possession. (4-4-13)

**05. Unlawful Methods of Take.** No person shall take big game animals as outlined in IDAPA 13.01.08, "Rules Governing the Taking of Big Game Animals in the State of Idaho" Section 410; EXCEPT trapped gray wolves may be dispatched with any rimfire rifle, rimfire handgun or any muzzleloading handgun. (4-4-13)

## IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

### 16.02.01 – RULES OF THE IDAHO TIME SENSITIVE EMERGENCY SYSTEM COUNCIL

#### DOCKET NO. 16-0201-1801

#### 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 56-1024 through 56-1030, 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 17, 2018.

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 incorporated document is being revised and updated to more current standards in the “Time Sensitive Emergency Standards Manual,” Edition 2019-1, that will become effective July 1, 2019, along with these rules. Additional changes are being made for clarification of the designation fee structure and for enforcement procedures for failure to make annual payments for facilities choosing to pay designation fees on a yearly basis.

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

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

There is no anticipated fiscal impact to the state general fund or any other funds related to this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted and deemed not feasible because the proposed updates to the Time Sensitive Emergency Standards Manual and rules represent extensive input from stakeholders gathered during 2018 at meetings of the Time Sensitive Emergency Council and submitted as written comments throughout the year.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the “Time Sensitive Emergency System Standards Manual,” Edition 2019-1, is being incorporated to give it the force and effect of law. The current incorporated document is being updated from Edition 2017-1 to the revised Edition 2019-1.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Christian Surjan at (208) 334-6564.

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 24, 2018.

Dated this 31st day of August, 2018.

Tamara Prisock  
DHW – Administrative Rules Unit  
450 W. State Street – 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
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[dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0201-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**004. INCORPORATION BY REFERENCE.**

The Time Sensitive Emergency System Standards Manual, Edition 2017-1, is incorporated by reference in this chapter of rules. Copies of the manual may be obtained online at [www.tse.idaho.gov](http://www.tse.idaho.gov) or from the Bureau of Emergency Medical Services and Preparedness located at 2224 East Old Penitentiary Road, Boise, ID 83712-8249. (7-1-17)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. DESIGNATION AND TSE ON-SITE SURVEY FEES.**

**01. Application With National Verification.** An applicant applying for a TSE designation that is verified by a national accrediting body must submit the appropriate designation fees with its application for initial designation and renewal. The designation fees are for a three (3) year designation and are payable on an annual basis. TSE designation fees are not to exceed those listed in Subsections 200.03 through 200.05 of this rule. (3-24-16)

**02. Application Without National Verification.** An applicant who requires a TSE on-site survey prior to designation is required to pay the applicable on-site survey fee at the time of application. TSE designation and on-site survey fees are not to exceed those listed in Subsections 200.03 through 200.05 of this rule. (3-24-16)

**03. Trauma Designation and TSE On-Site Survey Fees.**

<b>TRAUMA DESIGNATIONS 200.03</b>	<b>DESIGNATION FEE 3-year / Annual (Not to exceed)</b>	<b>TSE ON-SITE SURVEY FEE (Not to exceed)</b>
LEVEL I	\$45,000 / \$15,000	\$3,000 / Not applicable with ACS verification
LEVEL II	\$36,000 / \$12,000	\$3,000 / Not applicable with ACS verification
LEVEL III	\$24,000 / \$8,000	\$3,000 / Not applicable with ACS verification
LEVEL IV	\$12,000 / \$4,000	\$1,500 / Not applicable with ACS verification
LEVEL V	\$3,000 / \$1,000	\$1,500
PEDIATRIC LEVEL I and LEVEL II	\$36,000 / \$12,000	\$3000 / Not applicable with ACS verification

(3-24-16)

**04. Stroke Designation and TSE On-Site Survey Fees.**

<b>STROKE DESIGNATIONS 200.04</b>	<b>DESIGNATION FEE 3-year / Annual (Not to exceed)</b>	<b>TSE ON-SITE SURVEY FEE (Not to exceed)</b>
LEVEL I	\$21,000 / \$7,000	\$3,000 / Not applicable with national <u>or acceptable state verification</u>
LEVEL II	\$12,000 / \$4,000	\$3,000 / Not applicable with national <u>or acceptable state verification</u>
LEVEL III	\$1,500 / \$500	\$3,000 / <u>Not applicable with national or acceptable state verification</u>

(3-24-16)( )

**05. STEMI (Heart Attack) Designation and TSE On-Site Survey Fees.**

<b>STEMI (HEART ATTACK) DESIGNATIONS 200.05</b>	<b>DESIGNATION FEE 3-year / Annual (Not to exceed)</b>	<b>TSE ON-SITE SURVEY FEE (Not to exceed)</b>
LEVEL I	\$21,000 / \$7,000	\$3,000 / Not applicable with national <u>or acceptable state verification</u>
LEVEL II	\$1,500 / \$500	\$3,000 / <u>Not applicable with national or acceptable state verification</u>

(3-24-16)( )

**06. Designation Fee Payment.** After completion of the TSE on-site survey, the TSE Council will notify the applicant facility of the designation determination by letter. The applicant facility must then pay either the annual designation fee or the entire three (3) year designation fee. After designation notification and upon the Department's receipt of the designation fee, designation is effective. The TSE Council will send a certificate of designation and confirmation of the designation period. Annual designation fees for those facilities paying yearly are due to the Department within thirty (30) days of the date of the invoice in order to maintain designation. Failure to meet this deadline will result in suspension or revocation of designation as provided in Section 285 of these rules.

(3-24-16)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**285. REVOCATION AND SUSPENSION.**

**01. Revocation.** The TSE Council may revoke the designation of a center or a waiver when an owner, officer, director, manager, or other employee: (3-24-16)

- a. Fails or refuses to comply with the provisions of these rules; (3-24-16)

- b.** Fails to make annual designation fee payment for those facilities paying yearly; ( )
- bc.** Makes a false statement of material fact about the center’s capabilities or other pertinent circumstances in any record or matter under investigation for any purposes connected with these rules; (3-24-16)
- cd.** Prevents, interferes with, or attempts to impede in any way, the work of a representative of the TSE Council in implementing or enforcing these rules; (3-24-16)
- de.** Falsely advertises, or in any way misrepresents the facility’s ability to care for patients based on its designation status; (3-24-16)
- ef.** Is substantially out of compliance with these rules and has not rectified such noncompliance; (3-24-16)
- fg.** Fails to provide reports required by the TSE registry or the Department in a timely and complete fashion; or (3-24-16)
- gh.** Fails to comply with or complete a plan of correction in the time or manner specified. (3-24-16)
- 02. Suspension.** The TSE Council may suspend a center’s designation or waiver when it finds, after investigation, that the center has engaged in a deliberate and willful violation of these rules, or that the public’s health, safety, or welfare is endangered. (3-24-16)
- 03. Notification and Appeal.** When the TSE Council revokes or suspends a center’s designation or waiver, it must provide the center with a written notification of the action and the basis for the action. The notice will inform the center of the right to appeal and the procedure to appeal the action under the provisions in IDAPA 16.05.03, “Rules Governing Contested Case Proceedings and Declaratory Rulings.” (3-24-16)

**IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE**  
**16.02.02 – RULES OF THE IDAHO EMERGENCY MEDICAL SERVICES (EMS)**  
**PHYSICIAN COMMISSION**

**DOCKET NO. 16-0202-1801**

**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 56-1013A and 56-1023, 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 17, 2018.

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 best protect the public's health and safety, the EMS Physician Commission is revising its Standards Manual that is incorporated by reference in this chapter of rules. The revision to these rules will ensure that the most recent edition of the manual has the force and effect of law.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted and deemed not feasible because the content of the proposed updates to the EMS Physician Commission Standards Manual already represents extensive input from stakeholders gathered on an ongoing basis throughout the year and at the quarterly meetings of the EMS Physician Commission.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the Idaho Emergency Medical Services (EMS) Physician Commission Standards Manual, edition 2019-1, is being incorporated by reference into these rules to give it the force and effect of law. The document is not being published in this chapter of rules due to its length and format, but it is available upon request from Idaho EMS. Once the docket has been finalized and adopted, the manual will be available online at: [www.emspc.dhw.idaho.gov](http://www.emspc.dhw.idaho.gov).

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Wayne Denny at (208) 334-4000.

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 24, 2018.

Dated this 31st day of August, 2018.

Tamara Prisock  
DHW – Administrative Rules Unit  
450 W. State Street – 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
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[dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0202-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**004. INCORPORATION BY REFERENCE.**

The Idaho Emergency Medical Services (EMS) Physician Commission has adopted the Idaho Emergency Medical Services (EMS) Physician Commission Standards Manual, edition 201~~8~~<sup>9</sup>-1, and hereby incorporates this Standards Manual by reference. Copies of the manual may be obtained on the Internet at [www.emspc.dhw.idaho.gov](http://www.emspc.dhw.idaho.gov) or from the Bureau of Emergency Medical Services and Preparedness located at 2224 East Old Penitentiary Road, Boise, ID, 83712-8249, whose mailing address is P.O. 83720, Boise, Idaho 83720-0036. ~~(7-1-18)~~ ( )

## **IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE**

### **16.03.03 – RULES GOVERNING CHILD SUPPORT SERVICES**

#### **DOCKET NO. 16-0303-1801 (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 7-1206, 32-1207, 32-1209, 32-1214G, 32-1217, 56-203A, and 56-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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 needs to comply with amendments to the Social Security Act that require an increase to the annual federal fee and the threshold of when this fee is imposed. The annual federal fee increases from \$25 to \$35 and amount of when a fee is imposed is being increased to \$550.

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

Fees will be increased for the annual child support services from a \$25 fee to \$35 fee; and the threshold of when this fee is imposed is being increased to \$550.

**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:

Non-custodial parents who pay at least \$550 in child support in a fiscal year will pay an annual fee of \$35. Based on current data, it is anticipated that approximately 35,000 child support cases will qualify for this fee increase. The total estimated increase will result in an increase of \$350,000 per each federal fiscal year. The state pays 66% of the total fees assessed to the federal Office of Child Support Enforcement for federal match, which equals \$231,000. The state retains any amount collected above the federal share, which equals up to \$119,000.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted and deemed not feasible because these changes are being made to keep Idaho in compliance with new federal requirements under Section 454(6)(B)(ii) of the Social Security Act.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference in this rulemaking.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2018.

Dated this 31st day of August, 2018.

Tamara Prisock  
DHW – Administrative Rules Unit  
450 W. State Street – 10th Floor  
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Boise, ID 83720-0036  
Phone: (208) 334-5500 / Fax: (208) 334-6558  
[dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0303-1801  
(Only Those Sections With Amendments Are Shown.)

304. FEES.

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

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

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

**04. Locate Fees.** Child Support Services may charge an applicant/recipient a fee of ten dollars (\$10) for referral to FPLS for location of a non-custodial parent when no other child support services are being provided. Child Support Services may also charge a fee of four dollars (\$4) for referral to the FPLS for a social security number search. Child Support Services may charge a fee of seventy cents (\$.70) for referral to FPLS for location of a non-custodial parent. (7-1-98)

**05. Federally Mandated Annual Service Fees.** Child Support Services must charge an annual fee of ~~twenty~~ **thirty**-five dollars (\$~~25~~**35**) for each Title IV-D support enforcement case in which Child Support Services **it** has collected and disbursed **at least** five hundred **fifty** dollars (\$~~500~~**50**) of support in the federal fiscal year. The fee will be billed to the ~~child support obligor once five hundred dollars (\$500) of support has been collected during the relevant federal fiscal year provided the case otherwise qualifies. The fee~~ **parent ordered to pay support, but** will not be ~~collected~~ **assessed** on any case in which ~~the applicant/recipient~~ **an individual** has ever received benefits under ~~a State or Tribal Title IV-A program, or from any child support obligor who is currently required to participate in Title IV-D services as an eligibility requirement for Food Stamps participation~~ **the Temporary Assistance for Needy Families program.** (~~4-9-09~~)(      )

**IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.04 – RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO**  
**DOCKET NO. 16-0304-1801**  
**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. This action is authorized pursuant to Section 56-203, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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

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

These rules are being updated to provide clarification for self-employment and update obsolete language. The rules as currently written cause confusion for participants and staff when determining eligibility. These rules define self-employment and include a referral process for the state's mandatory employment and training program. Updates are also being made for participation in the Workforce Investment Act (WIA), now known as the Workforce Innovation and Opportunity Act (WIOA) programs.

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

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

There is no anticipated fiscal impact to the state general fund as a result of this rulemaking. The Idaho Food Stamp Program is a federally funded program.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted and deemed not feasible as these changes are being made to reflect updated policies pertaining to the Food Stamp Program based on recommendations from our federal and state partners.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference in this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Kristin Matthews 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 24, 2018.

Dated this 31st day of August, 2018.

Tamara Prisock  
DHW – Administrative Rules Unit  
450 W. State Street – 10th Floor  
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Fax: (208) 334-6558  
[dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0304-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**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.** **Self-Employment.** Self-employment is the process of actively earning income directly from one's own business, trade, or profession. To be considered self-employed, a person is responsible for obtaining or providing a service or product that generates or is expected to generate income. Self-employment applies only to a business owned by one (1) person. A business owned by more than one (1) person is considered employment, not self-employment. ( )
- 145.** **Spouse.** Persons who are legally married under Idaho law. (4-4-13)
- 156.** **Standard Utility Allowance (SUA).** Utility deduction given to a food stamp household that has a cost for heating or cooling. (4-11-06)
- 167.** **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)
- 178.** **State Agency.** The Idaho Department of Health and Welfare. (6-1-94)
- 189.** **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)
- 1920.** **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)
- 201.** **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)
- 242.** **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)
- 223.** **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. (3-29-12)
- 234.** **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)
- 245.** **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)
- 256.** **Verification.** The proof obtained to establish the accuracy of information and the household's eligibility. (6-1-94)
- 267.** **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)

**2-78. 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. (3-29-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**014. ABBREVIATIONS I THROUGH Z.**

For the purposes of the Food Stamp Program, the following abbreviations are used. (4-11-06)

- 01. ICCP.** Idaho Child Care Program. (4-11-06)
- 02. ICSES.** Idaho Child Support Enforcement System. (4-11-06)
- 03. IEVS.** Income and Eligibility Verification Systems. (6-1-94)
- 04. IHE.** Inadvertent household error. (6-1-94)
- 05. INS.** Immigration and Naturalization Service, in 2003, became the United States Citizenship and Immigration Service (USCIS), a Division of Homeland Security. (4-11-06)
- 06. INA.** Immigration and Nationality Act. (4-6-05)
- 07. IPV.** Intentional program violation. (6-1-94)
- 08. IRS.** Internal Revenue Service. (6-1-94)
- 09. JSAP.** Job Search Assistance Program. (6-1-94)
- 10. LUA.** Limited utility allowance. (4-11-06)
- 11. MUA.** Minimum utility allowance. (4-11-06)
- 12. NADA.** National Automobile Dealer’s Association. (4-11-06)
- 13. PA.** Public Assistance. (6-1-94)
- 14. RSDI.** Retirement, Survivors, Disability Insurance received from SSA. (6-1-94)
- 15. SAVE.** Systematic Alien Verification for Entitlements. (4-11-06)
- 16. SAW.** Special Agricultural Worker. (6-1-94)
- 17. SDX.** State Data Exchange. (6-1-94)
- 18. SQC.** State Quality Control. (6-1-94)
- 19. SRS.** Self Reliance Specialist. (7-1-98)
- 20. SUA.** Standard utility allowance. (4-11-06)
- 21. SSA.** Social Security Administration. (6-1-94)
- 22. SSI.** The Federal Supplemental Security Income Program for the aged, blind or disabled. (6-1-94)

- |     |  |                          |
|-----|--|--------------------------|
| 23. | SSN. Social Security number.   | (6-1-94)                 |
| 24. | SWICA. State Wage Information Collection Agency.                             | (6-1-94)                 |
| 25. | TAFI. Temporary Assistance for Families in Idaho.                            | (7-1-98)                 |
| 26. | TOP. Treasury Offset Program.  | (3-15-02)                |
| 27. | TUA. Telephone Utility Allowance.  | (3-29-10)                |
| 28. | UI. Unemployment Insurance.  | (6-1-94)                 |
| 29. | USDA. United States Department of Agriculture.                               | (6-1-94)                 |
| 30. | VA. The Veterans Administration.   | (6-1-94)                 |
| 31. | WIOA. The Workforce <i>Investment Innovation and Opportunity</i> Act.        | <del>(3-15-02)</del> ( ) |
| 32. | WIC. The special supplemental Food Program for Women, Infants, and Children. | (6-1-94)                 |

**(BREAK IN CONTINUITY OF SECTIONS)**

**227. EXEMPTIONS FROM JSAP.**

Exemptions from JSAP are listed in Subsections 227.01 through 227.12 of these rules. (5-3-03)

**01. Parents or Caretakers of a Child Under Six Years of Age.** A parent or caretaker responsible for the care of a dependent child under age six (6) is exempt from JSAP. If the child becomes six (6) during the certification period, the parent or caretaker must register for JSAP at the next scheduled six-month or twelve-month contact or recertification, unless exempt for another reason. (3-29-12)

**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. (3-29-12)

**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~~ when ~~the person~~ is working a minimum of thirty (30) hours per week ~~or~~ and 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. (3-29-12)
- 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. (3-29-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**251. ABLE BODIED ADULTS WITHOUT DEPENDENTS (ABAWD) WORK REQUIREMENT.**

To participate in the Food Stamp program, a person must meet one (1) of the conditions in Subsections 251.01 through 251.05 of this rule. A person who does not meet one (1) of these conditions may not participate in the Food Stamp program as a member of any household for more than three (3) full months (consecutive or otherwise) in a fixed thirty-six (36) month period. (3-29-17)

- 01. Work at Least Eighty Hours per Month.** The person must work at least eighty (80) hours per month. The definition of work under Section 251 of this rule is any combination of: (5-3-03)
- a. Work in exchange for money. (3-15-02)
  - b. Work in exchange for goods or services, known as “in-kind” work. (3-15-02)
  - c. Unpaid work, with a public or private non-profit agency. (3-15-02)
- 02. Participate in JSAP or Another Work Program.** The person must participate in and comply with the requirements of the JSAP program (other than job search or job readiness activities), the WIOA program, a program under Section 236 of the Trade Act of 1974, or another work program recognized by the Department. The

person must participate for at least eighty (80) hours per month.

~~(3-15-02)~~( )

**03. Combination of Work and Work Programs.** The person must work and participate in a work program. Participation in work and work programs must total at least eighty (80) hours per month. (3-15-02)

**04. Participate in Work Opportunities.** The person must participate in and comply with the requirements of a Work Opportunities program. (7-1-99)

**05. Residents of High Unemployment Areas.** ABAWDs residing in a county identified as having high unemployment or lack of jobs are not subject to the three (3) month limitation of benefits. ABAWDs residing in these counties are subject to JSAP work requirement but will not lose Food Stamp eligibility after three (3) months if they participate fewer than eighty (80) hours per month. An ABAWD residing in a high unemployment area must participate according to his plan. (3-20-04)

**(BREAK IN CONTINUITY OF SECTIONS)**

**255. REGAINING ELIGIBILITY.**

ABAWDs whose three (3) month eligibility expires may regain eligibility for Food Stamps. During any thirty (30) consecutive days, the person must meet one (1) of the work requirements in Subsections 255.01 and 255.02. Prorate Food Stamp benefits from the date the person regains eligibility. ABAWDs must continue to meet the work requirement to get Food Stamps, or meet conditions for the three (3) additional months. There is no limit on the number of times an ABAWD may regain and maintain eligibility by meeting the work requirement. (3-15-02)

**01. Work Eighty Hours.** The person must work eighty (80) or more hours per month. (3-15-02)

**02. Participate in JSAP.** The person must participate in and comply with the requirements of the JSAP program (other than job search or job search training), the WIOA program, or a program under section 236 of the Trade Act of 1974 for eighty (80) or more hours per month. ~~(3-15-02)~~( )

**(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.** (3-29-12)

**a.** The student is employed a minimum of eighty (80) hours per month and is paid for such employment; or (3-29-12)

**b.** The student is self-employed a minimum of eighty (80) hours per month; and (3-29-12)

**c.** The student must earn at least the Federal minimum wage times eighty (80) hours. (3-29-12)

**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 WIOA program;~~ ~~the JOBS program;~~ ~~the JSAP program;~~ ~~a~~ program under Section 236 of the Trade Act of 1974, ~~or~~ ~~a~~ program for employment and training operated by a State or local government. (3-15-02)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**382. RESOURCES EXCLUDED BY FEDERAL LAW.**

Resources listed in Section 382 are excluded by Federal law: (3-15-02)

**01. P.L. 91-646.** Reimbursements under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970. (6-1-94)

**02. P.L. 92-203.** The Alaska Native Claims Settlement Act. (6-1-94)

**03. P.L. 93-134 as Amended by P.L. 103-66.** Effective January 1, 1994, interest of individual Indians in trust or restricted lands. (6-1-94)

**04. P.L. 93-288 as Amended by P.L. 100-707.** Payments from Disaster Relief and Emergency Assistance. (6-1-94)

**05. P.L. 93-531.** Relocation assistance to Navajo and Hopi tribal members. (6-1-94)

**06. P.L. 94-114.** The submarginal lands held in trust by the U.S. for certain Indian tribal members. (6-1-94)

**07. P.L. 94-189.** The Sac and Fox Indian Claims Agreement. (6-1-94)

**08. P.L. 94-540.** Funds to the Grand River Band of Ottawa Indians. (6-1-94)

**09. P.L. 95-433.** The Confederated Tribes and Bands of the Yakima Indian Nation and the Apache Tribe of the Mescalero Reservation from the Indian Claims Commission. (6-1-94)

**10. P.L. 96-420.** The Passamaquoddy Tribe and Penobscot Nation funds paid under the Maine Indian Claims Settlement Act of 1980. (6-1-94)

**11. P.L. 97-403.** Payments to the Turtle Mountain Band of Chippewas, Arizona. (6-1-94)

**12. P.L. 97-408.** Payments to the Blackfeet, Gros Ventre and Asiniboine Tribes, Montana and the Papago Tribe, Arizona. (6-1-94)

**13. P.L. 98-64 and P.L. 97-365.** Up to two thousand dollars (\$2,000) of any per capita payment, and any purchases made with such payment, from funds held in trust by the Secretary of the Interior. (6-1-94)

**14. P.L. 98-123.** Funds awarded to members of the Red Lake Band of Chippewa Indians. (6-1-94)

**15. P.L. 98-500.** Funds provided to heirs of deceased Indians under the Old Age Assistance Claims

- Settlement Act, except for per capita shares in excess of two thousand dollars (\$2,000). (6-1-94)
16. **P.L. 99-264.** Payments to the White Earth Band of Chippewa Indian Tribe, Michigan. (6-1-94)
  17. **P.L. 99-346.** Payments to the Saginaw Chippewa Indian Tribe, Michigan. (6-1-94)
  18. **P.L. 99-498 and P.L. 102-523 Student Loans.** Financial assistance funded in whole or in part under Title IV of the Higher Education Act. (6-1-94)
  19. **P.L. 101-41.** Payments to the Puyallup Tribe of Indians, Washington. (6-1-94)
  20. **P.L. 101-277.** Payments to the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Miccosukee Tribe of Florida and the Independent Seminole Indians of Florida. (6-1-94)
  21. **P.L. 101-426.** Payments from the Radiation Exposure Compensation Act. (6-1-94)
  22. **P.L. 102-237.** Resources of any mixed household member who gets TAFI or SSI. (7-1-98)
  23. **P.L. 103-286.** Effective 8-1-94, payments made to victims of Nazi persecution. (1-1-95)
  24. **P.L. 103-436.** Payments to the Confederated Tribes of the Colville Reservation for the Grand Coulee Dam Settlement. (7-1-97)
  25. **P.L. 104-204.** Payments to children with spina bifida born to Vietnam veterans. (7-1-99)
  26. **Civil Liberties Act of 1988.** Restitution payments to persons of Japanese ancestry who were evacuated, relocated and interned during World War II as a result of government action. These payments are also excluded when paid to the statutory heirs of deceased internees. (6-1-94)
  27. **SSI Payments Under Zebley v. Sullivan Ruling.** Retroactive lump sum SSI payments, for childhood disability, paid as a result of the Zebley v. Sullivan ruling. The payments are excluded resources for six (6) months from receipt. (6-1-94)
  28. **BIA Education Grant.** Bureau of Indian Affairs (BIA) Higher Education Grant Program. (6-1-94)
  29. **WIC.** Benefits from the Women, Infants, and Children (WIC) Program. (6-1-94)
  30. **WIOA.** Payments from the Workforce ~~Investment~~ **Innovation and Opportunity** Act (WIOA). ~~(3-15-02)~~(\_\_\_\_)
  31. **Energy Assistance.** Payments from Federal, state, or local energy assistance, including insulation and weatherization payments. (6-1-94)
  32. **HUD Payments.** HUD retroactive subsidy payments for tax and utilities are excluded the month received and the next month. (6-1-94)
  33. **Agent Orange Settlement Fund.** Product liability payments, made by Aetna Life and Casualty from the Agent Orange Settlement Fund. Effective January 1, 1989. (6-1-94)
  34. **Federal EITC.** Federal Earned Income Tax Credit (EITC) is excluded for twelve (12) months from receipt. The month of receipt is the first month of the exclusion. (7-1-14)
  35. **Crime Act of 1984 as Amended by P.L. 103-322.** Payments from a crime victim compensation program. (7-1-99)
  36. **Federal Tax Refunds.** Federal income tax refunds are excluded as a resource for a period of twelve (12) months from receipt. The month of receipt is the first month of the exclusion. (7-1-14)

(BREAK IN CONTINUITY OF SECTIONS)

416. -- ~~425~~6. (RESERVED)

~~426. SELF-EMPLOYMENT INCOME.~~

~~For the purposes of these rules, self-employment income is from a business that is a sole proprietorship. A sole proprietorship is a business owned by one (1) person. The Idaho Food Stamp Program recognizes two (2) types of self-employment businesses. (5-8-09)~~

~~01. A Self-Employed Farmer. To be considered a self-employed farmer, a person must receive, or expect to receive, an annual gross income of one thousand dollars (\$1000) or more earned from farming activities. (5-8-09)~~

~~02. All Other Self-Employment Businesses. (5-8-09)~~

(BREAK IN CONTINUITY OF SECTIONS)

429. ~~OFFSETTING FARM~~ SELF-EMPLOYMENTED LOSSES FARMER.

~~To be considered a self-employed farmer, a person must receive, or expect to receive, an annual gross income of one thousand dollars (\$1,000) or more earned from farming activities. If a farmer's cost of producing self-employment income results in a loss, the Department subtracts the loss from other countable income in the household in accordance with 7 CFR 273.11(a)(2)(ii)(A) and (B). (5-8-09)( )~~

## IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

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

DOCKET NO. 16-0308-1801

#### 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 260-265.

**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 17, 2018.

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 amending these rules relating to:

1. Children receiving Supplemental Security Income (SSI) income when their families apply for and receive TAFI benefits; and
2. A child's eligibility when the child turns 18 years old.

**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 as a result of this rulemaking:

1. The fiscal impact for a child who receives Supplemental Security Income (SSI), is anticipated to be cost-neutral.
2. The fiscal impact related to the change being made in regards to the eligibility of a TAFI household with a child turning 18 is estimated to be between \$2000–\$6000 in cost savings. The state general fund portion would be \$650–\$1950 and the federal funds portion would be \$1350–\$4050.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking published in the July 5, 2017, Idaho Administrative Bulletin, [Vol. 17-7, page 55](#). The content for Docket No. 16-0308-1801 was negotiated under Docket No. 16-0308-1701 in July of 2017.

**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 Ericka Rupp at (208) 334-5641.

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 24, 2018.

Dated this 31st day of August, 2018.

Tamara Prisock  
DHW – Administrative Rules Unit  
Phone: (208) 334-5500 / Fax: (208) 334-6558  
[dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

450 W. State Street – 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0308-1801  
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS.

01. **Agency Error.** A benefit error caused by the Department's action or failure to act. (7-1-12)
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)
04. **Caretaker Relative.** An adult who is a specified relative, other than parents, who has an eligible related child residing with them and who is responsible for the child's care. Only one (1) child in the family must be related to one (1) of the following specified relatives: brother, sister, aunt/great aunt, uncle/great uncle, grandparent/great grandparent, nephew, niece, cousin, any one (1) of these relationships by half-blood, a step-sibling, or a spouse of a relative by marriage, even if the marriage has ended. (3-29-17)
05. **Claim Determination.** The action taken by the Department establishing the household's liability for repayment when a TAFI overpayment occurs. (7-1-12)
06. **Department.** The Idaho Department of Health and Welfare. (7-1-98)
07. **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)(      )
08. **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)
09. **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)
10. **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, or may include caretaker relatives who have an eligible child residing with them. (3-29-17)
12. **Inadvertent Household Error (IHE).** A benefit error caused unintentionally by the household. (7-1-12)
13. **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)
14. **Parent.** The mother/step-mother or father/step-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. (3-29-17)

15. **Participant.** An individual who has signed a Personal Responsibility Contract. (7-1-98)
16. **Personal Responsibility Contract (PRC).** An agreement negotiated between a family and the Department that is intended to result in self-reliance. (7-1-98)
17. **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)
18. **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)
19. **Unearned Income.** Income received from sources other than employment or self-employment, such as Social Security, unemployment insurance, and workers' compensation. (7-1-98)

**(BREAK IN CONTINUITY OF SECTIONS)**

**125. MANDATORY TAFI HOUSEHOLD MEMBERS.**

Individuals who must be included in the family are listed in Subsections 125.01 through 125.04 of this rule. (7-1-12)

01. **Children.** Children under the age of eighteen (18) ~~or, under the age of nineteen (19) if they are attending a secondary school full time.~~ Children must reside with a parent or caretaker relative who exercises care and control of them. A dependent child's brother or sister, including half (1/2) siblings, living in the same home as the dependent child must be included in the family. ~~Children receiving Supplemental Security Income (SSI) are excluded from the household~~ (3-29-17)( )

02. **Parents.** Parents, as defined in Section 010 of these rules, who have an eligible child residing with them. (3-29-17)

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. **Spouses.** Anyone related by marriage to another mandatory household member. (7-1-12)

**126. BUDGETING FOR CARETAKER RELATIVES.**

Individuals who may be eligible are listed in Subsections 126.01 and 126.03 of this rule. (3-29-17)

01. **Relatives.** Adult specified relatives other than parents who have an eligible related child residing with them and who are responsible for the child's care. Only one (1) child in the family must be related to one (1) of the specified caretaker relatives defined in Section 010 of these rules. (3-29-17)

02. **Caretaker Relative Applying Only for Relative Child.** When a caretaker relative applies only for a relative child, only the child's income is counted. (3-29-17)

03. **Multiple Children.** When multiple children are included in the family unit and any child receives ~~Social Supplemental~~ Security Income, that income is not counted in the determination of the grant amount. (5-8-09)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**142. SCHOOL ATTENDANCE RESPONSIBILITY.**

School age children included in the family must attend school until they reach age eighteen (18) ~~or they graduate from a secondary school or the equivalent level of vocational or technical training, Job Corps, alternative or home~~

~~school~~. A fifty dollar (\$50) penalty per month, per child, will be subtracted from the grant if a dependent child does not attend school. This penalty does not apply if the child is participating in work activities outlined in the PRC.

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

**(BREAK IN CONTINUITY OF SECTIONS)**

**215. EXCLUDED INCOME.**

The types of income listed in Subsections 215.01 through 215.~~38~~**40** 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. Child's Supplemental Security Income (SSI).** Income received for a child from Supplemental Security Income (SSI). ( )
- ~~056.~~ **Loans.** Loans with a signed, written repayment agreement. (7-1-98)
- ~~067.~~ **Third Party Payments.** Payments made by a person directly to a third party on behalf of the family. (7-1-98)
- ~~078.~~ **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)
- ~~089.~~ **TAFI.** Retroactive TAFI grant corrections. (7-1-98)
- ~~109.~~ **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)
- ~~101.~~ **Interest Income.** Interest posted to a bank account. (7-1-98)
- ~~142.~~ **Tax Refunds.** State and federal income tax refunds. (7-1-98)
- ~~123.~~ **EITC Payments.** EITC payments. (7-1-98)
- ~~134.~~ **Disability Insurance Payments.** Taxes withheld and attorney's fees paid to secure disability insurance payments. (7-1-98)
- ~~145.~~ **Sales Contract Income.** Taxes and insurance costs related to sales contracts. (7-1-98)
- ~~156.~~ **Foster Care.** Foster care payments. (7-1-98)
- ~~167.~~ **Adoption Assistance.** Adoption assistance payments. (7-1-98)
- ~~178.~~ **Food Programs.** Commodities and food stamps. (7-1-98)
- ~~189.~~ **Child Nutrition.** Child nutrition benefits. (7-1-98)
- ~~1920.~~ **Elderly Nutrition.** Elderly nutrition benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965. (7-1-98)

1981. ~~201.~~ **Low Income Energy Assistance.** Benefits paid under the Low Income Energy Assistance Act of (7-1-98)
9101. ~~212.~~ **Home Energy Assistance.** Home energy assistance payments under Public Law 100-203, Section (7-1-98)
- ~~223.~~ **Utility Reimbursement Payment.** Utility reimbursement payments. (7-1-98)
- ~~234.~~ **Housing Subsidies.** An agency or housing authority pays a portion of or all of the housing costs for a participant. (5-8-09)
- ~~245.~~ **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)
- ~~256.~~ **Native American Payments.** Payments authorized by law made to people of Native American ancestry. (7-1-98)
- ~~267.~~ **Educational Income.** Educational 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. (7-1-12)
- ~~278.~~ **Work Study Income of Student.** College work study income. (7-1-98)
- ~~289.~~ **VA Educational Assistance.** VA Educational Assistance. (7-1-98)
- ~~2930.~~ **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)
- ~~301.~~ **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)
- ~~312.~~ **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)
- ~~323.~~ **Radiation Exposure Payments.** Payments made to persons under the Radiation Exposure Compensation Act. (7-1-98)
- ~~334.~~ **Agent Orange.** Agent Orange settlement payments. (7-1-98)
- ~~345.~~ **Spina Bifida.** Spina bifida allowances paid to children of Vietnam veterans. (7-1-99)
- ~~356.~~ **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)
- ~~367.~~ **Vista Payments.** Volunteers in Service to America (VISTA) payments. (3-30-01)
- ~~378.~~ **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)
- ~~389.~~ **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~~**40. Income Excluded By Federal Law.** Income excluded by federal law is not counted in determining income available to the participant. (7-1-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**240. INDIVIDUALS EXCLUDED FROM FAMILY SIZE.**

Individuals listed in Subsections 240.01 through 240.056 are excluded from the family size in determining eligibility and grant amount. Income and resources of these ineligible family members are counted unless otherwise excluded in Section 215 of these rules. ~~(7-1-99)~~( )

**01. Ineligible Non-Citizens.** Individuals who are non-citizens and are not listed in Section 131. (7-1-98)

**02. Drug Related Conviction.** 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)

**03. Fleeing Felons.** Felons who are fleeing to avoid prosecution, custody or confinement after conviction of a felony or an attempt to commit a felony. (7-1-98)

**04. Felons Violating a Condition of Probation or Parole.** Felons who are violating a condition of probation or parole imposed for a federal or state felony. (7-1-98)

**05. Fraudulent Misrepresentation of Residency.** Individuals convicted in a federal or state court of fraudulently misrepresenting residence to get TANF, AABD, Food Stamps, Medicaid or SSI from two (2) or more states at the same time are ineligible for ten (10) years from the date of conviction. (7-1-99)

~~**06. Children Receiving Supplemental Security Income (SSI).** A child who is receiving Supplemental Security Income (SSI).~~ ( )

# IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

## 16.03.09 – MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-1801

### 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(b), Idaho Code.

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

<b>PUBLIC HEARING</b>
<b>Friday, October 26, 2018 - 9:00 a.m. (MDT)</b>
<b>Department of Health &amp; Welfare Medicaid Central Office 3232 Elder Street Conference Room D-East Boise, ID 83705</b>
<b>TELECONFERENCE CALL-IN</b>
<b>Toll Free: 1-877-820-7831 Participant Code: 701700</b>

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:

Some rural communities in Idaho do not have local skilled nursing facilities. When individuals from those communities need skilled nursing services, they are placed in skilled nursing facilities that are up to 50 miles away from where they and their families live, limiting access to support networks that significantly contribute to their recovery and quality of life. These rule changes will allow eligible Critical Access Hospitals to designate additional acute care beds as swing beds to provide necessary care for individuals, without having to place them in facilities outside of their community and away from their support system. These rules would only apply to those Critical Access Hospitals, who do not have a skilled nursing facility within 35 miles of their facility, and have been approved by Medicare to offer swing-beds.

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

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

The fiscal impact in SFY2020 of allowing Critical Access Hospitals who meet the special requirements to request additional swing-bed days from the Department would be a savings of \$87 per person, per day. The savings to the state general fund would be \$25 per person, per day, and the Federal savings would be \$62 per person, per day. This rule change would only allow those Critical Access Hospitals who do not have nursing facilities in their communities to provide additional hospital swing beds that provide the level of care that individuals need to receive care in their local communities.

**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 June 6, 2018, Idaho Administrative Bulletin, [Vol. 18-6, pages 55 and 56](#).

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference in this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact William Deseron at (208) 287-1179.

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, 2018.

Dated this 31st day of August, 2018.

Tamara Prisock  
DHW – Administrative Rules Unit  
450 W. State Street – 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
Phone: (208) 334-5500  
Fax: (208) 334-6558  
[dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0309-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**405. INPATIENT HOSPITAL SERVICES: PROVIDER REIMBURSEMENT.**

Under the Medicaid provisions of the Social Security Act, in reimbursing hospitals, the Department will pay the lesser of customary hospital charges or the reasonable cost of inpatient services in accordance with the procedures detailed under this Section of rule. The upper limits observed by the Department in reimbursing each individual hospital must not exceed the payment that would be determined as a reasonable cost under the policies, definitions and procedures observed under Medicare (Title XVIII) principles of cost reimbursement. (3-30-07)

**01. Exemption of New Hospitals.** A hospital that has operated as the type of facility for which it is certified (or the equivalent thereof) under present and previous ownership for less than three (3) full years will be paid in accordance with the Title XVIII principles of reasonable cost reimbursement, including those provisions applicable to new providers for the carryover and recovery of unreimbursed costs, in accordance with 42 CFR Section 413.64. (3-30-07)

**02. Medicaid Inpatient Operating Cost Limits.** The following describe the determination of inpatient operating cost limits. (3-30-07)

**a. Medicaid Cost Limits for Dates of Service Prior to a Current Year.** The reimbursable reasonable costs for services rendered prior to the beginning of the principal year, but included as prior period claims in a subsequent period's cost report, will be subject to the same operating cost limits as the claims under settlement. (3-30-07)

**b. Application of the Medicaid Cost Limit.** In the determination of a hospital's reasonable costs for inpatient services rendered after the effective date of a principal year, a hospital inflation index, computed for each hospital's fiscal year end, will be applied to the operating costs, excluding capital costs and other allowable costs as defined for the principal year and adjusted on a per diem basis for each subsequent year under the hospital inflation index. (7-1-18)

**i.** Each inpatient routine service cost center, as reported in the finalized principal year end Medicare cost report, will be segregated in the Medicaid cost limit calculation and assigned a share of total Medicaid inpatient

ancillary costs. The prorated ancillary costs will be determined by the ratio of each Medicaid routine cost center's reported costs to total Medicaid inpatient routine service costs in the principal year. (3-30-07)

ii. Each routine cost center's total Medicaid routine service costs plus the assigned share of Medicaid inpatient ancillary costs of the principal year will be divided by the related Medicaid patient days to identify the total costs per diem in the principal year. (3-30-07)

(1) The related inpatient routine service cost center's per diem capital and graduate medical education costs plus the prorated share of inpatient ancillary capital costs will be subtracted from the per diem amount identified in Subsection 405.02.b.ii. of this rule to identify each inpatient routine service cost center per diem cost limit in the principal year. (3-30-07)

(2) If a provider did not have any Medicaid inpatient utilization or render any Medicaid inpatient services in an individual inpatient routine service cost center in the fiscal year serving as the principal year, the principal year for only those routine cost centers without utilization in the provider's principal year will be appropriately calculated using the information available in the next subsequent year in which Medicaid utilization occurred. (3-30-07)

iii. Each routine cost center's cost per diem for the principal year will be multiplied by the hospital inflation index for each subsequent fiscal year. (7-1-18)

iv. The sum of the per diem cost limits for the Medicaid inpatient routine service cost centers of a hospital during the principal year, as adjusted by the hospital inflation index, will be the Medicaid cost limit for operating costs in the current year. (7-1-18)

(1) At the date of final settlement, reimbursement of the Medicaid current year inpatient routine cost centers plus the assigned ancillary costs will be limited to the total per diem operating costs as adjusted for each subsequent fiscal year after the principal year through the current year by the hospital inflation cost index. (7-1-18)

(2) Providers will be notified of the estimated inflation index periodically or hospital inflation index (CMS Market Basket Index) prior to final settlement only upon written request. (7-1-18)

**03. Adjustments to the Medicaid Cost Limit.** A hospital's request for review by the Department concerning an adjustment to or exemption from the cost limits imposed under the provisions set forth in Section 405 of this chapter of rules, must be granted under the following circumstances: (3-30-07)

**a.** Adjustments. Because of Extraordinary Circumstances. Where a provider's costs exceed the Medicaid limit due to extraordinary circumstances beyond the control of the provider, the provider can request an adjustment to the cost limit to the extent the provider proves such higher costs result from the extraordinary circumstances including, but not limited to, increased costs attributable to strikes, fires, earthquake, flood, or similar, unusual occurrences with substantial cost effects. (3-30-07)

**b.** Reimbursement to Public Hospitals. A public hospital that provides services free or at a nominal charge, which is less than, or equal to fifty percent (50%) of its total allowable costs, will be reimbursed at the same rate that would be used if the hospital's charges were equal to, or greater than, its costs. (7-1-18)

**c.** Adjustment to Cost Limits. A hospital is entitled to a reasonable increase in its Medicaid cost limits if the hospital shows that its per diem costs of providing services have increased due to increases in case-mix, the adoption of new or changed services, the discontinuation of services or decrease in average length of stay for Medicaid inpatients since the principal year. Any hospital making such showing is entitled to an increase commensurate with the increase in per diem costs. (7-1-18)

i. The Medicaid operating cost limit may be adjusted by multiplying cost limit by the ratio of the current year's case-mix index divided by the principal year's case-mix index. (7-1-18)

ii. The contested case procedure set forth in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," is available to larger hospitals seeking such adjustments to their Medicaid cost

limits. (7-1-18)

**d.** Adjustment to the Proration of Ancillary Costs in the principal year. Where the provider asserts that the proration of ancillary costs does not adequately reflect the total Medicaid cost per diem calculated for the inpatient routine service cost centers in the principal year, the provider may submit a detailed analysis of ancillary services provided to each participant for each type of patient day during each participant's stay during the principal year. The provider will be granted this adjustment only once upon appeal for the first cost reporting year that the limits are in effect. (3-30-07)

**04. Payment Procedures.** The following procedures are applicable to in-patient hospitals: (3-30-07)

**a.** The participant's admission and length of stay is subject to prior authorization, concurrent review, continued stay review, and retrospective review by a Quality Improvement Organization (QIO) designated by the Department. QIO review will be governed by provisions of the QIO Idaho Medicaid Provider Manual as amended. If a review identifies that an admission or continued stay is not medically necessary, then no Medicaid payment will be made. Failure to obtain a timely QIO review as required by Section 402 of this chapter of rules, and as outlined in the QIO Idaho Medicaid Provider Manual as amended, will result in the QIO conducting a late review. After a QIO review has determined that the hospital stay was medically necessary, Medicaid will assess a late review penalty to the hospital as outlined in Section 405 of this rule. (7-1-18)

**i.** All admissions are subject to QIO review to determine if continued stay in inpatient status is medically necessary. A QIO continued stay review is required when the participant's length of stay exceeds the number of days certified by the QIO. If no initial length of stay certification was issued by the QIO, a QIO continued stay review is required when the admission exceeds a number of days as specified by the Department. (3-30-07)

**ii.** Reimbursement for services originally identified as not medically necessary by the QIO will be made if such decision is reversed by the appeals process required in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (3-30-07)

**iii.** Absent the Medicaid participant's informed decision to incur services deemed unnecessary by the QIO, or not authorized by the QIO due to the negligence of the provider, no payment for denied services may be obtained from the participant. (3-30-07)

**b.** In reimbursing licensed hospitals, the Department will pay the lesser of customary hospital charges or the reasonable cost of semi-private rates for in-patient hospital care as set forth in this rule, unless an exception applies as stated in Section 402 of these rules. The upper limits for payment must not exceed the payment which would be determined as reasonable cost using the Title XVIII standards and principles. (3-30-07)

**05. Hospital Penalty Schedule.** (3-30-07)

**a.** A request for a preadmission and/or continued stay QIO review that is one (1) day late will result in a penalty of two hundred and sixty dollars (\$260), from the total Medicaid paid amount of the inpatient hospital stay. (3-30-07)

**b.** A request for a preadmission and/or continued stay QIO review that is two (2) days late will result in a penalty of five hundred and twenty dollars (\$520), from the total Medicaid paid amount of the inpatient hospital stay. (3-30-07)

**c.** A request for a preadmission and/or continued stay QIO review that is three (3) days late will result in a penalty of seven hundred and eighty dollars (\$780), from the total Medicaid paid amount of the inpatient hospital stay. (3-30-07)

**d.** A request for a preadmission and/or continued stay QIO review that is four (4) days late will result in a penalty of one thousand and forty dollars (\$1,040), from the total Medicaid paid amount of the inpatient hospital stay. (3-30-07)

**e.** A request for a preadmission and/or continued stay QIO review that is five (5) days late or greater

will result in a penalty of one thousand three hundred dollars (\$1,300), from the total Medicaid paid amount of the inpatient hospital stay. (3-30-07)

**06. AND Reimbursement Rate.** Reimbursement for an AND will be made at the weighted average Medicaid payment rate for all Idaho nursing facilities for routine services, as defined per 42 CFR 447.280(a)(1), furnished during the previous calendar year. ICF/ID rates are excluded from this calculation. (3-30-07)

**a.** The AND reimbursement rate will be calculated by the Department by March 15 of each calendar year and made effective retroactively for dates of service on or after January 1 of the respective calendar year. (3-30-07)

**b.** Hospitals with an attached nursing facility will be reimbursed the lesser of their Medicaid per diem routine rate or the established average rate for an AND; and (3-30-07)

**c.** The Department will pay the lesser of the established AND rate or a facility's customary hospital charge to private pay patients for an AND. (3-30-07)

**07. Reimbursement for Services.** Routine services as addressed in Subsection 405.08 of this rule include all medical care, supplies, and services which are included in the calculation of nursing facility property and non-property costs as described in these rules. Reimbursement of ancillary services will be determined in the same manner as hospital outpatient reasonable costs in accordance with Medicare reasonable cost principles, except that reimbursement for prescription drugs will be in accord with Section 665 of these rules. (3-30-07)

**08. Hospital Swing-Bed Reimbursement.** The Department will pay for nursing facility care in certain rural hospitals. Following approval by the Department, such hospitals may provide service to participants in licensed hospital ~~(“swing-beds”)~~ ~~beds~~ who require nursing facility level of care. ~~(3-30-07)~~ ~~( )~~

**a.** Facility Requirements. The Department will approve hospitals for nursing facility care provided to eligible participants under the following conditions: (3-30-07)

**i.** The Department’s Licensure and Certification Section finds the hospital in conformance with the requirements of 42 CFR 482.58 “Special Requirements” for hospital providers of long-term care services (“swing-beds”), or 42 CFR 485.645 – Special requirements for CAH providers of long-term services (“swing-beds”) as applicable; and ~~(3-30-07)~~ ~~( )~~

**ii.** The hospital is approved by the Medicare program for the provision of “swing-bed” services; and (3-30-07)

**iii.** The facility does not have a twenty-four (24) hour nursing waiver granted under 42 CFR 488.54(c); and (3-30-07)

**iv.** The hospital must not have had a swing-bed approval terminated within the two (2) years previous to application for swing-bed participation; and (3-30-07)

**v.** The hospital must be licensed for less than one hundred (100) beds as defined by 42 CFR 482.58(a)(1) for swing-bed purposes; and (3-30-07)

**vi.** Nursing facility services in swing-beds must be rendered in beds used interchangeably to furnish hospital or nursing facility-type services. (3-30-07)

**b.** Participant Requirements. The Department will reimburse hospitals for participants under the following conditions: (3-30-07)

**i.** The participant is determined to be entitled to such services in accordance with IDAPA 16.03.05, “Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled”; and (3-30-07)

**ii.** The participant is authorized for payment in accordance with IDAPA 16.03.10, “Medicaid

Enhanced Plan Benefits,” Subsection 222.02. (3-30-07)

c. Reimbursement for “Swing-Bed” Patient Days. The Department will reimburse swing-bed hospitals on a per diem basis utilizing a rate established as follows: (3-30-07)

i. Payment rates for routine nursing facility services will be at the weighted average Medicaid rate per patient day paid to hospital-based nursing facility/ICF facilities for routine services furnished during the previous calendar year. ICF/ID facilities’ rates are excluded from the calculations. (3-30-07)

ii. The rate will be calculated by the Department by March 15 of each calendar year. The rate will be based on the previous calendar year and effective retroactively for dates of service on or after January 1 of the respective year. (3-30-07)

iii. The weighted average rate for nursing facility swing-bed days will be calculated by dividing total payments for routine services, including patient contribution amounts but excluding miscellaneous financial transactions relating to prior years, by total patient days for each respective level of care occurring in the previous calendar year. (3-30-07)

iv. Routine services include all medical care, supplies, and services which are included in the calculation of nursing facility property and nonproperty costs as described in IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits,” Subsection 225.01. (3-30-07)

v. The Department will pay the lesser of the established rate, the facility’s charge, or the facility’s charge to private pay patients for “swing-bed” services. (3-30-07)

vi. Reimbursement of ancillary services not included in the nursing facility rates furnished for extended care services will be billed and determined in the same manner as hospital outpatient reasonable costs in accordance with Medicare reasonable cost principles, except that reimbursement for prescription drugs will be in accord with Section 665 of these rules. (3-30-07)

vii. The number of swing-bed days that may be reimbursed to a provider in a twelve (12) month period will be limited to the greater of one thousand ninety-five (1,095) days which may be prorated over a shorter fiscal period or, fifteen percent (15%) of the product of the average number of available licensed beds in the hospital in the period and the number of days in the fiscal period. The Department may authorize additional critical access hospital swing-bed days for participants residing in a community without a nursing facility within thirty-five (35) miles contingent on a review of medical necessity, cost-effectiveness, residency, and quality of care. ~~(3-30-07)~~ ( )

d. Computation of “Swing-Bed” Patient Contribution. The computation of the patient’s contribution of swing-bed payment will be in accordance with IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits,” Section 224. (3-30-07)

**09. Adjustment for Disproportionate Share Hospitals (DSH).** All Idaho hospitals serving a disproportionate share of low income patients must qualify either as a Mandatory DSH or as Deemed DSH to receive a DSH payment. (3-29-10)

a. DSH Survey Requirements. The Department will send each hospital a DSH survey on or before January 31 of each calendar year. The DSH survey must be returned to the Department on or before May 31 of the same calendar year. A hospital will not receive a DSH payment if the survey is not returned by the deadline, unless good cause is determined by the Department. No later than July 15 of each calendar year, the Department must notify each hospital of their calculated DSH payment and notify each hospital of its preliminary calculated distribution amount. A hospital may file an amended survey to complete, correct, or revise the original DSH survey by submitting the amended survey and supporting documentation to the Department no later than thirty (30) days after the notice of the preliminary DSH calculation is mailed to the hospital. The state’s annual DSH allotment payment will be made by September 30 of the same calendar year based on the final DSH surveys and Department data. (3-30-07)

b. Mandatory Eligibility. Mandatory Eligibility for DSH status will be provided for hospitals which: (3-30-07)

- i. Meet or exceed the disproportionate share threshold as defined in Subsection 400.13 of these rules. (3-30-07)
- ii. Have at least two (2) obstetricians with staff privileges at the hospital who have agreed to provide obstetric services. (3-29-10)
  - (1) Subsection 405.09.b.ii. of this rule does not apply to a hospital in which the inpatients are predominantly individuals under eighteen (18) years of age; or (3-30-07)
  - (2) Does not offer nonemergency inpatient obstetric services as of December 21, 1987. (3-30-07)
- iii. The MUR will not be less than one percent (1%). (3-30-07)
- iv. If an Idaho hospital exceeds both disproportionate share thresholds, as described in Subsection 400.13 of these rules, and the criteria of Subsections 405.09.b.ii. and 405.09.b.iii. of this rule are met, the payment adjustment will be the greater of the amounts calculated using the methods identified in Subsections 405.09.b.vi. through 405.09.b.x. of this rule. (3-29-10)
- v. Hospitals qualifying for Mandatory DSH eligibility with Medicaid Inpatient Utilization Rates equal to or exceeding one (1) standard deviation and less than one and one-half (1 1/2) standard deviations above the mean of all Idaho hospitals will receive a DSH payment equal to two percent (2%) of the payments related to the Medicaid inpatient days included in the MUR computation. (3-30-07)
- vi. Hospitals qualifying for Mandatory DSH eligibility with Medicaid Inpatient Utilization Rates equal to or exceeding one and one-half (1 1/2) standard deviations and less than two (2) standard deviations of the mean of all Idaho hospitals will receive a DSH payment equal to four percent (4%) of the payments related to the Medicaid inpatient days included in the MUR computation. (3-30-07)
- vii. Hospitals qualifying for Mandatory DSH eligibility with Medicaid Inpatient Utilization Rates exceeding two (2) standard deviations of the mean of all Idaho hospitals will receive a DSH payment equal to six percent (6%) of the payments related to the Medicaid inpatient days included in the MUR computation. (3-30-07)
- viii. Hospitals qualifying for Mandatory DSH eligibility with Low Income Utilization Rates equal to or exceeding twenty-five percent (25%) will receive a DSH payment equal to four percent (4%) of the payments related to the Medicaid inpatient days included in the MUR computation. (3-30-07)
- ix. Hospitals qualifying for Mandatory DSH eligibility with Low Income Utilization Rates equal to, or exceeding, thirty percent (30%) will receive a DSH payment equal to six percent (6%) of the payments related to the Medicaid inpatient days included in the MUR computation. (3-30-07)
- c. Deemed Disproportionate Share Hospital (DSH). All hospitals in Idaho which have inpatient utilization rates of at least one percent (1%) only in Idaho inpatient days, and meet the requirements unrelated to patient day utilization specified in Subsection 405.09.b. of this rule, will be designated a Deemed Disproportionate Share Hospital. The disproportionate share payment to a Deemed DSH hospital will be the greater of: (3-29-10)
  - i. Five dollars (\$5) per Idaho Medicaid inpatient day included in the hospital's MUR computation; or (3-30-07)
  - ii. An amount per Medicaid inpatient day used in the hospital's MUR computation that equals the DSH allotment amount, less the Mandatory DSH payment amount, divided by the number of Medicaid inpatient days used in the MUR computation for all Idaho DSH hospitals. (3-30-07)
- d. Insufficient DSH Allotment Amounts. When the DSH allotment amount is insufficient to make the aggregate amount of DSH payments to each DSH hospital, payments to each hospital will be reduced by the percentage by which the DSH allotment amount was exceeded. (3-30-07)

**e.** DSH Payments Will Not Exceed Costs. A DSH payment will not exceed the costs incurred during the year of furnishing services to individuals who are either eligible for medical assistance under the State Plan or were uninsured for health care services provided during the year. (3-30-07)

**i.** Payments made to a hospital for services provided to indigent patients by a state or a unit of local government within a state will not be considered a source of third party payment. (3-30-07)

**ii.** Claims of uninsured costs which increase the maximum amount which a hospital may receive as a DSH payment must be documented. (3-30-07)

**f.** DSH Will be Calculated on an Annual Basis. A change in a provider's allowable costs as a result of a reopening or appeal will not result in the recomputation of the provider's annual DSH payment. (3-30-07)

**g.** To the extent that audit findings demonstrate that DSH payments exceed the documented hospital specific cost limits, the Department will collect overpayments and redistribute DSH payments. (4-7-11)

**i.** If at any time during an audit the Department discovers evidence suggesting fraud or abuse by a provider, that evidence, in addition to the Department's final audit report regarding that provider, will be referred to the Medicaid Fraud Unit of the Idaho Attorney General's Office. (4-7-11)

**ii.** The Department will submit an independent certified audit to CMS for each completed Medicaid State plan rate year, consistent with 42 CFR Part 455, Subpart D, "Independent Certified Audit of State Disproportionate Share Hospital Payment Adjustments." (4-7-11)

**iii.** Beginning with FFY 2011, if based on the audit of the DSH allotment distribution, the Department determines that there was an overpayment to a provider, the Department will immediately: (4-7-11)

(1) Recover the overpayment from the provider; and (4-7-11)

(2) Redistribute the amount in overpayment to providers that had not exceeded the hospital-specific upper payment limit during the period in which the DSH payments were determined. The payments will be subject to hospital-specific upper payment limits. (4-7-11)

**iv.** Disproportionate share payments must not exceed the DSH state allotment, except as otherwise required by the Social Security Act. In no event is the Department obligated to use State Medicaid funds to pay more than the State Medicaid percentage of DSH payments due a provider. (4-7-11)

**10. Out-of-State Hospitals.** (3-30-07)

**a.** Cost Settlements for Certain Out-of-State Hospitals. Hospitals not located in the state of Idaho will have a cost settlement computed with the state of Idaho if the following conditions are met: (3-30-07)

**i.** Total inpatient and outpatient covered charges are more than fifty thousand dollars (\$50,000) in the fiscal year; or (3-30-07)

**ii.** When less than fifty thousand dollars (\$50,000) of covered charges are billed to the state by the provider, and a probable significant underpayment or overpayment is identifiable, and the amount makes it administratively economical and efficient for cost settlement to be requested by either the provider or the state, a cost settlement will be made between the hospital and the Department. (3-30-07)

**b.** Payment for Hospitals Without Cost Settlement. Those out-of-state hospitals not cost settling with the state will have annually adjusted rates of payment no greater than seventy-five percent (75%) for inpatient covered charges and no greater than eighty percent (80%) of outpatient covered charges or, the Department's established fee schedule for certain outpatient services. These rates represent average inpatient and outpatient reimbursement rates paid to Idaho hospitals. (3-30-07)

**11. Audit Function.** Under a common audit agreement, the Medicare Intermediary may perform any

audit required for both Title XVIII and Medicaid purposes. The Department may elect to perform an audit even though the Medicare Intermediary does not choose to audit the facility. (3-30-07)

**12. Adequacy of Cost Information.** Cost information as developed by the provider must be current, accurate, and in sufficient detail and in such form as needed to support payments made for services rendered to participants. This includes all ledgers, books, reports, records and original evidences of cost (purchase requisitions, purchase orders, vouchers, requisitions for materials, inventories, labor time cards, payrolls, bases for apportioning costs, etc.), which pertain to the determination of reasonable costs, leaving an audit trail capable of being audited. Financial and statistical records will be maintained in a consistent manner from one (1) settlement period to another. (3-30-07)

**13. Availability of Records of Hospital Providers.** A participating hospital provider of services must make available to the Department in the state in which the facility is licensed, the provider's fiscal and other necessary records for the purpose of determining its ongoing record keeping capability and to ascertain information pertinent to the determination of the proper amount of program payments due the provider. (3-30-07)

**14. Interim Cost Settlements.** The Department may initiate or a hospital may request an interim cost settlement based on the Medicare cost report as submitted to the Medicare Intermediary. (3-30-07)

**a. Cost Report Data.** Interim settlement cost report data will be adjusted to reflect Medicaid payments and statistical summary reports sent to providers before the filing deadline. (3-30-07)

**b. Hard Copy of Cost Report.** Hospitals which request to undergo interim cost settlement with Idaho Medicaid must submit a hard copy of the Medicare cost report to the Department upon filing with the Intermediary. (3-30-07)

**c. Limit or Recovery of Payment.** The Department may limit a recovery or payment of an interim settlement amount up to twenty-five percent (25%) of the total settlement amount when the cost report information is in dispute. (3-30-07)

**15. Notice of Program Reimbursement.** Following receipt of the finalized Medicare cost report and the timely receipt of any other information requested by the Department to fairly cost settle with the provider, a certified letter with the return receipt requested will be sent to the provider which sets forth the amounts of underpayment or overpayment made to the provider. The notice of the results of the final retroactive adjustment will be sent even though the provider intends to request a hearing on the determination, or has appealed the Medicare Intermediary's determination of cost settlement. Where the determination shows that the provider is indebted to the Medicaid program because total interim and other payments exceed cost limits, the state will take the necessary action to recover overpayment, including the suspension of interim payments sixty (60) days after the provider's receipt of the notice. Such action of recovery or suspension will continue even after a request for an informal conference or hearing is filed with the state. If the hearing results in a revised determination, appropriate adjustments will be made to the settlement amount. (3-30-07)

**a. Timing of Notice.** The Department will make every effort to issue a notice of program reimbursement within twelve (12) months of receipt of the cost report from the Medicare Intermediary. (3-30-07)

**b. Reopening of Completed Settlements.** A Medicaid completed cost settlement may be reopened by the provider or the state within a three (3) year period from the date of the letter of notice of program reimbursement. The issues must have been raised, appealed and resolved through the reopening of the cost report by the Medicare Intermediary. Issues previously addressed and resolved by the Department's appeal process are not cause for reopening of the finalized cost settlement. (3-30-07)

**16. Nonappealable Items.** The formula for the determination of the hospital inflation index, the principles of reimbursement which define allowable cost, non-Medicaid program issues, interim rates which are in compliance with state and federal rules, and the preliminary adjustments prior to final cost settlement determinations as supported by properly completed cost reports and audits must not be accepted as appealable items. (7-1-18)

**17. Interim Reimbursement Rates.** The interim reimbursement rates are reasonable and adequate to

meet the necessary costs which must be incurred by economically and efficiently operated providers which provide services in conformity with applicable state and federal laws, rules, and quality and safety standards. (3-30-07)

**a.** Annual Adjustments. Interim rates will be adjusted at least annually based on the best information available to the Department. The interim rate will reflect the Medicaid Inpatient Operating Cost Limits used to set inpatient rates and the Reimbursement Floor Percentage. (3-30-07)

**b.** Retrospective Adjustments. Interim rates will not be adjusted retrospectively upon request for rate review by the provider. (3-30-07)

**c.** Basis for Adjustments. The Department may make an adjustment based on the Medicare cost report as submitted and accepted by the Intermediary after the provider's reporting year to bring interim payments made during the period into agreement with the tentative reimbursable amount due the provider at final settlement. If the settlement amount is equal to or greater than ten percent (10%) of the payments received or paid and equal to or greater than one hundred thousand dollars (\$100,000), the interim rate will be adjusted to account for half ( $\frac{1}{2}$ ) of the difference. (3-30-07)

**d.** Unadjusted Rate. The Medicaid interim reimbursement rate on file is synonymous with the term unadjusted rate used by other payors. (3-30-07)

**18. Audits.** All financial reports are subject to audit by Departmental representatives in accordance with Section 305 of these rules. (3-30-07)

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

**16.03.09 – MEDICAID BASIC PLAN BENEFITS**

**DOCKET NO. 16-0309-1804**

**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(b), Idaho Code.

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

<b>PUBLIC HEARING</b>
<b>Friday, October 26, 2018 - 9:00 a.m. (MDT)</b>
<b>Department of Health &amp; Welfare Medicaid Central Office 3232 Elder Street Conference Room D-East Boise, ID 83705</b>
<b>TELECONFERENCE CALL-IN</b>
<b>Toll Free: 1-877-820-7831 Participant Code: 701700</b>

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

Laboratory rules in this chapter haven't been updated since 2007. Laboratory tests have rapidly changed in the past 11 years, and a foundation in rule is needed for Department coverage of these services. A minimum standard will be established with the following changes.

1. Ensure that Medicaid providers outside of Idaho maintain the same quality of work and documentation as providers within the state;
2. Prevent expenditure of tax payer funds for services that are inaccurate, or for genetic services that could be used for elective abortions;
3. Establish authority for prior authorizations to be required by the Department so that delivery of services is consistent with the Department's utilization management as required by CFR; and
4. Set minimum requirements for testing coverage.

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

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

There is no anticipated fiscal impact to state general funds, or any other funds as a result of this rulemaking.

**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 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, pages 103 through 104](#).

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference in this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact William Deseron at (208) 287-1179.

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, 2018.

Dated this 31st day of August, 2018.

Tamara Prisock  
DHW – Administrative Rules Unit  
450 W. State Street – 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
Phone: (208) 334-5500  
Fax: (208) 334-6558  
[dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0309-1804**  
**(Only Those Sections With Amendments Are Shown.)**

**SUB AREA: LABORATORY AND RADIOLOGY SERVICES**  
**(Sections 650 - 659)**

**650. LABORATORY AND RADIOLOGY SERVICES: DEFINITIONS.**

**01. Independent Laboratory.** A laboratory that is not located in a physician's office, and receives specimens from a source other than another laboratory. A physician is not an independent laboratory. ~~(3-30-07)~~( )

**02. Laboratory or Clinical Laboratory.** A facility for the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examinations of material derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease, or the impairment or assessment of human health. ( )

**03. Proficiency Testing.** Evaluation of a laboratory's ability to perform laboratory procedures within acceptable limits of accuracy through analysis of unknown specimens distributed at periodic intervals. ( )

**04. Quality-Control.** A day-to-day analysis of reference materials to ensure reproducibility and accuracy of laboratory results, and includes an acceptable system to assure proper functioning of instruments, equipment and reagents. ( )

**05. Reference Laboratory.** A laboratory that only accepts specimens from other laboratories and does not receive specimens directly from patients. ~~(3-30-07)~~( )

**651. -- 653. (RESERVED)**

**653. LABORATORY AND RADIOLOGY SERVICES: COVERAGE AND LIMITATIONS.**

01. Medical Necessity Criteria. Services must meet the definition of Medical Necessity in Section 011 of these rules as detailed in the Idaho Medicaid Provider Handbook. ( )

02. Prior Authorization of Services. The Department may require prior authorization of any laboratory or radiology service as detailed in the Idaho Medicaid Provider Handbook. ( )

**654. LABORATORY AND RADIOLOGY SERVICES: PROVIDER QUALIFICATIONS AND DUTIES.**  
*Laboratories in a physician's office or a physician's group practice association, except when physicians personally perform their own patients' laboratory tests, must be certified by the Idaho Bureau of Laboratories and be eligible for Medicare certification for participation. All other Idaho laboratories must fulfill these requirements. (3-30-07)*

01. Laboratory and Radiology Requirements. Providers of laboratory and radiology services must be eligible for Medicare certification for these services. ( )

02. Use of Reference Laboratories. Laboratories using reference laboratories must ensure that all requirements of Sections 650 through 659 of these rules are met by the reference laboratory. ( )

**655. LABORATORY AND RADIOLOGY SERVICES: PROVIDER REIMBURSEMENT.**

01. Provider of Service. Payment for laboratory tests can only be made to the actual provider of that service. An exception to the preceding is made in the case of: ( )

a. ~~An independent laboratory that can bill for a reference laboratory;~~ *A physician is not an independent laboratory. (3-30-07)* ( )

b. A transplant facility that can bill for histocompatibility testing; and ( )

c. Healthcare professionals acting within the licensure and scope of their practice to comply with IDAPA 16.02.12, "Procedures and Testing to be Performed on Newborn Infants." ( )

~~02.~~ **Tests Performed by or Personally Supervised by a Physician.** The payment level for clinical diagnostic laboratory tests performed by or personally supervised by a physician will be at a rate established by the Department that is no higher than Medicare's fee schedule. The payment level for other laboratory tests will be a rate established by the Department. (3-30-07)

~~03.~~ **Tests Performed by an Independent Laboratory.** The payment level for clinical diagnostic laboratory tests performed by an independent laboratory will be at a rate established by the Department that is no higher than Medicare's fee schedule. The payment level for other laboratory tests will be at a rate established by the Department. (3-30-07)

~~04.~~ **Tests Performed by a Hospital Laboratory.** The payment level for clinical diagnostic laboratory tests performed by a hospital laboratory for anyone who is not an inpatient will be at a rate established by the Department that is no higher than Medicare's fee schedule. The payment level for other laboratory tests will be at a rate established by the Department. (3-30-07)

~~05.~~ **Specimen Collection Fee.** Collection fees for specimens drawn by venipuncture or catheterization are payable only to the physician or laboratory who draws the specimen. If done during an office visit on the same day the service is ordered, specimen collection may be reimbursed even if prior authorization is not approved. *(3-30-07)* ( )

**656. LABORATORY AND RADIOLOGY SERVICES: QUALITY ASSURANCE.**  
Laboratories, as a condition of payment, must maintain a quality-control program, including proficiency testing consistent with federal requirements, as detailed in the Idaho Medicaid Provider Handbook. The laboratory must provide the results of proficiency testing to the Department or their Quality Improvement Organization vendor upon request. ( )

~~657.~~ -- 659. (RESERVED)

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

**16.03.09 – MEDICAID BASIC PLAN BENEFITS**

**DOCKET NO. 16-0309-1805**

**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(b), Idaho Code; also House Bill 128 (2017) codified as Section 56-265(5), Idaho Code, re: Value-Based Care.

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

<b>PUBLIC HEARING</b>
<b>Tuesday, October 23, 2018 - 9:30 a.m. (MDT)</b>
<b>Department of Health &amp; Welfare Medicaid Central Office 3232 Elder Street Conference Room D-East and D-West Boise, ID 83705</b>
<b>TELECONFERENCE CALL-IN</b>
<b>Call in number: 1-240-454-0879 Meeting access code: 805 638 537 Meeting password: 4jsvE7p8 (45783778 from phones)</b>

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 2017 Idaho Legislature passed House Bill 128, amending Section 56-265(5), Idaho Code, that provided the Department with the authority to develop a value-based payment model approach to provide Medicaid services to participants. This rulemaking incorporates new procedural requirements needed to implement a fixed participant enrollment process to support the value-based model through the existing Healthy Connections Program.

The existing Healthy Connections enrollment process allows participants to change their primary care provider (PCP) any time they choose. These proposed rule changes implement an enrollment process, (referred to as a “fixed enrollment process”), which designates a set period of time where participants are free to change their PCP at will. Once this time period ends, participants will not be able to change their PCP at will until the next open enrollment period the following year. There are provisions that allow PCP changes outside of the open enrollment period, for cause, which have been added to meet the requirements of federal law. These changes encourage a long-term provider-patient relationship through which a medical home is established. This ensures the participant is receiving a consistent source of care, provides for better patient outcomes, and supports the value-based model of care, as directed by the legislature.

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

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

There is no anticipated fiscal impact to the State General Fund or any other funds for these rule changes. The rule changes are considered to be budget neutral for providers and there are no benefit changes for participants. Programmatic changes needed to implement this rulemaking are possible within existing Medicaid program funding.

**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 4, 2018, Idaho Administrative Bulletin, **Vol. 18-7, pages 105 and 106.**

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference in this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cindy Brock at (208) 364-1983.

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 24, 2018.

Dated this 31st day of August, 2018.

Tamara Prisock  
DHW – Administrative Rules Unit  
450 W. State Street – 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
Phone: (208) 334-5500  
Fax: (208) 334-6558  
[dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0309-1805**  
**(Only Those Sections With Amendments Are Shown.)**

**562. HEALTHY CONNECTIONS: PRIMARY CARE SERVICES.**

- 01. Eligible Services.** Participants enrolled with a primary care provider (PCP) are eligible to receive: (3-25-16)
- a.** Basic care management and care coordination; (3-25-16)
  - b.** Timely access to routine primary care; (3-25-16)
  - c.** A patient-centered health care decision making process; (3-25-16)
  - d.** Twenty-four (24) hour, seven (7) days per week access to an on-call medical professional; and (3-25-16)
  - e.** Referral to other medically necessary services as specified in Section 210 of these rules, based on the clinical judgment of their primary care provider. (3-25-16)
- 02. Selection or Change in Primary Care Provider.** Participants may select or change their primary care provider at any time by contacting Healthy Connections staff. as follows: (3-25-16)()
- a.** When they become eligible for Idaho Medicaid benefits, or after a break in their eligibility for Idaho Medicaid benefits; ()



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

**16.03.09 – MEDICAID BASIC PLAN BENEFITS**

**DOCKET NO. 16-0309-1806**

**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(b), Idaho Code; also 42 CFR 447.502, 447.512, 447.514, and 447.518.

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

<b>PUBLIC HEARING</b>
<b>Wednesday, October 17, 2018 - 9:00 a.m. (MDT)</b>
<b>Department of Health &amp; Welfare Medicaid Central Office 3232 Elder Street Conference Room D-East Boise, ID 83705</b>
<b>TELECONFERENCE CALL-IN</b>
<b>Toll Free: 1-877-820-7831 Participant Code: 701700</b>

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:

These rule changes are being made to implement policy (coverage) and reimbursement changes to the Medicaid Pharmacy program rules that are the result of recent changes in federal regulations and corresponding changes that have been made to the Idaho Medicaid State Plan.

Coverage changes include provisions clarifying that:

1. Drugs acquired through the federal 340B drug pricing program and dispensed by 340B contract pharmacies are not covered; and
2. Investigational drugs are not covered under Idaho’s Medicaid pharmacy program.

Reimbursement changes include replacing one cost measure (Estimated Acquisition Cost, or EAC) with the Average Acquisition Cost (AAC), or Wholesale Acquisition Cost (WAC) in cases where the AAC is not available. In addition, revisions will also update information in rule regarding which drugs are covered and which drugs are excluded.

Also, this docket updates an old list of drugs for which a three-month supply may be prescribed and dispensed and establishes appropriate controls for prescriptions of opioids.

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

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

There is no anticipated fiscal impact to the State General Fund, or any other funds, related to this rulemaking.

**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 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, pages 107 and 108](#).

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference in this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Clay Lord at (208) 364-1979.

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 24, 2018.

Dated this 31st day of August, 2018.

Tamara Prisock  
DHW – Administrative Rules Unit  
450 W. State Street – 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
Phone: (208) 334-5500  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0309-1806  
(Only Those Sections With Amendments Are Shown.)**

**662. PRESCRIPTION DRUGS: COVERAGE AND LIMITATIONS.**

**01. General Drug Coverage.** The Department will pay for those prescription drugs not excluded by Subsections 662.046 and 662.07 of ~~these~~this rules which are legally obtainable by the order of a licensed prescriber whose licensing allows for the prescribing of prescription drugs or legend drugs, as defined under Section 54-1705~~(37)~~, Idaho Code, and which are deemed medically necessary as defined in Section 011 of these rules.

~~(3-30-07)~~( )

**02. ~~Dispensing Fee Preferred Drug List (PDL).~~ Dispensing Fee is defined as the cost of filling a prescription including direct pharmacy overhead, and is for all services pertaining to the usual practice of pharmacy, including:**

~~(4-4-13)~~( )

**a. ~~Interpretation, evaluation, compounding, and dispensing of prescription drug orders;~~ The PDL identifies the preferred drugs and non-preferred drugs within a therapeutic class designated by the Department and reviewed by the Idaho Medicaid Pharmacy and Therapeutics Committee.**

~~(3-30-07)~~( )

**b. ~~Participation in drug selection;~~ A brand name drug may be designated as a preferred drug by the Department if the net cost of the brand name drug after consideration of all rebates is less than the cost of the generic equivalent.**

~~(3-30-07)~~( )

**c. ~~Drug administration;~~ The Director of the Department makes final decisions regarding the designated preferred or non-preferred status of drugs based on therapeutic recommendations from the Pharmacy and Therapeutics Committee and cost analysis from the Idaho Medicaid Pharmacy Program.**

~~(3-30-07)~~( )

- ~~d. *Drug regimen and research reviews:* Drugs in a drug class on the Medicaid PDL may require therapeutic prior authorization regardless of preferred or non-preferred designation. (3-30-07)( )~~
- ~~e. *Proper storage of drugs;* (3-30-07)~~
- ~~f. *Maintenance of proper records;* (3-30-07)~~
- ~~g. *Prescriber interaction; and* (3-30-07)~~
- ~~h. *Patient counseling.* (3-30-07)~~
- ~~03. **Limitations on Payment.** *Medicaid payment for prescription drugs will be limited as follows:* (3-30-07)~~
- ~~a. *Days' Supply.* *Medicaid will not cover any days' supply of prescription drugs that exceeds the quantity or dosage allowed by these rules.* (3-30-07)~~
- ~~b. *Brand Name Drugs.* *Medicaid will not pay for a brand name product that is part of the federal upper limit (FUL) or state maximum allowable cost (SMAC) listing when the physician has not specified the brand name drug to be medically necessary.* (3-30-07)~~
- ~~c. *Medication for Multiple Persons.* *When the medication dispensed is for more than one (1) person, Medicaid will only pay for the amount prescribed for the person or persons covered by Medicaid.* (3-30-07)~~
- ~~d. *No Prior Authorization.* *Medicaid will not pay for a covered drug or pharmacy item that requires, but has not received, prior authorization for Medicaid payment as required in Section 663 of these rules.* (3-30-07)~~
- ~~e. *Limitations to Discourage Waste.* *Medicaid may conduct drug utilization reviews and impose limitations for participants whose drug utilization exceeds the standard participant profile or disease management guidelines determined by the Department.* (3-30-07)~~
- ~~04. **Excluded Covered Drug Products.** *The following categories and specific products are excluded from coverage by Idaho Medicaid provides coverage to Medicaid participants for the following drugs or classes of drugs, or their medical uses, which may be excluded from coverage or otherwise restricted under Section 1927(d)(2) of the Social Security Act:* (3-30-07)( )~~
- ~~a. *Non Legend Medications.* *Federal legend medications that change to non legend status, as well as their therapeutic equivalents regardless of prescription, status unless: Agents, when used to promote smoking cessation.* (3-30-07)( )~~
- ~~i. *They are included in Subsection 662.05.b. of these rules; or* (3-30-07)~~
- ~~ii. *The Director determines that non legend drug products are covered based upon appropriate criteria including the following: safety, effectiveness, clinical outcomes of the drug in comparison with other therapeutically interchangeable alternative drugs, cost, and the recommendation of the Pharmacy And Therapeutics Committee. Therapeutically interchangeable is defined in Subsection 663.01.e. of these rules.* (3-30-07)~~
- ~~b. *Legend Drugs.* *Any legend drugs for which federal financial participation is not available. Prescription vitamins and mineral products. Covered agents include the following:* (3-30-07)( )~~
- ~~i. Injectable vitamin B12 (cyanocobalamin and analogues); ( )~~
- ~~ii. Vitamin K and analogues; ( )~~
- ~~iii. Prescription vitamin D and analogues; ( )~~



- a.** ~~Therapeutic Vitamins. Therapeutic vitamins may include:~~ Agents, when used to promote fertility. (3-30-07)()
- i.* ~~Injectable vitamin B12 (cyanocobalamin and analogues);~~ (3-30-07)
- ii.* ~~Vitamin K and analogues;~~ (3-30-07)
- iii.* ~~Pediatric legend vitamin fluoride preparations;~~ (3-30-07)
- iv.* ~~Legend prenatal vitamins for pregnant or lactating women;~~ (3-30-07)
- v.* ~~Legend folic acid;~~ (3-30-07)
- vi.* ~~Oral legend drugs containing folic acid in combination with Vitamin B12 and/or iron salts, without additional ingredients;~~ (4-4-13)
- vii.* ~~Legend vitamin D and analogues; and~~ (4-4-13)
- viii.* ~~Legend tobacco cessation products.~~ (3-20-14)
- b.** ~~Prescriptions for Nonlegend Products. Prescriptions for nonlegend products may include:~~ Agents, when used for cosmetic purposes or hair growth. (3-30-07)()
- i.* ~~Insulin;~~ (3-30-07)
- ii.* ~~Disposable insulin syringes and needles;~~ (3-30-07)
- iii.* ~~Oral iron salts;~~ (4-4-13)
- iv.* ~~Permethrin; and~~ (4-4-13)
- v.* ~~Tobacco cessation products.~~ (3-20-14)
- c.** Agents, when used for the symptomatic relief of cough and colds. ()
- d.** Covered outpatient drugs for which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee. ()
- e.** Agents, when used for the treatment of sexual or erectile dysfunction, unless such agents are used to treat a condition, other than sexual or erectile dysfunction, for which the agents have been approved by the Food and Drug Administration. ()
- 06.** Additional Excluded Drugs. Drugs are also not covered when any of the following circumstances apply: ()
- a.** The participant's practitioner has written an order for a prescription drug for which federal financial participation is not available. ()
- b.** The participant's practitioner has written an order for a prescription drug that is deemed to be experimental or investigational, as defined in Subsection 390.03 of these rules. Investigational drugs are not a covered service under the Idaho Medicaid pharmacy program. The Department may consider Medicaid coverage on a case-by-case basis for life-threatening medical illnesses when no other treatment options are available. When approved for payment, reimbursement will be at actual acquisition cost, plus the assigned professional dispensing fee. ()
- 067.** **Limitation of Quantities.** Medication refills provided before at least seventy-five percent (75%) of the estimated days' supply has been utilized are not covered, unless an increase in dosage is ordered. Days' supply is

the number of days a medication is expected to last when used at the dosage prescribed for the participant. No more than a thirty-four (34) days' supply of continuously required medication is to be purchased in a calendar month as a result of a single prescription with the following exceptions: (3-30-07)

a. ~~Doses of Medication. Up to one hundred (100) doses of medication may be dispensed, not to exceed a one hundred (100) day supply for:~~ Maintenance Medications. Pharmacy providers may be reimbursed for up to a three (3) month supply of select medications or classes of medications for a participant who has received the same dose of the same select medication or class of medications for two months or longer. The Director of the Department of Health and Welfare, acting upon the recommendation of the Pharmacy and Therapeutics Committee, approves the list of covered maintenance medications, which targets medications that are administered continuously rather than intermittently, are used most commonly to treat a chronic disease state, and have a low probability for dosage changes. The list of covered maintenance medications is available on the Medicaid Pharmacy website at <http://medicaidpharmacy.idaho.gov>. (3-30-07)(    )

- ~~i. Cardiac glycosides;~~ (3-30-07)
- ~~ii. Thyroid replacement hormones;~~ (3-30-07)
- ~~iii. Prenatal vitamins;~~ (3-30-07)
- ~~iv. Nitroglycerin products—oral or sublingual;~~ (3-30-07)
- ~~v. Fluoride and vitamin/fluoride combination products; and~~ (3-30-07)
- ~~vi. Nonlegend oral iron salts.~~ (3-30-07)

b. Oral Contraceptive Products. Oral contraceptive products may be dispensed in a quantity sufficient for one (1), two (2), or three (3) cycles. (3-30-07)

**663. PRESCRIPTION DRUGS: PROCEDURAL REQUIREMENTS.**

In accordance with Section 1927(d)(1)(A) of the Social Security Act, the Idaho Medicaid Pharmacy Program may subject any covered outpatient drug to prior authorization. (    )

**01. Items Drugs Requiring Prior Authorization.** ~~Pharmaceutical items requiring prior authorization include:~~ No payment for drugs requiring prior authorization will be issued until the prior authorization request has been reviewed and approved by the Department. (3-30-07)(    )

- ~~a. Amphetamines and related CNS stimulants;~~ (3-30-07)
- ~~b. Growth hormones;~~ (3-30-07)
- ~~c. Retinoids;~~ (3-30-07)
- ~~d. Brand name drugs when an acceptable generic form exists;~~ (3-30-07)
- ~~e. Medication otherwise covered by the Department for which there is a therapeutically interchangeable alternate medication identified by the Department. Therapeutically interchangeable means a medication that is interchangeable with another medication within the same pharmacologic or therapeutic class and is at least as effective as the medication for which it is being interchanged. The Director may exempt a drug from the prior authorization requirement described in Section 663 of this chapter of rules, based upon appropriate criteria, including the following: safety, effectiveness, clinical outcomes of the drug in comparison with other therapeutically interchangeable alternative drugs, cost, and the recommendation of the Pharmacy And Therapeutics Committee (P&T Committee). The Department determines, and will make available to providers, which drugs are therapeutically interchangeable using a number of resources that may include:~~ (3-30-07)
  - ~~i. Peer-reviewed medical literature;~~ (3-30-07)
  - ~~ii. Randomized clinical trials;~~ (3-30-07)

- ~~iii. Drug comparison studies; (3-30-07)~~
- ~~iv. Pharmacoeconomic studies; (3-30-07)~~
- ~~v. Outcomes research data; (3-30-07)~~
- ~~vi. Idaho practice guidelines; and (3-30-07)~~
- ~~vii. Consultation with practicing physicians, pharmacists, and the Idaho Medicaid Medical Director. (3-30-07)~~
- ~~f. Medications prescribed in quantities which exceed the Food and Drug Administration (FDA) dosage guidelines. (3-30-07)~~
- ~~g. Lipase inhibitors. (3-30-07)~~
- ~~h. Medications prescribed outside of the Food and Drug Administration approved indications. (3-30-07)~~
- ~~i. Medications excluded in Subsection 662.04 of these rules that the Department accepts for other medically approved indications. (3-30-07)~~

**02. Prior Authorization Criteria.** Criteria for prior authorization for individual drugs and drug classes will be determined by the Department, and will include: ( )

- a.** Food and Drug Administration (FDA) indications and labeling, including dosage guidelines. ( )
- b.** Compendia of drug information recognized by the Centers for Medicare and Medicaid Services (CMS), including: ( )
  - i.** American Hospital Formulary Service-Drug Information; ( )
  - ii.** United States Pharmacopeia-Drug Information, or its successor publications; and ( )
  - iii.** The DrugDex Information System. ( )
- c.** Evidence-based, peer-reviewed, published medical literature, including: ( )
  - i.** Systematic reviews; ( )
  - ii.** Randomized controlled trials; and ( )
  - iii.** Meta-analysis studies. ( )
- d.** Guidelines and case-controlled studies may be considered where systematic reviews, randomized controlled trials and meta-analysis studies do not exist. ( )
- e.** The requested drug's preferred drug status. ( )

**023. Request for Prior Authorization.** ( )

**a.** The prior authorization procedure is initiated by the prescriber who must submit the request to the Department in the format prescribed by the Department. (3-30-07)

**b.** Whenever possible, the Department will use automated authorization, in which claims are adjudicated at point of sale using submitted National Council for Prescription Drug Programs (NCPDP) data

elements or claims history to verify that the Department's authorization requirements have been satisfied, without the need for the prescriber to submit additional clinical information. ( )

**034.** **Notice of Decision.** The Department will determine coverage based on this request, and will notify the participant of a denial. The participant has twenty-eight (28) days from the date the denial letter is mailed to appeal the decision. Hearings will be conducted in accordance with IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (3-30-07)( )

**045.** **Emergency Situation.** The Department will provide for the dispensing of at least a seventy-two (72) hour supply of a covered outpatient prescription drug in an emergency situation as required in 42 U.S.C. 1396r-8(d)(5)(B). (3-30-07)

**056.** **Response to Request.** The Department will respond within twenty-four (24) hours to a request for prior authorization of a covered outpatient prescription drug as required in 42 U.S.C. 1396r-8(d)(5)(A). (3-30-07)

07. Prohibition Against Cash Payment for Controlled Substances. Pharmacy providers are prohibited from accepting cash as payment for controlled substances from persons known to be Medicaid participants. ( )

**068.** **Supplemental Rebates.** (3-30-07)

**a.** Purpose. The purpose of supplemental rebates is to enable the Department to purchase prescription drugs provided to Medicaid participants in a cost-effective manner, ~~whether or not these drugs are subject to prior authorization by the Department.~~ The supplemental rebate may be one (1) factor considered in ~~exempting a prescription drug from prior authorization~~ determining a drug's preferred drug status, but it is secondary to considerations of the safety, effectiveness, and clinical outcomes of the drug in comparison with other therapeutically interchangeable alternative drugs. (3-30-07)( )

**b.** Rebate Amount. The Department may negotiate with manufacturers supplemental rebates for prescription drugs that are in addition to those required by Title XIX of the Social Security Act. There is no upper limit on the dollar amounts of the supplemental rebates the Department may negotiate. (3-30-07)

**079.** **Comparative Costs to be Considered.** Whenever possible, physicians and pharmacists are encouraged to utilize less expensive drugs and drug therapies. (3-30-07)

#### 664. PRESCRIPTION DRUGS: PROVIDER QUALIFICATIONS AND DUTIES.

**01.** **Payment for Covered Drugs.** Payment will be made, as provided in Section 665 of these rules, only to pharmacies registered with the Department as a provider for the specific location where the service was performed. An out of the state pharmacy shipping or mailing a prescription into Idaho must have a valid mail order license issued by the Idaho Board of Pharmacy and be properly enrolled as a Medicaid provider. (3-30-07)

**02.** **Dispensing Procedures.** The following protocol must be followed for proper prescription filling. (3-30-07)

**a.** Prescription Drug Refills. Refills of prescription drugs must be authorized by the prescriber on the original or new prescription order on file and each refill must be recorded on the prescription or logbook, or computer print-out, or on the participant's medication profile. (3-30-07)

**b.** Automatic Refills. ( )

**i.** Automatic refills are not allowed for Idaho Medicaid participants. A request specific to each medication is required. ( )

**ii.** All prescription refills must be initiated by a request from the participant, the prescriber, or another person, such as a family member, acting as an agent of the participant. ( )

iii. Authorization for each prescription refill must be received prior to the beginning of the filling process by the pharmacy. ( )

- bc. Dispensing Prescription Drugs. Prescriptions must be dispensed according to: (3-30-07)
- i. 21 CFR Section 1300, et seq.; (3-30-07)
- ii. Title 54, Chapter 17, and Title 37, Chapters 1, 27, and 32, Idaho Code; ~~(3-30-07)~~( )
- iii. IDAPA 27.01.0~~4~~3, “Rules ~~of the Idaho State Board of~~ Governing Pharmacy Practice”; and ~~(3-30-07)~~( )
- iv. Sections 660 through 666 of these rules. (3-30-07)

ed. Prescriptions on File. Prescriptions must be maintained on file in pharmacies in such a manner that they are available for immediate review by the Department upon written request. (3-30-07)

**03. Return of Unused Prescription Drugs.** When prescription drugs were dispensed in unit dose packaging, as defined by IDAPA 27.01.0~~4~~3, “Rules ~~of the Idaho State Board of~~ Governing Pharmacy Practice,” and the participant for whom the drugs were prescribed no longer uses them: ~~(3-30-07)~~( )

- a. A licensed skilled nursing care facility may return unused drugs dispensed in unit dose packaging to the pharmacy provider that dispensed the medication. (3-30-07)
- b. A residential or assisted living facility may return unused drugs dispensed in unit dose packaging to the pharmacy provider that dispensed the medication. (3-30-07)

**04. Pharmacy Provider Receiving Unused Prescription Drugs.** In order for a pharmacy provider to receive unused prescription drugs that it dispensed in unit dose packaging and that are being returned by a facility identified in Subsection 664.03 of this rule, the pharmacy provider: (3-30-07)

- a. Must comply with IDAPA 27.01.0~~4~~3, “Rules ~~of the Idaho State Board of~~ Governing Pharmacy Practice,” regarding unit dose packaging; ~~(3-30-07)~~( )
- b. Must credit the Department the amount billed for the cost of the drug less the professional dispensing fee; and ~~(3-30-07)~~( )
- c. May receive a fee for acceptance of returned unused prescription drugs. The value of the unused prescription drug being returned must be such that return of the drug is cost-effective as determined by the Department. (3-30-07)

**665. PRESCRIPTION DRUGS: PROVIDER REIMBURSEMENT.**  
~~All medications dispensed to participants will be pharmacy providers are~~ With specific exceptions as set forth in Subsections 665.01 through 665.04 of this rule, Idaho Medicaid participants will be pharmacy providers are reimbursed based on actual acquisition costs. ~~All medications administered to participants by physicians or other qualified and licensed providers must be reimbursed based on Medicare rates as directed in Section 56-265, Idaho Code, or if no Medicare rate is available, based on actual acquisition cost.~~ Idaho Medicaid may require providers to supply documentation of their acquisition costs as described in the Medicaid Pharmacy Claims Submission Manual available at: [https://idaho.fhsc.com/downloads/providers/IDRx\\_Pharmacy\\_Claims\\_Submission\\_Manual.pdf](https://idaho.fhsc.com/downloads/providers/IDRx_Pharmacy_Claims_Submission_Manual.pdf). Reimbursement is restricted to those drugs supplied from labelers that are participating in the CMS Medicaid Drug Rebate Program. ~~(4-1-17)~~( )

**01. Pharmacy Reimbursement.** Prescriptions not filled in accordance with the provisions of Subsection 664.02 of these rules will be subject to nonpayment or recoupment. The following protocol must be followed for proper reimbursement. (4-1-17)

- a. Filing Claims. Pharmacies must file claims electronically with Department-approved software or by submitting the appropriate claim form to the fiscal contractor. Upon request, the contractor will provide

pharmacies with a supply of claim forms. The form must include information described in the pharmacy guidelines issued by the Department. (4-1-17)

~~b. **Claim Form Review.** Each claim form may be subject to review by a contract claim examiner, a pharmaceutical consultant, or a medical consultant. (3-30-07)~~

~~eb.~~ Billed Charges. A pharmacy's billed charges are not to exceed the usual and customary charges defined as the lowest charge by the provider to the general public for the same service including advertised specials. (3-30-07)

~~dc.~~ Reimbursement. Reimbursement to pharmacies is limited to the lowest of the following: (3-30-07)

~~i. **Federal Upper Limit (FUL), as established by the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services, plus the professional dispensing fee assigned by the Department** Actual Acquisition Cost (AAC) based on results of the periodic state cost survey as defined in this rule, plus the assigned professional dispensing fee. In cases where no AAC is available, reimbursement will be the Wholesale Acquisition Cost (WAC). WAC will mean the price, for a given calendar quarter, paid by a wholesaler for the drugs purchased from the wholesaler's supplier. The wholesaler's supplier is typically the manufacturer of the drug as published by a recognized compendium of drug pricing for the same calendar quarter; (4-1-17)( )~~

~~ii. State Maximum Allowable Cost (SMAC), as established by the Department, plus the assigned professional dispensing fee; (4-1-17)~~

~~iii. Actual Acquisition Cost (AAC) based on results of the periodic state cost survey as defined in this rule, plus the assigned professional dispensing fee. In cases where no AAC is available, reimbursement will be the Wholesale Acquisition Cost (WAC). WAC will mean the price, paid by a wholesaler for the drugs purchased from the wholesaler's supplier, typically the manufacturer of the drug as published by a recognized compendia of drug pricing on the last day of the calendar quarter that corresponds to the calendar quarter **Federal Upper Limit (FUL), as established by the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services, plus the professional dispensing fee assigned by the Department;** or (4-1-17)( )~~

~~iv. The pharmacy's provider's billed charges as defined in Subsection 665.01 of this rule **usual and customary charge to the general public.** (4-1-17)( )~~

~~ed.~~ Periodic State Cost Surveys. The Department will utilize periodic state cost surveys to obtain the most accurate pharmacy drug acquisition costs in establishing a pharmacy reimbursement fee schedule. Pharmacies participating in the Idaho Medicaid ~~Pharmacy~~ **P**rogram are required to participate in these periodic state cost surveys by disclosing the costs of all drugs. A pharmacy that is non-responsive to the periodic state cost surveys can be disenrolled as a Medicaid provider by the Department. (4-1-17)( )

~~e. **Physician Administered Drugs.** ( )~~

~~i. Reimbursement to providers that are not 340B covered entities for medications administered to Medicaid participants by physicians or other qualified and licensed providers will be ninety percent (90%) of the published Medicare Average Sales Price plus six percent (6%) rate (ASP+6% rate). If the ASP+6% rate is not available, payment will be at the Wholesale Acquisition Cost (WAC). ( )~~

~~ii. Reimbursement to 340B covered entities for medications administered to Medicaid participants by physicians or other qualified and licensed providers will be the actual 340B drug acquisition cost, not to exceed the 340B ceiling price. ( )~~

~~f. **Clotting Factors.** ( )~~

~~i. Reimbursement to specialty pharmacies will be at a state-based price equivalent to the published Medicare ASP+6% rate, plus the assigned professional dispensing fee. ( )~~

~~ii. Reimbursement to Hemophilia Treatment Centers will be the 340B actual acquisition cost, not to~~

exceed the 340B ceiling price. ( )

g. Professional Dispensing Fee. Professional Dispensing Fee is defined as a tier-based amount paid on a pharmacy claim, over and above the ingredient cost, to compensate the provider for the pharmacist's professional services related to dispensing a prescription to a Medicaid participant, including: ( )

i. Looking up information about a participant's coverage on the computer: ( )

ii. Performing drug use reviews and preferred drug list review activities: ( )

iii. Measuring or mixing the covered outpatient drug: ( )

iv. Filling the container: ( )

v. Participant counseling: ( )

vi. Physically providing the completed prescription to the Medicaid participant: ( )

vii. Special packaging; and ( )

viii. Overhead associated with maintaining the facility and equipment necessary to operate the dispensing entity. ( )

fh. Limitations on Payment of Professional Dispensing Fee. Only one (1) professional dispensing fee per month will be allowed for the dispensing of each maintenance drug to any participant as an outpatient or a resident in a care facility except: (4-1-17)( )

i. Multiple dispensing of topical and injectable medication when dispensed in manufacturer's original package sizes, unless evidence exists, as determined by the Department, that the quantity dispensed does not relate to the prescriber's order; (3-30-07)

ii. Multiple dispensing of oral liquid maintenance medication if a reasonable quantity, as determined by the Department, is dispensed at each filling; (3-30-07)

iii. Multiple dispensing of tablets or capsules if the quantity needed for a thirty-four (34) day supply is excessively large or unduly expensive, in the judgment of the Department; or (3-30-07)

iv. When the dose is being titrated for maximum therapeutic response with a minimum of adverse effects. (3-30-07)

i. Tier-Based Professional Dispensing Fees. A professional dispensing fee for each pharmacy provider will be established in accordance with this rule. ( )

gi. Claims Volume Survey for Tier-Based Professional Dispensing Fees. The Department will survey pharmacy providers to establish a professional dispensing fee for each provider. The professional dispensing fees will be paid based on the provider's total annual claims volume. The provider must return the claims volume survey to the Department no later than May 31st each year. Pharmacy providers who do not complete the annual claims volume survey will be assigned the lowest professional dispensing fee starting on July 1st until the next annual survey is completed. Based upon the annual claims volume of the enrolled pharmacy, the professional dispensing fee is provided online at: <http://healthandwelfare.idaho.gov/LinkClick.aspx?fileticket=iJDsiQavFLc%3d&tabid=119&mid=1111>. (4-1-17)

hk. Remittance Advice. Claims are processed by computer, and payments are made directly to the pharmacy or its designated bank through electronic funds transfer. A remittance advice with detailed information of each claim transaction will accompany each payment made by the Department. (4-1-17)

**02. 340B Covered Entity Reimbursement.** (4-1-17)

a. Participation as a 340B Covered Entity. Medicaid will reimburse 340B covered entities as defined in Section 340B of the Public Health Service Act, codified under 42 U.S.C. 256b(a)(4), when the provider meets the following requirements: (4-1-17)

i. A 340B covered entity may receive reimbursement for drugs provided to Idaho Medicaid participants through the 340B drug pricing program if the 340B covered entity submits its unique 340B identification number issued by the Health Resources and Services Administration (HRSA) and a copy of its completed HRSA 340B registration to Idaho Medicaid. (4-1-17)

ii. A 340B covered entity that elects to provide drugs to Idaho Medicaid participants through the 340B drug pricing program must use 340B covered outpatient drugs for all dispensed or administered drugs, including those dispensed through the 340B covered entity's retail pharmacy or administered in an outpatient clinic. A 340B covered entity must ensure that a contract pharmacy does not dispense drugs, or receive Medicaid reimbursement for drugs, acquired by the 340B covered entity through the 340B drug pricing program. An entity that does not use 340B covered outpatient drugs for all dispensed or administered drugs, including those dispensed through the 340B covered entity's retail pharmacy or administered in an outpatient clinic, will be deemed to be carved out of the 340B drug pricing program and will be reimbursed for brand name and generic drugs as provided in Subsection 665.01 of this rule. (4-1-17)(    )

iii. A 340B covered entity must provide Idaho Medicaid with thirty (30) days advance written notice of its intent to discontinue the provision of drugs acquired through the 340B drug pricing program to Idaho Medicaid participants. (4-1-17)

b. Filing Claims. A 340B covered entity must file claims electronically with Department-approved software or by submitting the appropriate claim form to the fiscal contractor. The form must include information described in the pharmacy guidelines issued by the Department. (4-1-17)

c. ~~Claim Form Review~~ Reimbursement Exclusions. ~~Each claim form may be subject to review by a contract claim examiner, a pharmaceutical consultant, or a medical consultant~~ Drugs acquired through the federal 340B drug pricing program and dispensed by 340B contract pharmacies are not covered. (4-1-17)(    )

~~d. Billed Charges. A 340B covered entity's billed charges are not to exceed the entity's actual 340B drug acquisition cost.~~ (4-1-17)

ed. Reimbursement. Reimbursement to 340B covered entities is limited to their actual 340B drug acquisition cost submitted, not to exceed the 340B ceiling price, plus the assigned professional dispensing fee. (4-1-17)(    )

fe. Professional Dispensing Fee. Only one (1) professional dispensing fee per month will be allowed for the dispensing of each maintenance drug to any participant as an outpatient or a resident in a care facility except: (4-1-17)

i. Multiple dispensing of topical and injectable medication when dispensed in manufacturer's original package sizes, unless evidence exists, as determined by the Department, that the quantity dispensed does not relate to the prescriber's order; (4-1-17)

ii. Multiple dispensing of oral liquid maintenance medication if a reasonable quantity, as determined by the Department, is dispensed at each filling; (4-1-17)

iii. Multiple dispensing of tablets or capsules if the quantity needed for a thirty-four (34) day supply is excessively large or unduly expensive, in the judgment of the Department; or (4-1-17)

iv. When the dose is being titrated for maximum therapeutic response with a minimum of adverse effects. (4-1-17)

gf. Tier-Based Professional Dispensing Fees. A professional dispensing fee for each 340B covered entity will be established in accordance with this rule. (4-1-17)

~~4g.~~ Remittance Advice. Claims are processed by computer, and payments are made directly to the 340B covered entity or its designated bank through electronic funds transfer. A remittance advice with detailed information of each claim transaction will accompany each payment made by the Department. (4-1-17)

**03. Reimbursement for Drugs Dispensed by Other Provider Types.** ( )

a. Drugs acquired through non-340B Indian Health Service, Tribal, or Urban Indian pharmacies will be reimbursed at the actual acquisition cost to the entity, plus the assigned professional dispensing fee. ( )

b. Drugs acquired via the Federal Supply Schedule (FSS) will be reimbursed at the FSS actual acquisition cost, plus the assigned professional dispensing fee. ( )

c. Drugs acquired at nominal price, which is defined as pricing that is outside of 340B regulations or FSS, will be reimbursed at the actual acquisition cost, plus the assigned professional dispensing fee. ( )

d. Specialty drugs not dispensed by retail community pharmacies and dispensed primarily through the mail will be reimbursed at the Idaho actual acquisition cost, if such cost is available, plus the professional dispensing fee. If the actual acquisition cost is not available, drugs will be reimbursed at the lower of the Wholesale Acquisition Cost (WAC) or State Maximum Allowable Cost (SMAC) as established by the Department, plus the assigned professional dispensing fee. ( )

e. Drugs not distributed by a retail community pharmacy, such as drugs dispensed in a long-term care facility or dispensed to participants receiving swing-bed services, as described in Subsection 405.08 of these rules, will be reimbursed at the actual ingredient cost, plus the assigned professional dispensing fee. ( )

**04. Limitations on Payment.** Medicaid payment for prescription drugs will be limited as follows: ( )

a. Medication for Multiple Persons. When the medication dispensed is for more than one (1) person, Medicaid will only pay for the amount prescribed for the person or persons covered by Medicaid. ( )

b. No Prior Authorization. Medicaid will not pay for a covered drug or pharmacy item that requires, but has not received, prior authorization for Medicaid payment as required in Section 663 of these rules. ( )

c. Limitations to Discourage Waste. Medicaid may conduct drug utilization reviews and impose limitations for participants whose drug utilization exceeds the standard participant profile or disease management guidelines determined by the Department. ( )

~~035.~~ **Return of Drugs.** Drugs dispensed in unit dose packaging as defined by IDAPA 27.01.01, "Rules of the Idaho State Board of Pharmacy: General Provisions," ~~Section 012,~~ must be returned to the dispensing pharmacy when the participant no longer uses the medication as follows: (4-1-17)( )

a. A pharmacy provider using unit dose packaging must comply with IDAPA 27.01.01~~3,~~ "Rules of the Idaho State Board of Governing Pharmacy Practice," ~~Section 146.~~ (4-1-17)( )

b. The pharmacy provider that receives the returned drugs must credit the Department the amount billed for the cost of the drug less the professional dispensing fee. (4-1-17)

c. The pharmacy provider may receive a fee for acceptance of returned unused drugs. The value of the unused drug being returned must be cost effective as determined by the Department. (3-30-07)

**046. Cost Appeal Process.** Cost appeals will be determined by the Department's process provided online at: <http://healthandwelfare.idaho.gov/LinkClick.aspx?fileticket=iJDsiQavFLc%3d&tabid=119&mid=1111>. (4-4-13)

**666. PRESCRIPTION DRUGS: QUALITY ASSURANCE.**

- 01. Pharmacy And Therapeutics Committee (P&T Committee).** (3-30-07)
- a.** Membership. The P&T Committee is appointed by the Director and is composed of practicing pharmacists, physicians and other licensed health care professionals with authority to prescribe medications. (3-30-07)
- b.** Function. The P&T Committee has the following responsibilities for the prior authorization of drugs under Section 663 of these rules: (3-30-07)
- i.** To serve in evaluational, educational and advisory capacities to the Idaho Medicaid **Pharmacy** Program specific to the prior authorization of drugs ~~with therapeutically interchangeable alternatives.~~ (3-30-07)(    )
- ii.** To ~~receive~~ **review** evidence-based clinical and pharmacy economic data and recommend to the Department ~~the agents to be exempt from prior authorization in selected classes of drugs with therapeutically interchangeable alternatives. The recommendation of items to be exempt from prior authorization will be based primarily on objective evaluations of their relative safety, effectiveness, and clinical outcomes of the drug in comparison with other therapeutically interchangeable alternative drugs, and secondarily on cost~~ **preferred and non-preferred drugs in classes designated for the Idaho Medicaid Preferred Drug List.** (3-30-07)(    )
- iii.** To recommend to the Department the classes of medications to be reviewed through evidence-based evaluation. (3-30-07)
- iv.** To review drug utilization outcome studies and intervention reports from the Drug Utilization Review Board as part of the process of reviewing and developing recommendations to the Department. (3-30-07)
- c.** Meetings. The P&T Committee meetings will be open to the public and a portion of each meeting will be set aside to hear and review public comment. The P&T Committee may adjourn to executive session to consider the following: (3-30-07)
- i.** Relative cost information for prescription drugs that could be used by representatives of pharmaceutical manufacturers or other people to derive the proprietary information of other pharmaceutical manufacturers; or (3-30-07)
- ii.** Participant-specific or provider-specific information. (3-30-07)

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

**16.03.09 – MEDICAID BASIC PLAN BENEFITS**

**DOCKET NO. 16-0309-1807**

**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(b), Idaho Code; also Section 1905(a) of the Social Security Act and House Bill 695 (2018).

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

<b>PUBLIC HEARING</b>
<b>Tuesday, October 16, 2018 - 11:00 a.m. (MDT)</b>
<b>Department of Health &amp; Welfare Medicaid Central Office 3232 Elder Street Conference Room D-East Boise, ID 83705</b>
<b>TELECONFERENCE CALL-IN</b>
<b>Toll Free: 1-877-820-7831 Participant Code: 701700</b>

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:

In House Bill 695 (2018), the Legislature directed the Department’s Division of Medicaid to implement processes to improve the Non-Emergency Medical Transportation (NEMT) program. These processes will include developing and implementing a provider training program and conducting a rate review process to set reimbursement rates at a level that will enhance service quality and participant access. These rule changes are needed to meet the legislative intent of House Bill 695 (2018).

These rule changes add participation in provider training programs and rate-setting activities to the existing duties of the transportation broker described in this chapter.

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

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

There is no fiscal impact for this docket to the State General Fund for SFY 2020. The fiscal impact is limited to the amount appropriated to IDHW by the legislature in House Bill 695 (2018) for SFY 2019 for the Division of Medicaid to develop and implement a Non-Emergency Medical Transportation (NEMT) provider training program and conduct a rate review process. The rate reviews will be used to establish the contracted per member per month rate, which could in turn produce a positive or negative fiscal impact.

**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 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, pages 109 and 110](#).

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference in this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Clay Lord at (208) 364-1979.

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 24, 2018.

Dated this 31st day of August, 2018.

Tamara Prisock  
DHW – Administrative Rules Unit  
450 W. State Street – 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
Phone: (208) 334-5500 / Fax: (208) 334-6558  
[dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0309-1807**  
**(Only Those Sections With Amendments Are Shown.)**

**873. NON-EMERGENCY MEDICAL TRANSPORTATION SERVICES: REIMBURSEMENT METHODOLOGY.**

The Department will reimburse the NEMT services broker a fixed, actuarially sound amount per member per month based on the cost of efficiently delivered, timely, and safe non-emergency medical transportation for eligible Idaho Medicaid participants and the cost for efficient administration of the brokerage program. ( )

**873.4. -- 879. (RESERVED)**

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

**16.03.09 – MEDICAID BASIC PLAN BENEFITS**

**DOCKET NO. 16-0309-1808**

**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(b), Idaho Code.

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

<b>PUBLIC HEARING - LIVE MEETING</b>
<b>Wednesday, October 24, 2018 3:30 - 4:30p.m. (MT)</b>
<b>Medicaid Central Office 3232 Elder St. Conf. Room D West &amp; East Boise, ID 83705</b>

<b>VIDEO CONFERENCE Eastern Idaho - DHW Office</b>	<b>VIDEO CONFERENCE Northern Idaho - DHW Office</b>
<b>Wednesday, October 24, 2018 3:30 - 4:30p.m. (MT)</b>	<b>Wednesday, October 24, 2018 2:30 - 3:30p.m. (PT)</b>
<b>1070 Hiline Road (Brown Brick Building) Second Floor, Ste. 230 VC Conf. Room Pocatello, ID 83201</b>	<b>1120 Ironwood Drive Suite 102 Lower Level - Large Conf. Room Coeur d'Alene, ID 83814</b>

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:

These proposed changes align definitions for Community Based Rehabilitation Services (CBRS) in schools and in the community.

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

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

This rulemaking has no anticipated fiscal impact to the state general fund or to any other funds.

**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 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 111 and 112](#).

**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 Angie Williams, (208) 287-1169.

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 24, 2018.

Dated this 31st day of August, 2018.

Tamara Prisock  
DHW – Administrative Rules Unit  
450 W. State Street – 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
Phone: (208) 334-5500  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0309-1808**  
**(Only Those Sections With Amendments Are Shown.)**

**850. SCHOOL-BASED SERVICE: DEFINITIONS.**

**01. Activities of Daily Living (ADL) for Personal Care Services.** The performance of basic self-care activities in meeting an individual's needs for sustaining him in a daily living environment, including, but not limited to, bathing, washing, dressing, toileting, grooming, eating, communication, continence, mobility, and associated tasks. (7-1-16)

**02. Educational Services.** Services that are provided in buildings, rooms, or areas designated or used as a school or an educational setting, which are provided during the specific hours and time periods in which the educational instruction takes place in the school day and period of time for these students, which are included in the individual educational plan (IEP) for the student. (7-1-16)

**03. School-Based Services.** School-based services are health-related and rehabilitative services provided by Idaho public school districts and charter schools under the Individuals with Disabilities Education Act (IDEA). (7-1-13)

**04. The Psychiatric Rehabilitation Association (PRA).** An association that works to improve and promote the practice and outcomes of psychiatric rehabilitation and recovery. The PRA also maintains a certification program to promote the use of qualified staff to work for individuals with mental illness. <http://www.uspra.org>. (7-1-16)

**05. PRA Credential.** Certificate or certification in psychiatric rehabilitation based upon the primary population with whom the individual works in accordance with the requirements set by the PRA. ( )

**056. Practitioner of the Healing Arts.** A physician's assistant, nurse practitioner, or clinical nurse specialist who is licensed and approved by the state of Idaho to make such recommendations or referrals for Medicaid services. (7-1-13)

**067. Serious Mental Illness (SMI).** In accordance with 42 CFR 483.102(b)(1), a person with SMI: (3-20-14)

a. Currently or at any time during the year, must have had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet the diagnostic criteria specified in the DSM-V; and (3-20-14)

b. Must have a functional impairment that substantially interferes with or limits one (1) or more major life activities. Functional impairment is defined as difficulties that substantially interfere with or limit role functioning with an individual's basic daily living skills, instrumental living skills, and functioning in social, family, vocational or educational contexts. Instrumental living skills include maintaining a household, managing money, getting around the community, and taking prescribed medication. An adult who met the functional impairment criteria during the past year without the benefit of treatment or other support services is considered to have a serious mental illness. (3-20-14)

~~0-7~~**8. Serious and Persistent Mental Illness (SPMI).** A participant must meet the criteria for SMI, have at least one (1) additional functional impairment, and have a diagnosis under DSM-V with one (1) of the following: Schizophrenia, Schizoaffective Disorder, Bipolar I Disorder, Bipolar II Disorder, Major Depressive Disorder Recurrent Severe, Delusional Disorder, or Borderline Personality Disorder. The only Not Otherwise Specified (NOS) diagnosis included is Psychotic Disorder NOS for a maximum of one hundred twenty (120) days without a conclusive diagnosis. (3-20-14)

**(BREAK IN CONTINUITY OF SECTIONS)**

**852. SCHOOL-BASED SERVICE: SERVICE-SPECIFIC PARTICIPANT ELIGIBILITY.**

Skills Building/Community Based Rehabilitation Services (CBRS). Behavioral Intervention, Behavioral Consultation, and Personal Care Services (PCS) have additional eligibility requirements. (7-1-16)(    )

**01. Skills Building/Community Based Rehabilitation Services (CBRS).** To be eligible for Skills Building/CBRS, the student participant must meet one (1) of the following: (7-1-16)(    )

a. A student who is a child under eighteen (18) years of age must meet the Serious Emotional Disturbance (SED) eligibility criteria for children in accordance with the Children's Mental Health Services Act, Section 16-2403, Idaho Code. A child who meets the criteria for SED must experience a substantial impairment in functioning. The child's level and type of functional impairment must be documented in the school record. A Department-approved assessment must be used to obtain the child's initial functional impairment score. Subsequent scores must be obtained at least annually in order to determine the child's change in functioning that occurs as a result of mental health treatment. (7-1-16)

b. A student who is eighteen (18) years old or older must meet the criteria of Serious and Persistent Mental Illness (SPMI). This requires that a student participant meet the criteria for SMI, as described in 42 CFR 483.102(b)(1), have at least one (1) additional functional impairment, and have a diagnosis under DSM-V, or later edition, with one (1) of the following: Schizophrenia, Schizoaffective Disorder, Bipolar I Disorder, Bipolar II Disorder, Major Depressive Disorder Recurrent Severe, Delusional Disorder, or Borderline Personality Disorder. The only Not Otherwise Specified (NOS) diagnosis included is Psychotic Disorder NOS for a maximum of one hundred twenty (120) days without a conclusive diagnosis. In addition, the psychiatric disorder must be of sufficient severity to affect the participant's functional skills negatively, causing a substantial disturbance in role performance or coping skills in at least two (2) of the areas listed below on either a continuous or intermittent basis, at least once per year. The skill areas that are targeted must be consistent with the participant's ability to engage and benefit from treatment. The detail of the participant's level and type of functional impairment must be documented in the medical record in the following areas: (7-1-16)

- i. Vocational/educational; (3-20-14)
- ii. Financial; (3-20-14)
- iii. Social relationships/support; (3-20-14)
- iv. Family; (3-20-14)

- v. Basic living skills; (3-20-14)
- vi. Housing; (3-20-14)
- vii. Community/legal; or (3-20-14)
- viii. Health/medical. (3-20-14)

**02. Behavioral Intervention and Behavioral Consultation.** To be eligible for behavioral intervention and behavioral consultation services, the student must: (3-20-14)

**a.** Meet the criteria for developmental disabilities as identified in Section 66-402(5), Idaho Code, and have documentation to support eligibility using the standards under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 501-503; and (7-1-16)

**b.** Exhibit maladaptive behaviors that include frequent disruptive behaviors, aggression, self-injury, criminal or dangerous behavior evidenced by a score of at least one point five (1.5) standard deviations from the mean in at least two (2) behavior domains and by a rater familiar with the student, or at least two (2) standard deviations from the mean in one (1) composite score that consists of at least three (3) behavior domains by a rater familiar with the student, on a standardized behavioral assessment approved by the Department; and (7-1-16)

**c.** Have maladaptive behaviors that interfere with the student's ability to access an education. (3-20-14)

**03. Personal Care Services.** To be eligible for personal care services (PCS), the student must have a completed children's PCS assessment and allocation tool approved by the Department. To determine eligibility for PCS, the assessment results must find the student requires PCS due to a medical condition that impairs the physical or functional abilities of the student. (7-1-16)

**853. SCHOOL-BASED SERVICE: COVERAGE AND LIMITATIONS.**

The Department will pay school districts and charter schools for covered rehabilitative and health-related services. Services include medical or remedial services provided by school districts or other cooperative service agencies, as defined in Section 33-317, Idaho Code. (7-1-13)

**01. Excluded Services.** The following services are excluded from Medicaid payments to school-based programs: (3-30-07)

**a.** Vocational Services. (3-30-07)

**b.** Educational Services. Educational services (other than health related services) or education-based costs normally incurred to operate a school and provide an education. Evaluations completed for educational services only cannot be billed. (3-30-07)

**c.** Recreational Services. (3-30-07)

**d.** Payment for school-related services will not be provided to students who are inpatients in nursing homes or hospitals. (7-1-16)

**02. Evaluation and Diagnostic Services.** Evaluations to determine eligibility or the need for health-related services may be reimbursed even if the student is not found eligible for health-related services. Evaluations completed for educational services only cannot be billed. Evaluations completed must: (3-30-07)

**a.** Be recommended or referred by a physician or other practitioner of the healing arts. A school district or charter school may not seek reimbursement for services provided more than thirty (30) days prior to the signed and dated recommendation or referral; (3-28-18)

- b. Be conducted by qualified professionals for the respective discipline as defined in Section 855 of these rules; (3-20-14)
- c. Be directed toward a diagnosis; (7-1-16)
- d. Include recommended interventions to address each need; and (7-1-16)
- e. Include name, title, and signature of the person conducting the evaluation. (7-1-16)

**03. Reimbursable Services.** School districts and charter schools can bill for the following health-related services provided to eligible students when the services are provided under the recommendation of a physician or other practitioner of the healing arts for the Medicaid services for which the school district or charter school is seeking reimbursement. A school district or charter school may not seek reimbursement for services provided more than thirty (30) days prior to the signed and dated recommendation or referral. The recommendations or referrals are valid up to three hundred sixty-five (365) days. (3-28-18)

**a. Behavioral Intervention.** Behavioral Intervention is used to promote the student's ability to participate in educational services, as defined in Section 850 of these rules, through a consistent, assertive, and continuous intervention process to address behavior goals identified on the IEP. It includes the development of replacement behaviors by conducting a functional behavior assessment and behavior implementation plan with the purpose of preventing or treating behavioral conditions for students who exhibit maladaptive behaviors. Services include individual or group behavioral interventions. (7-1-16)

i. Group services must be provided by one (1) qualified staff providing direct services for a maximum of three (3) students. (7-1-16)

ii. As the number and severity of the students with behavioral issues increases, the staff-to-student ratio must be adjusted accordingly. (7-1-16)

iii. Group services should only be delivered when the child's goals relate to benefiting from group interaction. (7-1-13)

**b. Behavioral Consultation.** Behavioral consultation assists other service professionals by consulting with the IEP team during the assessment process, performing advanced assessment, coordinating the implementation of the behavior implementation plan and providing ongoing training to the behavioral interventionist and other team members. (7-1-13)

i. Behavioral consultation cannot be provided as a direct intervention service. (7-1-13)

ii. Behavioral consultation must be limited to thirty-six (36) hours per student per year. (7-1-13)

**c. Medical Equipment and Supplies.** Medical equipment and supplies that are covered by Medicaid must be medically necessary, ordered by a physician, and prior authorized. Authorized items must be for use at the school where the service is provided. Equipment that is too large or unsanitary to transport from home to school and back may be covered, if prior authorized. The equipment and supplies must be for the student's exclusive use and must be transferred with the student if the student changes schools. All equipment purchased by Medicaid belongs to the student. (7-1-16)

**d. Nursing Services.** Skilled nursing services must be provided by a licensed nurse, within the scope of his or her practice. Emergency, first aid, or non-routine medications not identified on the plan as a health-related service are not reimbursed. (7-1-16)

**e. Occupational Therapy and Evaluation.** Occupational therapy and evaluation services for vocational assessment, training or vocational rehabilitation are not reimbursed. (3-30-07)

**f. Personal Care Services.** School based personal care services include medically oriented tasks

having to do with the student's physical or functional requirements. Personal care services do not require a goal on the plan of service. The provider must deliver at least one (1) of the following services: (7-1-16)

i. Basic personal care and grooming to include bathing, care of the hair, assistance with clothing, and basic skin care; (7-1-13)

ii. Assistance with bladder or bowel requirements that may include helping the student to and from the bathroom or assisting the student with bathroom routines; (7-1-16)

iii. Assistance with food, nutrition, and diet activities including preparation of meals if incidental to medical need; (7-1-13)

iv. Assisting the student with physician-ordered medications that are ordinarily self-administered, in accordance with IDAPA 23.01.01, "Rules of the Idaho Board of Nursing," Subsection 490.05; (7-1-13)

v. Non-nasogastric gastrostomy tube feedings, if the task is not complex and can be safely performed in the given student care situation, and the requirements are met in accordance with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Subsection 303.01. (7-1-13)

g. Physical Therapy and Evaluation. (3-30-07)

h. Psychological Evaluation. (3-30-07)

i. Psychotherapy. (3-30-07)

j. Skills Building/Community Based Rehabilitation Services (CBRS) Services and Evaluation. ~~Community Based Rehabilitation Services and evaluation services that~~ Skills Building/CBRS are interventions to reduce the student's disability by assisting in gaining and utilizing skills necessary to participate in school. They are designed to build competency and confidence while increasing mental health and/or decreasing behavioral symptoms. Skills Building/CBRS provides ~~Training~~ training in behavior control, social skills, communication skills, appropriate interpersonal behavior, symptom management, activities of daily living, and coping skills ~~are types of interventions that may be reimbursed.~~ These services is are intended to prevent placement of the student into a more restrictive educational situation. (7-1-16)( )

k. Speech/Audiological Therapy and Evaluation. (3-30-07)

l. Social History and Evaluation. (3-30-07)

m. Transportation Services. School districts and charter schools can receive reimbursement for mileage for transporting a student to and from home and school when: (7-1-16)

i. The student requires special transportation assistance, a wheelchair lift, an attendant, or both, when medically necessary for the health and safety of the student; (3-28-18)

ii. The transportation occurs in a vehicle specifically adapted to meet the needs of a student with a disability; (3-30-07)

iii. The student requires and receives another Medicaid reimbursable service billed by the school-based services provider, other than transportation, on the day that transportation is being provided; (3-30-07)

iv. Both the Medicaid-covered service and the need for the special transportation are included on the student's plan; and (3-30-07)

v. The mileage, as well as the services performed by the attendant, are documented. See Section 855 of these rules for documentation requirements. (3-20-14)

n. Interpretive Services. Interpretive services needed by a student who is deaf or does not adequately

speaking or understanding English and requires an interpreter to communicate with the professional or paraprofessional providing the student with a health-related service may be billed with the following limitations: (7-1-13)

i. Payment for interpretive services is limited to the specific time that the student is receiving the health-related service; documentation for interpretive service must include the Medicaid reimbursable health-related service being provided while the interpretive service is provided. (7-1-16)

ii. Both the Medicaid-covered service and the need for interpretive services must be included on the student's plan; and (3-30-07)

iii. Interpretive services are not covered if the professional or paraprofessional providing services is able to communicate in the student's primary language. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**855. SCHOOL-BASED SERVICE: PROVIDER QUALIFICATIONS AND DUTIES.**

Medicaid will only reimburse for services provided by qualified staff. The following are the minimum qualifications for providers of covered services: (7-1-13)

**01. Behavioral Intervention.** Behavioral intervention must be provided by or under the supervision of a professional. (7-1-13)

**a.** A behavioral intervention professional must meet the following: (7-1-13)

i. An individual with an Exceptional Child Certificate who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity," Section 028; or (7-1-13)

ii. An individual with an Early Childhood/Early Childhood Special Education Blended Certificate who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity," Section 019; or (7-1-13)

iii. A Special Education Consulting Teacher who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity," Section 029; or (7-1-13)

iv. Habilitative intervention professional who meets the requirements defined in IDAPA 16.03.10 "Medicaid Enhanced Plan Benefits," Section 685; or (7-1-13)

v. Individuals employed by a school as certified Intensive Behavioral Intervention (IBI) professionals prior to July 1, 2013, are qualified to provide behavioral intervention; and (7-1-13)

vi. Must be able to provide documentation of one (1) year's supervised experience working with children with developmental disabilities. This can be achieved by previous work experience gained through paid employment, university practicum experience, or internship. It can also be achieved by increased on-the-job supervision experience gained during employment at a school district or charter school. (7-1-13)

**b.** A paraprofessional under the direction of a qualified behavioral intervention professional, must meet the following: (7-1-13)

i. Must be at least eighteen (18) years of age; (7-1-13)

ii. Demonstrate the knowledge, have the skills needed to support the program to which they are assigned; and (7-1-16)

iii. Must meet the paraprofessional requirements under the Elementary and Secondary Education Act of 1965, as amended, Title I, Part A, Section 1119. (7-1-13)

c. A paraprofessional delivering behavioral intervention services must be under the supervision of a behavioral intervention professional or behavioral consultation provider. The professional must observe and review the direct services performed by the paraprofessional on a monthly basis, or more often as necessary, to ensure the paraprofessional demonstrates the necessary skills to correctly provide the behavioral intervention service. (7-1-13)

**02. Behavioral Consultation.** Behavioral consultation must be provided by a professional who has a Doctoral or Master's degree in psychology, education, applied behavioral analysis, or has a related discipline with one thousand five hundred (1500) hours of relevant coursework or training, or both, in principles of child development, learning theory, positive behavior support techniques, dual diagnosis, or behavior analysis (may be included as part of degree program); and who meets one (1) of the following: (7-1-13)

a. An individual with an Exceptional Child Certificate who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity," Section 028. (7-1-13)

b. An individual with an Early Childhood/Early Childhood Special Education Blended Certificate who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity," Section 019. (7-1-13)

c. A Special Education Consulting Teacher who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity" Section 029. (7-1-13)

d. An individual with a Pupil Personnel Certificate who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity," Section 027, excluding a licensed registered nurse or audiologist. (7-1-13)

e. An occupational therapist who is qualified and registered to practice in Idaho. (7-1-13)

f. Therapeutic consultation professional who meets the requirements defined in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 685. (7-1-13)

**03. Medical Equipment and Supplies.** See Subsection 853.03 of these rules. (3-20-14)

**04. Nursing Services.** Nursing services must be provided by a licensed registered nurse (RN) or by a licensed practical nurse (LPN) licensed to practice in Idaho. (7-1-13)

**05. Occupational Therapy and Evaluation.** For therapy-specific rules, refer to Sections 730 through 739 of these rules. (7-1-16)

**06. Personal Care Services.** Personal care services must be provided by or under the direction of a registered nurse licensed by the State of Idaho. (7-1-13)

a. Providers of PCS must have at least one (1) of the following qualifications: (7-1-13)

i. Licensed Registered Nurse (RN). A person currently licensed by the Idaho State Board of Nursing as a licensed registered nurse; (7-1-13)

ii. Licensed Practical Nurse (LPN). A person currently licensed by the Idaho State Board of Nursing as a licensed practical nurse; (7-1-16)

iii. Certified Nursing Assistant (CNA). A person currently certified by the State of Idaho; or (7-1-16)

iv. Personal Assistant. A person who meets the standards of Section 39-5603, Idaho Code, and receives training to ensure the quality of services and meets the paraprofessional requirements under the Elementary and Secondary Education Act of 1965, as amended, Title 1, Part A, Section 1119. The assistant must be at least age eighteen (18) years of age. Medically-oriented services may be delegated to an aide in accordance with IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." The licensed registered nurse may require a CNA if, in their professional judgment, the student's medical condition warrants a CNA. (7-1-16)

**b.** The licensed registered nurse (RN) must review or complete, or both, the PCS assessment and develop or review, or both, the written plan of care annually. Oversight provided by the RN must include all of the following: (7-1-16)

- i.** Development of the written PCS plan of care; (7-1-13)
- ii.** Review of the treatment given by the personal assistant through a review of the student's PCS service detail reports as maintained by the provider; and (7-1-16)
- iii.** Reevaluation of the plan of care as necessary, but at least annually. (7-1-13)

**c.** The RN must conduct supervisory visits on a quarterly basis, or more frequently as determined by the IEP team and defined as part of the PCS plan of care. (7-1-16)

**07. Physical Therapy and Evaluation.** For therapy-specific rules, refer to Sections 730 through 739 of these rules. (7-1-16)

**08. Psychological Evaluation.** A psychological evaluation must be provided by a: (7-1-13)

- a.** Licensed psychiatrist; (7-1-13)
- b.** Licensed physician; (7-1-13)
- c.** Licensed psychologist; (7-1-13)
- d.** Psychologist extender registered with the Bureau of Occupational Licenses; or (7-1-13)
- e.** Endorsed or certified school psychologist. (7-1-16)

**09. Psychotherapy.** Provision of psychotherapy services must have, at a minimum, one (1) or more of the following credentials: (7-1-13)

- a.** Psychiatrist, M.D.; (7-1-13)
- b.** Physician, M.D.; (7-1-13)
- c.** Licensed psychologist; (7-1-13)
- d.** Licensed clinical social worker; (7-1-13)
- e.** Licensed clinical professional counselor; (7-1-13)
- f.** Licensed marriage and family therapist; (7-1-13)
- g.** Certified psychiatric nurse (R.N.), as described in Subsection 707.13 of these rules; (7-1-13)
- h.** Licensed professional counselor whose provision of psychotherapy is supervised in compliance with IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists"; (7-1-13)
- i.** Licensed masters social worker whose provision of psychotherapy is supervised as described in IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners"; (7-1-13)
- j.** Licensed associate marriage and family therapist whose provision of psychotherapy is supervised as described in IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists"; or (7-1-13)

k. Psychologist extender, registered with the Bureau of Occupational Licenses, whose provision of diagnostic services is supervised in compliance with IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners." (7-1-13)

10. Skills Building/Community Based Rehabilitation Services (CBRS). Skills Building/CBRS must be provided by one (1) of the following. Skills Building/Community Based Rehabilitation Services (CBRS) providers who is not required to have a PRA credential must be one (1) of the following: (7-1-16)( )

- a. Licensed physician, licensed practitioner of the healing arts; (7-1-16)
- b. Advanced practice registered nurse; (7-1-16)
- c. Licensed psychologist; (7-1-13)
- d. Licensed clinical professional counselor or professional counselor; (7-1-13)
- e. Licensed marriage and family therapist; (7-1-16)
- f. Licensed masters social worker, licensed clinical social worker, or licensed social worker; (7-1-13)
- g. Psychologist extender registered with the Bureau of Occupational Licenses; (7-1-13)
- h. Licensed registered nurse (RN); (7-1-13)
- i. Licensed occupational therapist; (7-1-13)
- j. Endorsed or certified school psychologist; (7-1-16)
- k. Skills Building/Community Based Rehabilitation Services specialist. A Skills Building/CBRS specialist ~~is~~ must: (7-1-16)( )
  - i. Be ~~A~~an individual who has a Bachelor's degree and holds a current PRA credential; or (3-20-14)( )
    - ii. Be ~~A~~an individual who has a Bachelor's degree or higher, but does not hold a current PRA credential and was hired on or after November 1, 2010, to work as a Skills Building/CBRS specialist to deliver Medicaid-reimbursable mental health services. This individual may continue to ~~do so~~ provide Medicaid-reimbursable Skills Building/CBRS without a current PRA credential for a period not to exceed thirty (30) months ~~from the initial date of hire. This thirty-month (30) period does not restart with new employment as a Skills Building/CBRS specialist when transferring to a new school district, charter school, or agency.~~ The individual must show documentation that they are working towards ~~this certification~~ obtaining the required PRA credential. In order to continue providing Skills Building/CBRS as a Skills Building/CBRS specialist beyond a total period of thirty (30) months ~~from the date of hire, the worker individual~~ must have ~~completed a certificate program or earned a certification in psychiatric rehabilitation based upon the primary population with whom he works in accordance with the requirements set by the PRA~~ obtained the required current PRA credential; (7-1-16)( )
    - iii. Be under the supervision of a licensed behavioral health professional, a physician, nurse, or an endorsed/certified school psychologist. The supervising practitioner is required to have regular one-to-one (1:1) supervision of the specialist to review treatment provided to student participants on an ongoing basis. The frequency of the one-to-one (1:1) supervision must occur at least on a monthly basis. Supervision can be conducted using telehealth when it is equally effective as direct on-site supervision; and ( )
    - iv. Have a ~~C~~redential required for CBRS specialists. (7-1-16)( )
- (1) Applicants Skills Building/CBRS specialists who intend to work primarily with adults, age eighteen (18) or older, must become a Certified Psychiatric Rehabilitation Practitioner in accordance with the PRA

~~requirements~~ obtain a current PRA credential to work with adults. (3-20-14)(\_\_\_\_)

~~(a) Applicants must be under the supervision of a licensed behavioral health professional, a physician, nurse, or a endorsed/certified school psychologist. The supervising practitioner is required to have regular one-to-one (1:1) supervision to review treatment provided to student participants on an ongoing basis. The frequency of the 1:1 supervision must occur at least on a monthly basis.~~ (7-1-16)

~~(b) CBRS supervision can be conducted using telehealth when it is equally effective as direct on site supervision.~~ (7-1-16)

(2) Applicants Skills Building/CBRS specialists who intend to work primarily with adults, but also ~~intend to work~~ with participants under the age of eighteen (18), must obtain a current PRA credential to work with adults, and must have additional training addressing children's developmental milestones, or have evidence of classroom hours in equivalent courses. The ~~worker's~~ individual's supervisor must determine the scope and amount of training the ~~worker~~ individual needs in order to work competently with children assigned to the ~~worker's~~ individual's caseload. (3-20-14)(\_\_\_\_)

~~(a) Applicants must be under the supervision of a licensed behavioral health professional staff, a physician, nurse, or a endorsed/certified school psychologist. The supervising practitioner is required to have regular one-to-one (1:1) supervision to review treatment provided to student participants on an ongoing basis. The frequency of the 1:1 supervision must occur at least on a monthly basis.~~ (7-1-16)

~~(b) CBRS supervision can be conducted using telehealth when it is equally effective as direct on site supervision.~~ (7-1-16)

(3) Applicants Skills Building/CBRS specialists who intend to work primarily with children under the age of eighteen (18) must obtain a ~~certificate in children's psychiatric rehabilitation in accordance with the PRA requirements~~ current PRA credential to work with children. (3-20-14)(\_\_\_\_)

(4) Applicants Skills Building/CBRS specialists who intend to primarily work with children, but ~~who~~ also ~~intend to~~ work with participants eighteen (18) years of age or older, must obtain a current PRA credential to work with children, and must have additional training or have evidence of classroom hours addressing adult issues in psychiatric rehabilitation. The ~~worker's~~ individual's supervisor must determine the scope and amount of training the worker needs in order to competently work with adults assigned to the ~~worker's~~ individual's caseload. (3-20-14)(\_\_\_\_)

**11. Speech/Audiological Therapy and Evaluation.** For therapy-specific rules, refer to Sections 730 through 739 of these rules. (7-1-16)

**12. Social History and Evaluation.** Social history and evaluation must be provided by a licensed registered nurse (RN), psychologist, M.D, school psychologist, certified school social worker, or by a person who is licensed and qualified to provide social work in the state of Idaho. (7-1-13)

**13. Transportation.** Transportation must be provided by an individual who has a current Idaho driver's license and is covered under vehicle liability insurance that covers passengers for business use. (7-1-13)

**14. Therapy Paraprofessionals.** The schools may use paraprofessionals to provide occupational therapy, physical therapy, and speech therapy if they are under the supervision of the appropriate professional. The services provided by paraprofessionals must be delegated and supervised by a professional therapist as defined by the appropriate licensure and certification rules. The portions of the treatment plan that can be delegated to the paraprofessional must be identified in the IEP or transitional IFSP. (7-1-16)

**a.** Occupational Therapy (OT). Refer to IDAPA 24.06.01, "Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants," for qualifications, supervision, and service requirements. (7-1-16)

**b.** Physical Therapy (PT). Refer to IDAPA 24.13.01, "Rules Governing the Physical Therapy

Licensure Board,” for qualifications, supervision and service requirements. (7-1-16)

c. Speech-Language Pathology (SLP). Refer to IDAPA 24.23.01, “Rule of the Speech and Hearing Services Licensure Board,” and the American Speech-Language-Hearing Association (ASHA) guidelines for qualifications, supervision and service requirements for speech-language pathology. The guidelines have been incorporated by reference in Section 004 of these rules. (7-1-16)

i. Supervision must be provided by an SLP professional as defined in Section 734 of this chapter of rules. (7-1-16)

ii. The professional must observe and review the direct services performed by the paraprofessional on a monthly basis, or more often as necessary, to ensure the paraprofessional demonstrates the necessary skills to correctly provide the SLP service. (7-1-16)

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

**16.03.09 – MEDICAID BASIC PLAN BENEFITS**

**DOCKET NO. 16-0309-1810**

**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(b), Idaho Code.

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

<b>PUBLIC HEARING</b>
<b>Tuesday, October 23, 2018 - 10:30 a.m. (MDT)</b>
<b>Department of Health &amp; Welfare Medicaid Central Office 3232 Elder Street Conference Room D-East and D-West Boise, ID 83705</b>
<b>TELECONFERENCE CALL-IN</b>
<b>Call in number: 1-240-454-0879 Meeting access code: 805 638 537 Meeting password: 4jsvE7p8 (45783778 from phones)</b>

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:

These rule changes were prompted by upcoming changes in federal regulations specific to third-party liability. This rule change will remove the prenatal exemption language from the third-party liability rules to align with changes in the Balanced Budget Act of 2018.

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

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

There is no anticipated fiscal impact to the State General Fund or any other funds for this rule change. The proposed rule changes within this docket are required for federal compliance. This is part of Medicaid's normal daily operations and are typically conducted through its contract with its claims processing vendor as a routine business practice without requiring any additional federal or state funding.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these changes are required for compliance with federal laws.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference in this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cindy Brock at (208) 364-1983.

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 24, 2018.

Dated this 31st day of August, 2018.

Tamara Prisock  
DHW – Administrative Rules Unit  
450 W. State Street – 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
Phone: (208) 334-5500  
Fax: (208) 334-6558  
[dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0309-1810**  
**(Only Those Sections With Amendments Are Shown.)**

**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 provided in Subsection 215.05 of this rule. (3-25-16)

**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 following exceptions: (3-25-16)

**a.** When the resource is a court-ordered absent parent and there are no other viable resources available, the claims will be paid and the resources billed by the Department; (3-25-16)

**b.** ~~Prenatal or p~~Preventive pediatric care including early and periodic screening and diagnosis. Screening and diagnosis program services include: ~~(3-25-16)~~ ( )

**i.** Regularly scheduled examinations and evaluations of the general physical, dental, and mental health, growth, development, and nutritional status of children under age twenty-one (21), provided according to guidance for child wellness exams published in the Medicaid General Provider and Participant Handbook; (3-25-16)

- ii. Immunizations recommended by the American Academy of Pediatrics immunization schedule; (3-25-16)
- iii. Diagnosis services to identify the nature of an illness or other problem by examination of the symptoms. (3-25-16)
- c. When prior authorization has been approved according to Section 883 of these rules, treatment services to control, correct, or ameliorate health problems found through diagnosis and screenings; (3-25-16)
- d. If the claim is for ~~prenatal or~~ preventative pediatric care as described in Subsection 215.05.b of this rule, the Department will make payment for the service provided in its fee schedule and will seek reimbursement from the third party according to 42 U.S.C. 1396a(a)(25)(E). ~~(3-25-16)~~ ( )

**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.** The Department will pay the provider the lowest amount of the following: (3-29-12)

- a. The provider's actual charge for the service; or (3-29-12)
- 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 (3-29-12)
- c. The third party-allowed amount minus the third party payment, or the patient liability as indicated by the third party. (3-29-12)

**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**

**16.03.10 – MEDICAID ENHANCED PLAN BENEFITS**

**DOCKET NO. 16-0310-1807**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is October 4, 2018.

**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 56-202(b), 56-264, and 56-1610, Idaho Code, and Sections 1905(a), 1915(c), and 1915(i), of the Social Security Act (SSA).

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

**PUBLIC HEARING**  
**Tuesday, October 16, 2018**  
**9:30 a.m. (MDT)**

**Medicaid Central Office**  
**3232 West Elder Street**  
**Conference Room D-East**  
**Boise, ID 83705**

**TELECONFERENCE CALL-IN**  
**Toll Free: 1-877-820-7831**  
**Participant Code: 701700**

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

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

These rules are being amended to add the requirement for termination of enrollment when a participant no longer meets Home and Community Based Services (HCBS) eligibility criteria, as required in Centers for Medicare and Medicaid Service (CMS) guidance for state programs operating under the federal authority of Sections 1915(c) and 1915(i) of the Social Security Act.

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

These temporary rule changes are necessary to align IDAPA 16.03.10 with federal requirements for terminating the enrollment of a participant who no longer meets requirements in Sections 1915(c) and 1915(i) of the SSA and Idaho's Medicaid State Plan. The Centers for Medicare and Medicaid Services approved the State Plan application contingent on the Department's assurance these rules would be amended at the earliest possible time.

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

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

This rulemaking is estimated to be cost-neutral with no fiscal impact to any state or federal funds. There is no estimate on the number of participants who will be impacted by this rule change as participants have the choice on whether to access services under the Sections 1915(c) and 1915(i) of the SSA. Administrative costs will be handled by the current staff.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rules are being adopted as temporary with an effective date of October 4, 2018. They are being amended to meet federal requirements under Idaho's approved Medicaid State Plan.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference in this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Clay Lord at (208) 364-1979.

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 24, 2018.

Dated this 31st day of August, 2018.

Tamara Prisock  
DHW – Administrative Rules Unit  
450 W. State Street – 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
Phone: (208) 334-5500  
Fax: (208) 334-6558  
[dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 16-0310-1807  
(Only Those Sections With Amendments Are Shown.)**

**310. HOME AND COMMUNITY BASED SERVICES.**

Home and Community Based Services (HCBS) are those ~~long-term~~ services and supports that assist eligible participants to remain in their home and community. The federal authorities under 42 CFR 441.301, 42 CFR 441.710, and 42 CFR 441.725 require the state to deliver HCBS in accordance with the rules described in Sections 310 through 318~~9~~ of these rules. HCBS include the following: ~~(7-1-16)~~(10-4-18)T

**01. Children's Developmental Disability Services.** Children's developmental disability services as defined in Sections 663 and 683 of these rules. (7-1-16)

**02. Adult Developmental Disability Services.** Adult developmental disability services as defined in Sections 645 through 659, 703, and 705 of these rules. (7-1-16)

**03. Consumer-Directed Services.** Consumer-directed services as defined in IDAPA 16.03.13, "Consumer-Directed Services." (7-1-16)

**04. Aged and Disabled Waiver Services.** Aged and disabled waiver services as defined in Section 326 of these rules. (7-1-16)

**05. Personal Care Services.** Personal care services as defined in Section 303 of these rules. (7-1-16)

**06. Services for Children with Serious Emotional Disturbance (SED).** ~~SED services, as defined in Section 368 of these rules, for children with serious emotional disturbance (SED) who are participants enrolled in the Medicaid SED program in support of Youth Empowerment Services (YES) Program as defined in Section 638 of these rules.~~ (3-28-18)(10-4-18)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**319. ~~(RESERVED)~~ HCBS -- Termination Of Participant Enrollment.**

The Department has the authority to terminate a participant from enrollment in an HCBS waiver or State Plan Option benefit described in Subsections 310.01 through 310.04, and 310.06 of these rules. (10-4-18)T

**01. Requirements to Maintain HCBS Program Enrollment.** After initial eligibility has been determined, a participant must meet the following conditions of participation to maintain enrollment in an HCBS waiver or State Plan Option: (10-4-18)T

**a.** Complete an assessment; (10-4-18)T

**b.** Complete a state-approved person-centered Medicaid service plan; (10-4-18)T

**c.** Complete an annual redetermination of eligibility and assessment; (10-4-18)T

**d.** Continue to comply with other state-established criteria for determining eligibility under the State Plan for medical assistance; and (10-4-18)T

**e.** Continue to comply with federal and state laws and rules, and the provisions of the state's applicable approved 1915(c) waiver or the 1915(i) HCBS state plan option that relate to eligibility and continuation of enrollment. (10-4-18)T

**02. Conditions for Termination of Enrollment.** The Department will terminate the enrollment of a participant who is enrolled in an HCBS waiver or State Plan option, or who has accessed Medicaid coverage through an HCBS waiver or State Plan option under any of the following conditions. The participant: (10-4-18)T

**a.** Is determined by a physician or other licensed practitioner of the healing arts acting within the scope of their practice not to need any waiver or State Plan option service; (10-4-18)T

**b.** Declines to engage in person-centered planning; (10-4-18)T

**c.** Does not meet other HCBS requirements provided in Sections 310 through 319 of these rules; (10-4-18)T

**d.** Is non-responsive to multiple contact attempts by the Department or its designee to engage the participant in fulfilling requirements for participation; or (10-4-18)T

**e.** Elects not to use any HCBS waiver service or HCBS State Plan option service according to the terms of the approved waiver or State Plan option for thirty (30) consecutive days. (10-4-18)

**03. Continuous Eligibility for Children Under Age Nineteen.** Continuous health care assistance eligibility for children under age nineteen (19), as provided in IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children," does not apply for a participant who is enrolled in the Medicaid SED program in support of Youth Empowerment Services (YES) as provided in Sections 635 through 638 of these rules. (10-4-18)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**645. HOME AND COMMUNITY BASED SERVICES (HCBS) STATE PLAN OPTION.**

Home and community based services are provided through the HCBS State Plan option as allowed in Section 1915(i) of the Social Security Act for adults with developmental disabilities who do not meet the ICF/ID level of care. HCBS state plan option services must comply with Sections 310 through 318~~9~~, and Sections 647~~5~~ through 659~~7~~ of these rules. ~~(7-1-16)~~(10-4-18)T

**IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE**  
**16.05.04 – RULES OF THE IDAHO COUNCIL ON DOMESTIC VIOLENCE**  
**AND VICTIM ASSISTANCE GRANT FUNDING**

**DOCKET NO. 16-0504-1801**

**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 39-5209, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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 best protect the public's health and safety, the Council on Domestic Violence and Victim Assistance is revising its standards manual that is incorporated by reference in this chapter of rules. The revision to these rules will ensure that the most recent edition of the manual has the force and effect of law.

**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 or any other funds related to this rulemaking. Programs affiliated with the ICDVVA provide fees independently. Currently there are no direct funds going to independent programs for offender intervention.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted and deemed not feasible because the content to be proposed for updates to the standards manual for the Idaho Council on Domestic Violence and Victim Assistance (ICDVVA) represents extensive input from stakeholders being gathered at meetings of the Committee for Oversight of Domestic Violence Offender Intervention Programs and Standards, a committee that oversees ICDVVA Offender Intervention Programs. The committee is responsible for making decisions on changes to the standards manual. In addition, the ICDVVA continually receives feedback from the Domestic Violence Offender Intervention Program Providers and the Domestic Violence court coordinators throughout the state.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the Minimum Standards for Domestic Violence Offender Intervention Programs, edition 2019-1, is being incorporated by reference into these rules to give it the force and effect of law. The document is not being published in this chapter of rules due to its length and format, but it is available upon request. Once the docket has been finalized and adopted, the manual will be available online at: <https://icdv.idaho.gov/offender-intervention.html>.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Kimberly Conklin at (208) 332-1545.

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 24, 2018.

Dated this 31st day of August, 2018.

Tamara Prisock, DHW – Administrative Rules Unit  
Phone: (208) 334-5500 / Fax: (208) 334-6558  
[dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

450 W. State Street – 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0504-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**004. INCORPORATION BY REFERENCE.**

**01. Documents Incorporated by Reference.** In accordance with Section 67-5229, Idaho Code, the following documents are incorporated by reference into this chapter of rules: (7-1-14)

**a.** “Service Standards for ICDVVA-Funded Programs,” Edition 2014-1, published by the Idaho Council on Domestic Violence and Victim Assistance, effective July 1, 2014. (7-1-14)

**b.** “Minimum Standards for Domestic Violence Offender Intervention Programs,” published by the Idaho Council on Domestic Violence and Victim Assistance, edition 201~~4~~<sup>9</sup>-1, effective July 1, 201~~4~~<sup>9</sup>.  
(~~3-29-12~~)(    )

**02. Availability of Reference Material.** Copies of the documents incorporated by reference into these rules are available: (7-1-14)

**a.** At the Idaho Council on Domestic Violence and Victim Assistance, 304 North 8th Street, Suite 140, P.O. Box 83720, Boise, Idaho 83720-0036. (7-1-14)

**b.** On the internet at: <http://www.icdv.idaho.gov>. (7-1-14)

## IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

### 16.05.06 – CRIMINAL HISTORY AND BACKGROUND CHECKS

DOCKET NO. 16-0506-1801

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE AND AMENDMENT TO TEMPORARY RULE

**EFFECTIVE DATE:** The effective date of the amendment to the temporary rule is August 23, 2018. This pending rule has been adopted by the agency and is now pending review by the 2019 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Sections 56-202(b), 56-203(2), 56-204A, 56-1004A, 56-1007, 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520, 39-5604, 39-9109, 66-404(7), 15-5-308(4), 15-5-311(5), and 15-5-316(5), Idaho Code, and Under 42 USC Section 9858f.

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

With the adoption of IDAPA 16.07.17, “Substance Use Disorders Services,” DHW has identified a new class of individuals that must complete a DHW criminal history and background check in order to provide those services. This requires that this class of individuals be added to the chapter to ensure that the Department of Health and Welfare retains the statutory authority to complete those background checks. Key elements were inadvertently missed with the previous rulemaking and are now included as part of the pending rule.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule as previously adopted while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions made to the pending rule. Only the sections that differ from the proposed rule text are printed in this Bulletin. The original text of the temporary and proposed rule was published in the July 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, pages 123 through 126](#).

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

There is no fiscal impact to the State General Fund or to dedicated funds for these rule changes. This rulemaking is intended to be cost-neutral. NOTE: The Department will have to change its web-based background check system to enable this change. It estimates that the cost of these system changes will be \$3,000.00. These modifications will be performed by DHW Information Technology staff, and it is an expense that is already integrated in the operational budget of the Department.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact Fernando Castro, (208) 332-7999.

Dated this 31st day of August, 2018.

Tamara Prisock  
DHW – Administrative Rules Unit  
Phone: (208) 334-5500 / Fax: (208) 334-6558  
[dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

450 W. State Street – 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036

DOCKET NO. 16-0506-1801 - ADOPTION OF PENDING RULE  
AND AMENDMENT TO TEMPORARY RULE

Substantive changes have been made to the pending rule.  
Italicized red text that is *double underscored* is new text that has been added to the pending rule.  
This is also an amendment to the pending rule text.

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

Section 200 is being printed in its entirety, as it was not included at the proposed stage.

The text of the temporary/proposed rule was published in the Idaho Administrative Bulletin, Volume 18-7, July 4, 2018, pages 123 through 126.

This rule has been adopted as a pending rule by the Agency and is now awaiting review and final approval by the 2019 Idaho State Legislature.

**200. UNCONDITIONAL DENIAL.**

An individual who receives an unconditional denial is not available to provide services, have access, or to be licensed or certified by the Department. (3-26-08)

**01. Reasons for an Unconditional Denial.** Unconditional denials are issued for: (3-4-11)

**a.** Disqualifying crimes described in Section 210 of these rules; (3-4-11)

**b.** A relevant record *or finding* on any Child Protection Registry for the classes of individuals listed in Section 126 of these rules; ~~(7-1-17)~~ (8-23-18)T

**c.** *A relevant record on the Idaho Child Protection Central Registry with a Level one (1) or Level two (2) designation for all other applicants covered by these rules;* (8-23-18)T

**ed.** A relevant record on the Nurse Aide Registry; (7-1-14)

**de.** A relevant record on either the state or federal sex offender registries; (7-1-17)

**ef.** A relevant record on the state or federal Medicaid Exclusion List, described in Section 240 of these rules; or (7-1-17)

**fg.** A materially false statement made knowingly in connection to the Department's criminal history and background check application for the classes of individuals listed in Section 126 of these rules will result in a five-year disqualification period for the applicant. (7-1-17)

**02. Issuance of an Unconditional Denial.** The Department will issue an unconditional denial within fourteen (14) days of completion of a criminal history and background check. (3-26-08)

**03. Challenge of Department's Unconditional Denial.** An individual has twenty-eight (28) days from the date the unconditional denial is issued to challenge the Department's unconditional denial. The individual must

submit the challenge in writing and provide court records or other information which demonstrates the Department's unconditional denial is incorrect. These documents must be filed with the Criminal History Unit described in Section 005 of these rules. (7-1-14)

**a.** If the individual challenges the Department's unconditional denial, the Department will review the court records, documents and other information filed by the individual. The Department will issue a decision within thirty (30) days of the receipt of the challenge. The Department's decision will be a final order under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152. (3-26-08)

**b.** If the individual does not challenge the Department's unconditional denial within thirty (30) days, it becomes a final order of the Department under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152. (3-26-08)

**04. No Exemption Review.** No exemption review, as described in Section 250 of these rules, is allowed for an unconditional denial. (3-26-08)

**05. Appeal of an Unconditional Denial.** Following a challenge of the Department's unconditional denial, an individual may appeal the Department's decision under the provisions in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." The request to appeal an unconditional denial does not stay the action of the Department. (7-1-14)

## IDAPA 17 – IDAHO INDUSTRIAL COMMISSION

### 17.02.06 – EMPLOYERS' REPORTS

DOCKET NO. 17-0206-1801

#### 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, and 72-806 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 17, 2018

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 Commission seeks to clarify the requirements for submission of Summaries of Payment and filing of closing documents to reflect Electronic Data Interchange (EDI) filing.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin, [Vol. 18-6, page 68](#).

**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, Benefits Administration Manager, (208) 334-6063.

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 24, 2018.

Dated this 24th day of August, 2018.

Mindy Montgomery, Director  
Industrial Commission  
700 S. Clearwater Lane  
P.O. Box 83720  
Boise, Idaho 83720-0041  
Phone: (208) 334-6000  
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0206-1801  
(Only Those Sections With Amendments Are Shown.)

021. SUMMARIES OF PAYMENT.

**01. Authority and Definitions.** Pursuant to Sections 72-432, 72-508, 72-602 and 72-707, Idaho Code, the Industrial Commission of the State of Idaho promulgates this rule governing the procedure for submission of summaries of payment to the Industrial Commission. This procedure applies to all workers' compensation claims. The following definitions shall be applicable to this Rule. (2-20-95)

- a. "Closure," ~~means that~~ Retirement of the file ~~will be retired~~ following an audit by the Commission. (2-20-95)( )
- b. "Commission," ~~means~~ the Idaho Industrial Commission. (2-20-95)( )
- c. "Death claim," ~~means~~ the injured worker died as a result of a work-related injury or occupational disease. (2-20-95)( )
- d. "Employer" ~~is~~ As defined in Section 72-102(13)(a), Idaho Code, and includes agents of employers such as attorneys, sureties, and adjusters. (2-20-95)( )
- e. "Impairment rated claim," ~~means those~~ eClaims in which a provider establishes an impairment rating for the injured worker. (2-20-95)( )
- f. Indemnity benefits. All payments made to or on behalf of workers' compensation claimants, including temporary or permanent total or partial disability benefits, death benefits paid to dependents, retraining benefits, and any other type of income benefits, but excluding medical and related benefits. ( )
- g. Legacy claim. A First Report of Injury that was filed with the Commission prior to November 4, 2017. ( )
- fh. "Medical only claim," means the injured worker will neither suffer a disability lasting more than five calendar days as a result of a job-related injury or occupational disease nor be admitted to a hospital as an in-patient. (2-20-95)( )
- gi. "Time loss claim," means the injured worker will suffer, or has suffered, a disability that lasts more than five calendar days as a result of a job-related injury or occupational disease, or the injured worker requires, or required, in-patient treatment as a result of such injury or disease. (2-20-95)( )
- hj. "Termination of disability," means the date ~~upon which the obligation of the Employer/Surety/Adjuster becomes certain as to duration and amount whether by settlement, decision or periodic payments in the ordinary course of claims processing~~ disability payments cease and there is no expectation payments will resume within one hundred twenty (120) days. If resolved by lump sum settlement (LSS), the termination of disability shall occur on the date the LSS is approved and an order approving is filed by the Industrial Commission. If resolved by decision, the termination of disability shall occur on the date the decision resolving all issues becomes final unless future indemnity benefits are ordered. (4-11-15)( )

**02. Summaries Requirement.** A summary of payment shall be filed, in duplicate, by the Employer/Surety/Adjuster within one hundred twenty (120) days of termination of disability for all ~~time loss~~ legacy indemnity claims upon which an Employer/Surety/Adjuster has made payments, except for those claims which are resolved by lump sum settlement. If all claim information has been provided via Electronic Data Interchange as prescribed by Commission rules, ~~no hard copy summary of payment need~~ an electronic final summary of payment transaction must be filed within one hundred twenty (120) days of termination of disability for all indemnity claims. In the case of

medical-only ~~cases~~ claims, no summaries of payment need to be filed. In the context of death claims and permanent total disability claims, interim summaries of payments shall be filed annually within the first quarter of each calendar year. Interim summaries shall be submitted setting forth substantially the same information required by Final Summaries of Payment, including the balance of payments made to the beginning of the current calendar year, payments during the calendar year, and a total of payments made. This total balance shall be carried forward as the amount of payments made to the beginning of the current year. The Final Summary shall be so designated. Supporting documentation shall be attached to any legacy claim summary of payment filed with the Commission. If all claim information has been filed electronically, supporting documentation must be provided upon Commission request. (3-25-16)( )

**03. Form.** The summary of payment for legacy claims shall be submitted in a format substantially similar to IC Form 6, available from the Commission and posted on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). The final Subsequent Report of Injury (SROI) transaction shall be reported electronically for non-legacy claims. (3-25-16)( )

**04. Approval.** Within ninety (90) days of receipt of the legacy claim Summary of Payment or final Subsequent Report of Injury (SROI) electronic transaction as set forth above, the Industrial Commission shall notify the Employer/Surety/Adjuster ~~that such summary has been approved or shall notify~~ of its an inability to reconcile the summary to its records and request additional information. If the Employer/Surety/Adjuster does not receive ~~either an approval or a~~ request for additional information within the ninety (90) day period, the Employer/Surety/Adjuster may proceed with closure. In the event the Commission requests additional information, whether in writing or telephonic, the Employer/Surety/Adjuster shall submit the requested information within fifteen (15) working days. If the Employer/Surety/Adjuster is unable to furnish the requested information, the Employer/Surety/Adjuster shall notify the Commission, in writing, of its inability to respond and the reasons therefor within the fifteen (15) working days. The Commission may schedule a show cause hearing to determine whether or not the Employer/Surety/Adjuster should be allowed to continue its status under the workers' compensation laws, including whether the Employer should be allowed to continue self-insured status. (3-30-07)( )

**05. Changes in Status.** In case of any default by the Employer or in the event the Employer shall fail to pay any final award or awards, by reason of insolvency or because a receiver has been appointed, the Employer shall submit a summary of payments for every time-loss and death claim within one hundred twenty (120) days of the default, insolvency, or appointment of a receiver. This summary will be designated as an interim summary and does not relieve the Employer, successor or receiver from continued reporting requirements. The receiver or successor shall continue to report to the Commission, including the submission of summaries of payments and schedules of outstanding awards. (4-11-15)

# IDAPA 17 – IDAHO INDUSTRIAL COMMISSION

## 17.02.07 – PROCEDURES TO OBTAIN COMPENSATION

DOCKET NO. 17-0207-1801

### 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, and 72-806 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 17, 2018.

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 Commission seeks to clarify that the IAIABC EDI Claims 3.0 Implementation Guide and Trading Partner Tables referenced in the rule are the roadmaps on how to properly report claims electronically and are not part of the rule. This is being done by moving the references to these guides from the Incorporation by Reference section to the Written Interpretations section of the rule. The changes also clarify the requirements for Trading Partner Agreements and eliminate obsolete procedures for submission of paper claims.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin, [Vol. 18-6, page 69](#).

**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, Benefits Administration Manager, (208) 334-6063.

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 24, 2018.

Dated this 24th day of August, 2018.

Mindy Montgomery, Director  
Industrial Commission  
700 S. Clearwater Lane  
P.O. Box 83720  
Boise, Idaho 83720-0041  
Phone: (208) 334-6000  
Fax: (208) 334-2321

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0207-1801  
(Only Those Sections With Amendments Are Shown.)**

**002. WRITTEN INTERPRETATIONS.**

~~No written interpretations of these rules exist~~ The Industrial Commission uses the following guidelines for implementing the EDI reporting requirements set out in this Chapter: (7-1-97)( )

**01. EDI Guide and Tables.** The Idaho Industrial Commission Claims EDI Implementation Guide and Trading Partner Tables (“EDI Guide and Tables”). The Idaho Industrial Commission Claims EDI Implementation Guide and Trading Partner Tables are available on the Commission’s website at [www.iic.idaho.gov](http://www.iic.idaho.gov). ( )

**02. EDI Implementation Guide.** International Association of Industrial Accidents Boards and Commissions (IAIABC) EDI Claims Release 3.0 Implementation Guide (“EDI Implementation Guide”). The IAIABC Claims Release 3.0 Implementation Guide is available at the IAIABC website at [www.iaiaabc.org](http://www.iaiaabc.org). ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**004. INCORPORATION BY REFERENCE.**

~~The Idaho Industrial Commission hereby adopts and incorporates by reference the following:~~ No documents have been incorporated by reference into these rules. (3-25-16)( )

~~**01. EDI Guide and Tables.** Idaho Industrial Commission Claims EDI Implementation Guide and Trading Partner Tables, Version 1.2 (“EDI Guide and Tables”). The Idaho Industrial Commission Claims EDI Implementation Guide and Trading Partner Tables are available at the Commission’s website at [www.iic.idaho.gov](http://www.iic.idaho.gov).~~ (3-25-16)

~~**02. EDI Implementation Guide.** International Association of Industrial Accidents Boards and Commissions (IAIABC) EDI Claims Release 3.0 Implementation Guide – January 1, 2015 Publication (“EDI Implementation Guide”). The IAIABC Claims Release 3.0 Implementation Guide is available at the IAIABC website at [www.iaiaabc.org](http://www.iaiaabc.org).~~ (3-25-16)

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

The following definitions shall be applicable to these rules. (7-1-97)

**01. Adjuster.** An individual who adjusts workers’ compensation claims. (3-25-16)

**02. Claim.** The making of a request with the Commission for benefits payable under the Idaho Workers’ Compensation Act, either by filing Industrial Commission (IC) Form 1A-1 entitled “Workers Compensation First Report of Injury or Illness,” filing a First Report of Injury (FROI) transaction electronically, or by filing an application for hearing, referred to as a Complaint in the Judicial Rules, with the Commission. (3-25-16)( )

**03. Claimant.** A worker who is seeking to recover benefits under the Workers’ Compensation Law. (3-25-16)

**04. Claims Administrator.** An organization, including insurers, third party administrators, independent adjusters, or self-insured employers, that services workers' compensation claims. (3-25-16)

- 05. Commission.** The Idaho Industrial Commission. (3-25-16)
- 06. Employer.** As defined in Section 72-102, Idaho Code, and, for the purposes of these rules, includes sureties and adjusters. (3-25-16)
- 07. IAIABC EDI Release 3.0.** The IAIABC authored EDI Release 3.0 standards that cover the transmission of Claims (FROI and SROI), information through electronic reporting. (3-25-16)
- 08. Legacy Claim.** A First Report of Injury that was filed with the Commission prior to ~~the date specified in Subsection 012.02.b. of these rules~~ November 4, 2017. (3-25-16)(    )
- 09. Notice.** Both the employer's actual and constructive knowledge of the accident, injury, or occupational disease. (3-25-16)
- 10. Trading Partner.** An insurance carrier, self-insured employer, or Claims Administrator that has entered into a Trading Partner Agreement with the Commission. (3-25-16)
- 11. Trading Partner Agreement.** An agreement between the Idaho Industrial Commission and a trading partner that sets out the terms and conditions for the electronic reporting of information to the Commission. (3-25-16)

**(BREAK IN CONTINUITY OF SECTIONS)**

**012. SUBMISSION OF FIRST REPORTS OF INJURY AND CLAIMS FOR COMPENSATION TO THE INDUSTRIAL COMMISSION.**

**01. Purpose.** The Industrial Commission seeks to develop a form for reporting work-related injuries and occupational diseases that is compatible with emerging standards for electronic submission of data. This will allow for more timely entry of information into the database system from which statistical reports are generated by the Commission, reduce the paper that the Commission currently receives, and is expected to reduce the cost of reporting for insurance carriers, employers and the Commission. (3-25-16)

**02. Procedure for Submitting Claims.** (3-25-16)

~~**a.** *FROI Reporting Prior to EDI Mandate.* Prior to November 4, 2017, all FROI information shall be submitted to the Commission on single-sided eight and one-half inch by eleven inch (8½" x 11") white paper in a format substantially similar to Form IA-1. Form IA-1 is available from the Benefits Bureau of the Industrial Commission or on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). At the Commission's discretion, claims may be submitted electronically in accordance with EDI Release 1.0 standards and any additional requirements of the Commission. (3-28-18)~~

**ba.** FROI & SROI EDI Reporting. The Commission ~~will~~ requires electronic submission of a First Report of Injury (FROI), ~~effective November 4, 2017,~~ and a Supplemental or Subsequent Report of Injury (SROI), ~~effective November 4, 2017,~~ in accordance with IAIABC EDI Release 3.0 and the Commission's EDI Guides and Tables, for insurance carriers, in-state Claims Administrators, and self-insured employers, as those entities are not otherwise exempted by these rules. (3-28-18)(    )

**eb.** Trading Partner Agreements. Before commencing electronic reporting, self-insured employers and insurance carriers, or their claims administrator, shall ~~sign~~ electronically submit a Trading Partner Agreement with the Commission, which must be approved by the Commission prior to initial data submission. This agreement will ~~provide the effective date to send and receive electronic reports, which may be earlier but not later than the date above in Paragraph 012.02.b., the acceptable data to be sent and received, the method of transmission to be used, and other pertinent elements~~ identify the insurance carrier, the claims administrator, the sender of the electronic files, and the electronic filing method. To ensure the accuracy of reported data, the Trading Partner must maintain their profile to reflect changes as they occur. The Commission may make periodic audits of insurance carrier and self-insured employer files. In the event that a Trading Partner Agreement is entered into by a claims administrator, notice

to the Trading Partner of a FROI shall be deemed to be notice to the underlying insurance carrier or self-insured employer. (3-25-16)( )

**d.c.** FROI. Each electronic First Report of Injury (FROI) must comply with the formatting requirements of the most current versions of the IAIABC EDI Claims Release 3.0 Implementation Guide and Idaho Industrial Commission Claims EDI Implementation Guide & Tables, and must contain the information identified as mandatory or mandatory conditional, as applicable. (3-25-16)( )

**d.d.** SROI. Each electronic Supplemental or Subsequent Report of Injury (SROI) must comply with the formatting requirements of the most current versions of the IAIABC EDI Claims Release 3.0 Implementation Guide and the Idaho Industrial Commission Claims EDI Implementation Guide & Tables, and must contain the information identified as mandatory or mandatory conditional, as applicable. (3-25-16)( )

**d.e.** Report Form and Content for Parties Exempt from EDI Requirements: (3-25-16)

i. Individual injured workers, injured workers' legal counsel, and employers that are not insured are not required to comply with IAIABC EDI requirements for filing of the FROI and SROI. SROIs filed on legacy claims will not be accepted via IAIABC EDI Release 3.0 standards. (3-25-16)

ii. Employers that are not insured, individual injured workers, and injured workers' legal counsel shall submit all FROI to the Commission on single-sided eight and one-half inch by eleven inch (8½" X 11") white paper in a format substantially similar to Form 1A-1. Form 1A-1 is available from the Benefits Bureau of the Industrial Commission or on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). (3-25-16)

iii. Employers that are not insured, individual injured workers, and injured workers' legal counsel, shall submit all SROI to the Commission on single-sided eight and one-half inch by eleven inch (8½" X 11") white paper in a format substantially similar to Form SROI-1. Form SROI-1 is available from the Benefits Bureau of the Industrial Commission or on the Commission's website at [www.iic.idaho.gov](http://www.iic.idaho.gov). (3-25-16)

**03. Retaining Claims Files. ( )**

**a.** All insurance carriers and their claims administrators shall maintain their respective claim files in accordance with IDAPA 17.02.10, "Administrative Rules of the Industrial Commission Under the Workers' Compensation Law -- Security for Compensation -- Insurance Carriers," Section 051. IDAPA 17.02.11, "Administrative Rules of the Industrial Commission Under the Workers' Compensation Law -- Security for Compensation -- Self-Insured Employers," Section 051. Upon request of the Commission, insurance carriers, claims administrators, or employers shall provide to the Commission, in whole or in part according to the request, a copy of the claim file at no cost to the Commission. (3-25-16)

**a.b.** All insurance carriers, claims administrators, or employers shall retain complete copies of claims files for the life of the claim or a minimum of five (5) years from the date of closure, whichever is shorter. (3-25-16)

**b.** ~~For time-loss claims, closure will be the date upon which the insurance carrier, claims administrator, or employer files the final summary of payments, either as an appropriate EDI transaction, or as a hardcopy document for legacy claims. The Commission recommends that an insurance carrier, claims administrator, or employer retain a closed claim file for a minimum of five (5) years.~~ (3-25-16)

**04. Filing Not an Admission.** Filing a claim is not an admission of liability and is not conclusive evidence of any fact stated therein. If a claim is submitted electronically, no signatures are required. (7-1-97)

**05. Filing Considered Authorization.** Filing of a claim shall be considered an authorization for the release of medical records that are relevant to or bearing upon the particular injury or occupational disease for which the claimant is seeking compensation. (7-1-97)

**06. Timely Response Requirement.** When the Commission requests additional information in order to process the Claim, the claimant or employer shall provide the requested information promptly. The Commission request may be either in writing or telephonic. (7-1-97)

## IDAPA 17 – IDAHO INDUSTRIAL COMMISSION

### 17.02.10 – ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION UNDER THE WORKERS' COMPENSATION LAW – SECURITY FOR COMPENSATION – INSURANCE CARRIERS

DOCKET NO. 17-0210-1801

#### 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, 72-301, and 72-304 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 17, 2018.

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 Commission seeks to clarify the new electronic requirements for insurance carriers on the submission of First Reports of Injury and Claims for Benefits, notices of occupational illness, and fatalities. The changes also eliminate the need to submit paper documentation in support of electronically-filed initial payments.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin, [Vol. 18-6, page 72](#).

**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, Benefits Administration Manager, (208) 334-6063.

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 24, 2018.

Dated this 24th day of August, 2018.

Mindy Montgomery, Director  
Industrial Commission  
700 S. Clearwater Lane  
P.O. Box 83720  
Boise, Idaho 83720-0041  
Phone: (208) 334-6000  
Fax: (208) 334-2321

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0210-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**051. REQUIREMENTS FOR MAINTAINING IDAHO WORKERS' COMPENSATION CLAIMS FILES.**

All insurance carriers and licensed adjusters servicing Idaho workers' compensation claims shall comply with the following requirements: (4-7-11)

**01. Idaho Office.** (4-7-11)

**a.** All insurance carriers and licensed adjusters servicing Idaho workers' compensation claims shall maintain an office within the state of Idaho. The offices shall be staffed by adequate personnel to conduct business. (4-7-11)

**b.** The insurance carrier shall authorize and require a member of its in-state staff or a licensed, resident claims adjuster to service and make decisions regarding claims pursuant to Section 72-305, Idaho Code. Answering machines, answering services, or toll free numbers outside of the state will not suffice. That authority shall include, but is not limited to, the following responsibilities: (3-25-16)

i. Investigate and adjust all claims for compensation; (4-7-11)

ii. Pay all compensation benefits due; (4-7-11)

iii. 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)

iv. Enter into compensation agreements and lump sum settlements with Claimants; and (4-7-11)

v. Provide at the insurance carrier's expense necessary forms to any worker who wishes to file a claim under the Workers' Compensation Law. (4-7-11)

**c.** As staffing changes occur and, at least annually, the insurance carrier or licensed adjuster shall submit to the Industrial Commission Secretary the names of those authorized to make decisions regarding claims pursuant to Section 72-305, Idaho Code. Each authorized insurance carrier shall designate only one (1) claims administrator for each policy of workers' compensation insurance. (3-25-16)

**02. Claim Files.** All Idaho workers' compensation claim files shall be maintained within the state of Idaho in either hard copy or immediately accessible electronic format. Claim files shall include, but are not limited to: (4-7-11)

**a.** First Report of Injury and Claim for Benefits; (4-7-11)

**b.** Copies of bills for medical care; (4-7-11)

**c.** Copy of lost-time computations, if applicable; (4-7-11)

**d.** Correspondence reflecting reasons for any delays in payments (i.e., awaiting medical reports, clarification, questionable items on bills, etc.), the resolution of such delays and acceptance or denial of compensability; (4-7-11)

**e.** Employer's Supplemental Report; and (4-7-11)

**f.** Medical reports. (4-7-11)

**03. Correspondence.** All original correspondence involving adjusting decisions regarding Idaho workers' compensation claims shall be authorized from and maintained at in-state offices. (3-25-16)

**04. Date Stamp.** Each of the documents listed in Subsections 051.02 and 051.03 shall be date-stamped with the name of the receiving office on the day received, and by each receiving agent or vendor acting on behalf of the claims office. (4-7-11)

**05. Notice and Claim.** All First Reports of Injury, Claims for Benefits, notices of occupational illnesses and fatalities shall be sent directly to the in-state ~~adjuster~~ claims administrator or insurance carrier responsible for making the electronic filing with the Commission. ~~The original copy of the First Report of Injury, Claim for Benefits and notices of occupational illness and fatality shall be sent directly to the Industrial Commission.~~ (4-7-11)(      )

**06. Compensation.** All compensation, as defined by Section 72-102, Idaho Code, must be issued from the in-state office. (4-7-11)

**07. Checks and Drafts.** Checks must be signed and issued within the state of Idaho; drafts are prohibited. (4-7-11)

**a.** The Commission may, upon receipt of a written Application for Waiver, grant a waiver from the provisions of Subsections 051.06 and 051.07 of this rule to permit an insurance carrier to sign and issue checks outside the state of Idaho. (4-7-11)

**b.** An Application for Waiver must be accompanied by an affidavit signed by an officer or principal of the insurance carrier attesting to the fact that the insurance carrier is prepared to comply with all statutes and rules pertaining to prompt payments of compensation. (4-7-11)

**c.** All waivers shall be effective from the date the Commission issues the order granting the waiver. A waiver shall remain in effect until revoked by the Industrial Commission. At least annually, staff of the Industrial Commission may review the performance of any insurance carrier for which a waiver under this rule has been granted to assure that the insurance carrier is complying with all statutes and rules pertaining to prompt payments of compensation. (4-7-11)

**d.** If at any time after the Commission has granted a waiver, the Commission receives information permitting the inference that the insurance carrier has failed to provide timely benefits to any claimant, the Commission may issue an order to show cause why the Commission should not revoke the waiver; and, after affording the insurance carrier an opportunity to be heard, may revoke the waiver and order the insurance carrier to comply with the requirements of Subsections 051.06 and 051.07 of this rule. (4-7-11)

**08. Copies of Checks.** Copies of checks and/or electronically reproducible copies of the information contained on the checks must be maintained in the in-state files for Industrial Commission audit purposes. A copy of the first income benefit check, showing signature and date, shall be sent to the Industrial Commission the same day of issuance for legacy claims. Paper copies of the first income benefit check need not be sent to the Industrial Commission on claims when the initial payment transaction is filed electronically. (3-25-16)(      )

**09. Prompt Claim Servicing.** Prompt claim servicing includes, but is not limited to: (4-7-11)

**a.** Making an initial decision to accept or deny a claim for an injury or occupational disease within thirty (30) days after the claims administrator receives knowledge of the same. The worker shall be given notice of that initial decision in accordance with Section 72-806, Idaho Code. Nothing in this rule shall be construed as amending the requirement to start payment of income benefits no later than four (4) weeks or twenty-eight (28) days from the date of disability under the provisions of Section 72-402, Idaho Code. (3-28-18)

**b.** Payment of medical bills in accordance with the provisions of IDAPA 17.02.09, Medical Fees, Sections 031, 032, 033 and 034. (4-7-11)

c. Payment of income benefits on a weekly basis, unless otherwise approved by the Commission. (4-7-11)

i. The first payment of income benefits under Section 72-408, Idaho Code, shall constitute application by the insurance carrier for a waiver to pay Temporary Total Disability (TTD) benefits on a bi-weekly basis, Temporary Partial Disability (TPD) benefits on other than a weekly basis, Permanent Partial Disability (PPD) benefits based on permanent impairment and Permanent Total Disability (PTD) benefits every twenty-eight (28) days, rather than on a weekly basis. (3-28-18)

ii. Such waiver application shall be granted upon receipt and remain in effect unless revoked by the Industrial Commission in accordance with Subparagraph 051.09.c.iii., below. (3-28-18)

iii. If at any time after a waiver has been granted pursuant to this section the Commission receives information permitting the inference that the insurance carrier has failed to service claims in accordance with Idaho law, or that such waiver has created an undue hardship on a claimant, the Commission may issue an order to show cause why the Commission should not revoke that waiver, and after affording the insurance carrier an opportunity to be heard, may revoke the waiver with respect to all or certain claimants and order the insurance carrier to comply with the requirements of Subsection 051.09.c. of this rule. (3-28-18)

d. Payment of the first Permanent Partial Disability (PPD) benefit based on permanent impairment no later than fourteen (14) days after receipt of the medical report providing the impairment rating. The first payment shall include payment of benefits retroactive to the date of medical stability. (3-28-18)

e. Temporary Partial Disability (TPD) payments shall be calculated using the employee's pay period, whether weekly, bi-weekly, or semi-monthly. For employees paid pursuant to any other schedule, TPD benefits shall be calculated semi-monthly. TPD payments owed for a particular pay period shall issue no later than seven (7) days following the date on which employee is ordinarily paid for that pay period. (3-28-18)

**10. Audits.** The Industrial Commission will perform periodic audits to ensure compliance with the above requirements. (4-7-11)

**11. Non-Compliance.** Non-compliance with the above requirements may result in the revocation of the authority of an insurance carrier to write workers' compensation insurance in the state of Idaho, or such lesser sanctions as the Industrial Commission may impose. (4-7-11)

## IDAPA 17 – IDAHO INDUSTRIAL COMMISSION

### 17.02.10 – ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION UNDER THE WORKERS' COMPENSATION LAW – SECURITY FOR COMPENSATION – INSURANCE CARRIERS

DOCKET NO. 17-0210-1802

#### 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, 72-301 and 72-304, Idaho Code.

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

**PUBLIC HEARING**  
**Wednesday, October 10, 2018**  
**2:00 p.m. – 3:30 p.m.**

**Idaho Industrial Commission**  
**700 S. Clearwater Lane**  
**Boise, ID 83720**

#### Via VIDEO CONFERENCE

**1:00 p.m. (PDT)**

**IIC Coeur D'Alene Field Office**  
**1111 W. Ironwood Drive, Suite A**  
**Coeur D'Alene, Idaho 83814**

**2:00 p.m. (MDT)**

**IIC Idaho Falls Field Office**  
**1820 E. 17th, Suite 300**  
**Idaho Falls, Idaho 83404**

**1:00 p.m. (PDT)**

**IIC Lewiston Field Office**  
**1118 "F" Street**  
**Lewiston, Idaho 83501**

**2:00 p.m. (MDT)**

**IIC Twin Falls Field Office**  
**1411 Falls Avenue East, Suite 915**  
**Twin Falls, Idaho 83301**

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:

The Industrial Commission seeks to authorize and set forth conditions for the use of electronic fund transfers and access cards to pay benefits due to injured workers by insurance carriers.

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

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

**NEGOTIATED RULEMAKING:** 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 June 6, 2018 Idaho Administrative Bulletin, [Vol. 18-6, page 73](#).

**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, Benefits Administration Manager, (208) 334-6063. 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 24, 2018.

Dated this 28th day of August, 2018.

Mindy Montgomery, Director  
Industrial Commission  
700 S. Clearwater Lane  
P.O. Box 83720  
Boise, Idaho 83720-0041  
Phone: (208) 334-6000  
Fax: (208) 334-2321

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0210-1802**  
**(Only Those Sections With Amendments Are Shown.)**

**051. REQUIREMENTS FOR MAINTAINING IDAHO WORKERS' COMPENSATION CLAIMS FILES.**

All insurance carriers and licensed adjusters servicing Idaho workers' compensation claims shall comply with the following requirements: (4-7-11)

**01. Idaho Office.** (4-7-11)

**a.** All insurance carriers and licensed adjusters servicing Idaho workers' compensation claims shall maintain an office within the state of Idaho. The offices shall be staffed by adequate personnel to conduct business. (4-7-11)

**b.** The insurance carrier shall authorize and require a member of its in-state staff or a licensed, resident claims adjuster to service and make decisions regarding claims pursuant to Section 72-305, Idaho Code. Answering machines, answering services, or toll free numbers outside of the state will not suffice. That authority shall include, but is not limited to, the following responsibilities: (3-25-16)

i. Investigate and adjust all claims for compensation; (4-7-11)

ii. Pay all compensation benefits due; (4-7-11)

iii. 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)

iv. Enter into compensation agreements and lump sum settlements with Claimants; and (4-7-11)

v. Provide at the insurance carrier's expense necessary forms to any worker who wishes to file a claim under the Workers' Compensation Law. (4-7-11)

c. As staffing changes occur and, at least annually, the insurance carrier or licensed adjuster shall submit to the Industrial Commission Secretary the names of those authorized to make decisions regarding claims pursuant to Section 72-305, Idaho Code. Each authorized insurance carrier shall designate only one (1) claims administrator for each policy of workers' compensation insurance. (3-25-16)

**02. Claim Files.** All Idaho workers' compensation claim files shall be maintained within the state of Idaho in either hard copy or immediately accessible electronic format. Claim files shall include, but are not limited to: (4-7-11)

a. First Report of Injury and Claim for Benefits; (4-7-11)

b. Copies of bills for medical care; (4-7-11)

c. Copy of lost-time computations, if applicable; (4-7-11)

d. Correspondence reflecting reasons for any delays in payments (i.e., awaiting medical reports, clarification, questionable items on bills, etc.), the resolution of such delays and acceptance or denial of compensability; (4-7-11)

e. Employer's Supplemental Report; and (4-7-11)

f. Medical reports. (4-7-11)

**03. Correspondence.** All original correspondence involving adjusting decisions regarding Idaho workers' compensation claims shall be authorized from and maintained at in-state offices. (3-25-16)

**04. Date Stamp.** Each of the documents listed in Subsections 051.02 and 051.03 shall be date-stamped with the name of the receiving office on the day received, and by each receiving agent or vendor acting on behalf of the claims office. (4-7-11)

**05. Notice and Claim.** All First Reports of Injury, Claims for Benefits, notices of occupational illnesses and fatalities shall be sent directly to the in-state adjuster or insurance carrier. The original copy of the First Report of Injury, Claim for Benefits and notices of occupational illness and fatality shall be sent directly to the Industrial Commission. (4-7-11)

**06. Compensation Payments – Generally.** ( )

**a.** All compensation, as defined by Section 72-102, Idaho Code, must be issued from the in-state office. ~~(4-7-11)~~( )

**b.** Except as ordered otherwise by the Commission, the insurance carrier may make compensation payments by either: ( )

**i.** Check or other readily negotiable instrument; ( )

**ii.** When requested by the claimant, electronic transfer to an account designated by the claimant in accordance with the requirements of Subsection 051.07 of this rule; or ( )

**iii.** When requested by the claimant, electronic transfer payments made through an access card; if that option is made available by the carrier, in accordance with the requirements of Subsection 051.08 of this rule. ( )

**c.** If the claimant is represented by an attorney who may have an attorney's lien for fees due on such compensation payments, the attorney must agree to payment by electronic transfer to claimant's account or through an access card before such compensation may be paid other than by a check made payable to the claimant and the attorney. ( )

**07. Electronic Transfer Payments.** ( )

**a.** A claimant may request that the insurance carrier make compensation payments by electronic transfer to a personal bank account by providing the insurance carrier in writing: the name and routing transit number of the financial institution and the account number and type of account to which the claimant wants to have the compensation electronically transferred. The insurance carrier shall provide the claimant with a written form to fill out the information required by this subsection within seven (7) days of receiving a request for electronic transfer of payments from the claimant unless the claimant has already completed an on-line electronic form provided by the carrier. ( )

**b.** The insurance carrier may make compensation payments to the claimant by electronic transfer to an account designated by the claimant if the claimant: ( )

**i.** Requests in writing that payment be made by electronic transfer; ( )

**ii.** Provides the information required by Paragraph 051.07.a. of this rule; and ( )

**ii.** Is reasonably expected to be entitled to receive compensation payments for a period of eight (8) weeks or more from the point that Subparagraphs 051.07.i. and 051.07.ii. of this rule are satisfied. ( )

**c.** The insurance carrier shall initiate payment by electronic transfer starting with the first benefit payment due on or after the twenty-first day after all the requirements of Paragraph 051.07.b. of this rule are met, but shall continue to make timely payments by check until the insurance carrier initiates benefit payment delivery by electronic transfer. ( )

**d.** If the claimant has previously been receiving benefit payments by electronic transfer and wants to receive benefits by check, the insurance carrier shall initiate benefit payment delivery by check starting with the first benefit payment due to the claimant on or after the seventh day after receiving a written request for such payments. ( )

**08. Access Card Payments.** ( )

**a.** Access card means any card or other payment method that may be used by a claimant to initiate electronic fund transfer from an insurance carrier's bank account. The term "access card" does not include stored value cards or prepaid cards that store funds directly on the card and that are not linked to an insurance carrier's bank account. ( )

**b.** An insurance carrier may pay compensation through an access card to a claimant if there is written mutual agreement signed by the insurance carrier and the claimant. The insurance carrier shall maintain accurate records of the mutual agreement for, at a minimum, four hundred one (401) weeks from the date of injury. The written agreement shall contain an acknowledgment that the claimant received and agreed to the written disclosure required by Paragraph 051.08.d. of this rule. ( )

**c.** An insurance carrier providing compensation payments to a claimant through an access card shall: ( )

**i.** Permit the claimant to withdraw the entire amount of the balance of an access card in one (1) transaction; ( )

**ii.** Not reduce compensation payments paid to a claimant through an access card for the following fees, surcharges, and adjustments: ( )

(1) Overdraft services under which a financial institution pays a transaction (including a check or other item) when the claimant has insufficient or unavailable funds in the account; ( )

(2) ATM withdrawal or point of sale purchase for more than the card holds and the transaction is denied; ( )

- (3) ATM balance inquiries; ( )
- (4) Withdrawing money from network ATMs; ( )
- (5) Withdrawing money from a teller; ( )
- (6) Customer service calls; ( )
- (7) Activating the card; ( )
- (8) Fees for card inactivity; ( )
- (9) Closing account; ( )
- (10) Access card replacement through standard mail; ( )
- (11) Withdrawing the entire payment in one (1) transaction; ( )
- (12) Point of sale purchases; or ( )
- (13) Any other fees or charges that are not authorized under Subparagraph 051.08.c.iii. of this rule; and ( )
- iii. Only permit a claimant to be charged for the following: ( )
  - (1) Fees for access card replacement through an expedited mail service; ( )
  - (2) International transaction fees; and ( )
  - (3) Out-of-network ATM fees. ( )
- d. Insurance carriers shall provide a written disclosure to the claimant contemporaneously with the written mutual agreement required under Paragraph 051.08.b. of this rule. The written disclosure shall include: ( )
  - i. A summary of the claimant's liability for unauthorized electronic fund transfers; ( )
  - ii. The telephone number and address of the person or office to be notified when the claimant believes that an unauthorized electronic fund transfer has been or may be made; ( )
  - iii. The type of electronic fund transfers that the claimant may make and any limitations on the frequency of transfers; ( )
  - iv. Any fees imposed for electronic fund transfers or for the right to make transfers, including a statement that fees may be imposed by an ATM operator that is out-of-network; ( )
  - v. Fees for expedited card replacement or international transaction fees will be removed from the balance maintained in the bank account linked to the access card; ( )
  - vi. A summary of the claimant's right to receipts and periodic statements; ( )
  - vii. All bank locations and network ATMs in the United States where the claimant may access his or her funds at no cost; ( )
  - viii. A statement informing the claimant that they have a right to receive payments directly into their personal bank account through direct deposit or by check. ( )

e. An insurance carrier shall provide the written disclosure and any notice of term or condition changes required under Subsection 051.08 of this rule that: ( )

i. Are printed in not less than twelve (12) point font; ( )

ii. Include the full text in English, Spanish, and any other language common to the claimant population; ( )

iii. Are written in a clear and coherent manner, and wherever practical, words with common and everyday meaning shall be used to facilitate readability; and ( )

iv. Are appropriately divided and captioned in a meaningful sequence such that each section contains an underlined, boldfaced, or otherwise conspicuous title or caption at the beginning of the section that indicates the nature of the subject matter included in or covered by the section. ( )

f. An access card issued to a claimant under Subsection 051.08 of this rule: ( )

i. Shall not bear any information that could reasonably identify the claimant as a participant in the workers' compensation system; and ( )

ii. Shall include on the front or back of the access card a toll-free customer service number and website address. Customer service personnel shall be available by phone Monday through Friday during normal business hours (9:00 a.m. to 6:00 p.m. Mountain Time). ( )

g. The insurance carrier shall provide a written notice to the claimant at least twenty-one (21) days before the effective date of any change in a term or condition of the mutual agreement or disclosure, including terminating the access card program, increased fees, or liability for unauthorized electronic fund transfers. Any terms or conditions that violate the requirements of Subsection 051.08 of this rule are null and void and may result in administrative action against the carrier. An insurance carrier shall provide a written notice of term or condition changes that: ( )

i. Provides a comparison of the current terms and the changes; and ( )

ii. References the claimant's ability to request a change in method of payment to electronic fund transfer to his or her personal bank account in accordance with Subsection 051.07 of these rules, or to payment by check. ( )

h. An insurance carrier may close the access card account by issuing a check to the claimant with the remaining balance of the access card if the account has been inactive for twelve (12) months or longer. ( )

i. The insurance carrier shall not remove money from the claimant's account or access card except to remove permitted fees under Subparagraph 051.08.c.iii. of this rule or to close the account for inactivity of a period of twelve (12) months or more. An insurance carrier seeking to recoup overpayments shall follow the requirements of Section 72-316, Idaho Code. ( )

j. An insurance carrier is considered to have made a compensation payment the date the payment is available on the claimant's access card. ( )

**079. Checks and Drafts.** Checks must be signed and issued within the state of Idaho; drafts are prohibited. (4-7-11)

**a.** The Commission may, upon receipt of a written Application for Waiver, grant a waiver from the provisions of Subsections 051.06 and 051.07 of this rule to permit an insurance carrier to sign and issue checks outside the state of Idaho. (4-7-11)

**b.** An Application for Waiver must be accompanied by an affidavit signed by an officer or principal of

the insurance carrier attesting to the fact that the insurance carrier is prepared to comply with all statutes and rules pertaining to prompt payments of compensation. (4-7-11)

**c.** All waivers shall be effective from the date the Commission issues the order granting the waiver. A waiver shall remain in effect until revoked by the Industrial Commission. At least annually, staff of the Industrial Commission may review the performance of any insurance carrier for which a waiver under this rule has been granted to assure that the insurance carrier is complying with all statutes and rules pertaining to prompt payments of compensation. (4-7-11)

**d.** If at any time after the Commission has granted a waiver, the Commission receives information permitting the inference that the insurance carrier has failed to provide timely benefits to any claimant, the Commission may issue an order to show cause why the Commission should not revoke the waiver; and, after affording the insurance carrier an opportunity to be heard, may revoke the waiver and order the insurance carrier to comply with the requirements of Subsections 051.06 and 051.07 of this rule. (4-7-11)

**~~10~~8.** **Copies of Checks.** Copies of checks and/or electronically reproducible copies of the information contained on the checks must be maintained in the in-state files for Industrial Commission audit purposes. A copy of the first income benefit check, showing signature and date, shall be sent to the Industrial Commission the same day of issuance. (3-25-16)

**~~9~~11.** **Prompt Claim Servicing.** Prompt claim servicing includes, but is not limited to: (4-7-11)

**a.** Making an initial decision to accept or deny a claim for an injury or occupational disease within thirty (30) days after the claims administrator receives knowledge of the same. The worker shall be given notice of that initial decision in accordance with Section 72-806, Idaho Code. Nothing in this rule shall be construed as amending the requirement to start payment of income benefits no later than four (4) weeks or twenty-eight (28) days from the date of disability under the provisions of Section 72-402, Idaho Code. (3-28-18)

**b.** Payment of medical bills in accordance with the provisions of IDAPA 17.02.09, Medical Fees, Sections 031, 032, 033 and 034. (4-7-11)

**c.** Payment of income benefits on a weekly basis, unless otherwise approved by the Commission. (4-7-11)

**i.** The first payment of income benefits under Section 72-408, Idaho Code, shall constitute application by the insurance carrier for a waiver to pay Temporary Total Disability (TTD) benefits on a bi-weekly basis, Temporary Partial Disability (TPD) benefits on other than a weekly basis, Permanent Partial Disability (PPD) benefits based on permanent impairment and Permanent Total Disability (PTD) benefits every twenty-eight (28) days, rather than on a weekly basis. (3-28-18)

**ii.** Such waiver application shall be granted upon receipt and remain in effect unless revoked by the Industrial Commission in accordance with Subparagraph 051.09.c.iii., below. (3-28-18)

**iii.** If at any time after a waiver has been granted pursuant to this section the Commission receives information permitting the inference that the insurance carrier has failed to service claims in accordance with Idaho law, or that such waiver has created an undue hardship on a claimant, the Commission may issue an order to show cause why the Commission should not revoke that waiver, and after affording the insurance carrier an opportunity to be heard, may revoke the waiver with respect to all or certain claimants and order the insurance carrier to comply with the requirements of Subsection 051.09.c. of this rule. (3-28-18)

**d.** Payment of the first Permanent Partial Disability (PPD) benefit based on permanent impairment no later than fourteen (14) days after receipt of the medical report providing the impairment rating. The first payment shall include payment of benefits retroactive to the date of medical stability. (3-28-18)

**e.** Temporary Partial Disability (TPD) payments shall be calculated using the employee's pay period, whether weekly, bi-weekly, or semi-monthly. For employees paid pursuant to any other schedule, TPD benefits shall be calculated semi-monthly. TPD payments owed for a particular pay period shall issue no later than seven (7) days

following the date on which employee is ordinarily paid for that pay period. (3-28-18)

**102.** **Audits.** The Industrial Commission will perform periodic audits to ensure compliance with the above requirements. (4-7-11)

**143.** **Non-Compliance.** Non-compliance with the above requirements may result in the revocation of the authority of an insurance carrier to write workers' compensation insurance in the state of Idaho, or such lesser sanctions as the Industrial Commission may impose. (4-7-11)

## IDAPA 17 – IDAHO INDUSTRIAL COMMISSION

### 17.02.11 – ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION UNDER THE WORKERS' COMPENSATION LAW – SECURITY FOR COMPENSATION – SELF-INSURED EMPLOYERS

DOCKET NO. 17-0211-1801

#### 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, 72-301, and 72-304 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 17, 2018.

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 Commission seeks to clarify the new electronic requirements for self-insured employers on the submission of First Reports of Injury and Claims for Benefits, notices of occupational illness, and fatalities. The changes also eliminate the need to submit paper documentation in support of electronically-filed initial payments.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin, [Vol. 18-6, page 75](#).

**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, Benefits Administration Manager, (208) 334-6063.

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 24, 2018.

Dated this 24th day of August, 2018.

Mindy Montgomery, Director  
Industrial Commission  
700 S. Clearwater Lane  
P.O. Box 83720  
Boise, Idaho 83720-0041  
Phone: (208) 334-6000  
Fax: (208) 334-2321

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0211-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**051. REQUIREMENTS FOR MAINTAINING IDAHO WORKERS' COMPENSATION CLAIMS FILES.**

All self-insured employers and licensed adjusters servicing Idaho workers' compensation claims shall comply with the following requirements: (4-7-11)

**01. Idaho Office.** All self-insured employers and licensed adjusters servicing Idaho workers' compensation claims shall maintain an office within the state of Idaho. The offices shall be staffed by adequate personnel to conduct business. The self-insured employer shall designate and require an Idaho licensed, resident adjuster to make decisions regarding claims pursuant to Section 72-305, Idaho Code. As staffing changes occur and, at least annually, the self-insured employer or licensed adjuster shall submit to the Industrial Commission Secretary the names of those authorized to make decisions regarding claims pursuant to Section 72-305, Idaho Code. Answering machines, answering services, or toll free numbers outside of the state will not suffice. (3-25-16)

**02. Claim Files.** All Idaho workers' compensation claim files shall be maintained within the state of Idaho in either hard copy or immediately accessible electronic format. Claim files shall include, but are not limited to: (4-7-11)

- a. First Report of Injury and Claim for Benefits; (4-7-11)
- b. Copies of bills for medical care; (4-7-11)
- c. Copy of lost-time computations, if applicable; (4-7-11)
- d. Correspondence reflecting reasons for any delays in payments (i.e., awaiting medical reports, clarification, questionable items on bills, etc.), the resolution of such delays and acceptance or denial of compensability; (4-7-11)
- e. Employer's Supplemental Report; and (4-7-11)
- f. Medical reports. (4-7-11)

**03. Correspondence.** All original correspondence involving adjusting decisions regarding Idaho workers' compensation claims shall be authorized from and maintained at in-state offices. (3-25-16)

**04. Date Stamp.** Each of the documents listed in Subsections 051.02 and 051.03 shall be date-stamped with the name of the receiving office on the day received, and by each receiving agent or vendor acting on behalf of the self-insured employer. (4-7-11)

**05. Notice and Claim.** All First Reports of Injury, Claims for Benefits, notices of occupational illnesses and fatalities shall be sent directly to the in-state ~~adjuster~~ claims administrator or self-insured employer responsible for making the electronic filing with the Commission. The original copy of the First Report of Injury, Claim for Benefits and notices of occupational illness and fatality shall be sent directly to the Industrial Commission. (4-7-11)(    )

**06. Compensation.** All compensation, as defined by Section 72-102, Idaho Code, must be issued from the in-state office. (4-7-11)

**07. Checks and Drafts.** Checks must be signed and issued within the state of Idaho; drafts are prohibited. (4-7-11)

a. The Commission may, upon receipt of a written Application for Waiver, grant a waiver from the provisions of Subsections 051.06 and 051.07 of this rule to permit a self-insured employer to sign and issue checks outside the state of Idaho. (4-7-11)

b. An Application for Waiver must be accompanied by an affidavit signed by an officer or principal of the self-insured employer, attesting to the fact that the self-insured employer is prepared to comply with all statutes and rules pertaining to prompt payment of compensation. (4-7-11)

c. All waivers shall be effective from the date the Commission issues the order granting the waiver. A waiver shall remain in effect until revoked by the Industrial Commission. At least annually, staff of the Industrial Commission may review the performance of any self-insured employer for which a waiver under this rule has been granted to assure that the self-insured employer is complying with all statutes and rules pertaining to prompt payment of compensation. (4-7-11)

d. If at any time after the Commission has granted a waiver, the Commission receives information permitting the inference that the self-insured employer has failed to provide timely benefits to any claimant, the Commission may issue an order to show cause why the Commission should not revoke the waiver; and, after affording the self-insured employer an opportunity to be heard, may revoke the waiver and order the self-insured employer to comply with the requirements of Subsections 051.06 and 051.07 of this rule. (4-7-11)

**08. Copies of Checks.** Copies of checks and/or electronically reproducible copies of the information contained on the checks must be maintained in the in-state files for Industrial Commission audit purposes. A copy of the first income benefit check, showing signature and date, shall be sent to the Industrial Commission the same day of issuance for legacy claims. Paper copies of the first income benefit check need not be sent to the Industrial Commission on claims when the initial payment transaction is filed electronically. (3-25-16)( )

**09. Prompt Claim Servicing.** Prompt claim servicing includes, but is not limited to: (4-7-11)

a. Making an initial decision to accept or deny a claim for an injury or occupational disease within thirty (30) days of the date the claims administrator receives knowledge of the same. The worker shall be given notice of that initial decision in accordance with Section 72-806, Idaho Code. Nothing in this rule shall be construed as amending the requirement to start payment of income benefits no later than four (4) weeks or twenty-eight (28) days from the date of disability under the provisions of Section 72-402, Idaho Code. (3-28-18)

b. Payment of medical bills in accordance with the provisions of IDAPA 17.02.09, Medical Fees, Sections 031, 032, 033, and 034. (4-7-11)

c. Payment of income benefits on a weekly basis, unless otherwise approved by the Commission. (4-7-11)

i. The first payment of income benefits under Section 72-408, Idaho Code, shall constitute application by the self-insured employer for a waiver to pay Temporary Total Disability (TTD) benefits on a bi-weekly basis, Temporary Partial Disability (TPD) benefits on other than a weekly basis, Permanent Partial Disability (PPD) benefits based on permanent impairment and Permanent Total Disability (PTD) benefits every twenty-eight (28) days, rather than on a weekly basis. (3-28-18)

ii. Such waiver application shall be granted upon receipt and remain in effect unless revoked by the Industrial Commission in accordance with Subparagraph 051.09.c.iii., below. (3-28-18)

iii. If at any time after a waiver has been granted pursuant to this section the Commission receives information permitting the inference that the self-insured employer has failed to service claims in accordance with Idaho law, or that such waiver has created an undue hardship on a claimant, the Commission may issue an order to show cause why the Commission should not revoke that waiver, and after affording the employer an opportunity to be heard, may revoke the waiver with respect to all or certain claimants and order the self-insured employer to comply with the requirements of Subsection 051.09.c. of this rule. (3-28-18)

d. Payment of the first Permanent Partial Disability (PPD) benefit based on permanent impairment no

later than fourteen (14) days after receipt of the medical report providing the impairment rating. The first payment shall include payment of benefits retroactive to the date of medical stability. (3-28-18)

**e.** Temporary Partial Disability (TPD) payments shall be calculated using the employee's pay period, whether weekly, bi-weekly, or semi-monthly. For employees paid pursuant to any other schedule, TPD benefits shall be calculated semi-monthly. TPD payments owed for a particular pay period shall issue no later than seven (7) days following the date on which employee is ordinarily paid for that pay period. (3-28-18)

**10. Audits.** The Industrial Commission will perform periodic audits to ensure compliance with the above requirements. (4-7-11)

**11. Non-Compliance.** Non-compliance with the above requirements may result in the revocation of the authority of a self-insured employer to self-insure its workers' compensation obligations in the state of Idaho, or such lesser sanctions as the Industrial Commission may impose. (4-7-11)

## IDAPA 17 – IDAHO INDUSTRIAL COMMISSION

### 17.02.11 – ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION UNDER THE WORKERS' COMPENSATION LAW – SECURITY FOR COMPENSATION – SELF-INSURED EMPLOYERS

DOCKET NO. 17-0211-1802

#### 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, 72-301 and 72-304, Idaho Code.

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

**PUBLIC HEARING**  
**Wednesday, October 10, 2018**  
**2:00 – 3:30 p.m.**

**Idaho Industrial Commission**  
**700 S. Clearwater Lane**  
**Boise, ID 83720**

#### Via VIDEO CONFERENCE

**1:00 p.m. (PDT)**

**IIC Coeur D'Alene Field Office**  
**1111 W. Ironwood Drive, Suite A**  
**Coeur D'Alene, Idaho 83814**

**2:00 p.m. (MDT)**

**IIC Idaho Falls Field Office**  
**1820 E. 17th, Suite 300**  
**Idaho Falls, Idaho 83404**

**1:00 p.m. (PDT)**

**IIC Lewiston Field Office**  
**1118 "F" Street**  
**Lewiston, Idaho 83501**

**2:00 p.m. (MDT)**

**IIC Twin Falls Field Office**  
**1411 Falls Avenue East, Suite 915**  
**Twin Falls, Idaho 83301**

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:

The Industrial Commission seeks to authorize and set forth conditions for the use of electronic fund transfers and access cards to pay benefits due to injured workers by self-insured employers.

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

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

**NEGOTIATED RULEMAKING:** 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 June 6, 2018 Idaho Administrative Bulletin, [Vol. 18-6, page 76](#).

**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, Benefits Administration Manager, (208) 334-6063.

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 24, 2018.

Dated this 28th day of August, 2018.

Mindy Montgomery, Director  
Industrial Commission  
700 S. Clearwater Lane  
P.O. Box 83720  
Boise, Idaho 83720-0041  
Phone: (208) 334-6000  
Fax: (208) 334-2321

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0211-1802**  
**(Only Those Sections With Amendments Are Shown.)**

**051. REQUIREMENTS FOR MAINTAINING IDAHO WORKERS' COMPENSATION CLAIMS FILES.**

All self-insured employers and licensed adjusters servicing Idaho workers' compensation claims shall comply with the following requirements: (4-7-11)

**01. Idaho Office.** All self-insured employers and licensed adjusters servicing Idaho workers' compensation claims shall maintain an office within the state of Idaho. The offices shall be staffed by adequate personnel to conduct business. The self-insured employer shall designate and require an Idaho licensed, resident adjuster to make decisions regarding claims pursuant to Section 72-305, Idaho Code. As staffing changes occur and, at least annually, the self-insured employer or licensed adjuster shall submit to the Industrial Commission Secretary the names of those authorized to make decisions regarding claims pursuant to Section 72-305, Idaho Code. Answering machines, answering services, or toll free numbers outside of the state will not suffice. (3-25-16)

**02. Claim Files.** All Idaho workers' compensation claim files shall be maintained within the state of Idaho in either hard copy or immediately accessible electronic format. Claim files shall include, but are not limited to: (4-7-11)

- a.** First Report of Injury and Claim for Benefits; (4-7-11)
- b.** Copies of bills for medical care; (4-7-11)
- c.** Copy of lost-time computations, if applicable; (4-7-11)

**d.** Correspondence reflecting reasons for any delays in payments (i.e., awaiting medical reports, clarification, questionable items on bills, etc.), the resolution of such delays and acceptance or denial of compensability; (4-7-11)

e. Employer's Supplemental Report; and (4-7-11)

f. Medical reports. (4-7-11)

**03. Correspondence.** All original correspondence involving adjusting decisions regarding Idaho workers' compensation claims shall be authorized from and maintained at in-state offices. (3-25-16)

**04. Date Stamp.** Each of the documents listed in Subsections 051.02 and 051.03 shall be date-stamped with the name of the receiving office on the day received, and by each receiving agent or vendor acting on behalf of the self-insured employer. (4-7-11)

**05. Notice and Claim.** All First Reports of Injury, Claims for Benefits, notices of occupational illnesses and fatalities shall be sent directly to the in-state adjuster or self-insured employer. The original copy of the First Report of Injury, Claim for Benefits and notices of occupational illness and fatality shall be sent directly to the Industrial Commission. (4-7-11)

**06. Compensation Payments – Generally.** ( )

**a.** All compensation, as defined by Section 72-102, Idaho Code, must be issued from the in-state office. (~~4-7-11~~) ( )

**b.** Except as ordered otherwise by the Commission, the self-insured employer may make compensation payments by either: ( )

**i.** Check or other readily negotiable instrument; ( )

**ii.** When requested by the claimant, electronic transfer to an account designated by the claimant in accordance with the requirements of Subsection 051.07 of this rule; or ( )

**iii.** When requested by the claimant, electronic transfer payments made through an access card; if that option is made available by the employer, in accordance with the requirements of Subsection 051.08 of this rule. ( )

**c.** If the claimant is represented by an attorney who may have an attorney's lien for fees due on such compensation payments, the attorney must agree to payment by electronic transfer to claimant's account or through an access card before such compensation may be paid other than by a check made payable to the claimant and the attorney. ( )

**07. Electronic Transfer Payments.** ( )

**a.** A claimant may request that the self-insured employer make compensation payments by electronic transfer to a personal bank account by providing the self-insured employer in writing: the name and routing transit number of the financial institution and the account number and type of account to which the claimant wants to have the compensation electronically transferred. The self-insured employer shall provide the claimant with a written form to fill out the information required by this subsection within seven (7) days of receiving a request for electronic transfer of payments from the claimant unless the claimant has already completed an on-line electronic form provided by the employer. ( )

**b.** The self-insured employer may make compensation payments to the claimant by electronic transfer to an account designated by the claimant if the claimant: ( )

**i.** Requests in writing that payment be made by electronic transfer; ( )

**ii.** Provides the information required by Paragraph 051.07.a. of this rule; and ( )

**iii.** Is reasonably expected to be entitled to receive compensation payments for a period of eight (8)

weeks or more from the point that Subparagraphs 051.07.a.i. and 051.07.a.ii. of this rule are satisfied. ( )

c. The self-insured employer shall initiate payment by electronic transfer starting with the first benefit payment due on or after the twenty-first day after all the requirements of Paragraph 051.07.b. of this rule are met, but shall continue to make timely payments by check until the self-insured employer initiates benefit payment delivery by electronic transfer. ( )

d. If the claimant has previously been receiving benefit payments by electronic transfer and wants to receive benefits by check, the self-insured employer shall initiate benefit payment delivery by check starting with the first benefit payment due to the claimant on or after the seventh day after receiving a written request for such payments. ( )

**08. Access Card Payments.** ( )

a. Access card means any card or other payment method that may be used by a claimant to initiate electronic fund transfer from a self-insured employer's bank account. The term "access card" does not include stored value cards or prepaid cards that store funds directly on the card and that are not linked to a self-insured employer's bank account. ( )

b. A self-insured employer may pay compensation through an access card to a claimant if there is written mutual agreement signed by the self-insured employer and the claimant. The self-insured employer shall maintain accurate records of the mutual agreement for, at a minimum, four hundred one (401) weeks from the date of injury. The written agreement shall contain an acknowledgment that the claimant received and agreed to the written disclosure required by Paragraph 051.08.d. of this rule. ( )

c. A self-insured employer providing compensation payments to a claimant through an access card shall: ( )

i. Permit the claimant to withdraw the entire amount of the balance of an access card in one (1) transaction; ( )

ii. Not reduce compensation payments paid to a claimant through an access card for the following fees, surcharges, and adjustments: ( )

(1) Overdraft services under which a financial institution pays a transaction (including a check or other item) when the claimant has insufficient or unavailable funds in the account; ( )

(2) ATM withdrawal or point of sale purchase for more than the card holds and the transaction is denied; ( )

(3) ATM balance inquiries; ( )

(4) Withdrawing money from network ATMs; ( )

(5) Withdrawing money from a teller; ( )

(6) Customer service calls; ( )

(7) Activating the card; ( )

(8) Fees for card inactivity; ( )

(9) Closing account; ( )

(10) Access card replacement through standard mail; ( )

(11) Withdrawing the entire payment in one (1) transaction; ( )

- (12) Point of sale purchases; or ( )
- (13) Any other fees or charges that are not authorized under Subparagraph 051.08.c.iii. of this rule; and ( )
- iii. Only permit a claimant to be charged for the following: ( )
- (1) Fees for access card replacement through an expedited mail service; ( )
- (2) International transaction fees; and ( )
- (3) Out-of-network ATM fees. ( )
- d.** Self-insured employers shall provide a written disclosure to the claimant contemporaneously with the written mutual agreement required under Paragraph 051.08.b. of this rule. The written disclosure shall include: ( )
- i. A summary of the claimant's liability for unauthorized electronic fund transfers; ( )
- ii. The telephone number and address of the person or office to be notified when the claimant believes that an unauthorized electronic fund transfer has been or may be made; ( )
- iii. The type of electronic fund transfers that the claimant may make and any limitations on the frequency of transfers; ( )
- iv. Any fees imposed for electronic fund transfers or for the right to make transfers, including a statement that fees may be imposed by an ATM operator that is out-of-network; ( )
- v. Fees for expedited card replacement or international transaction fees will be removed from the balance maintained in the bank account linked to the access card; ( )
- vi. A summary of the claimant's right to receipts and periodic statements; ( )
- vii. All bank locations and network ATMs in the United States where the claimant may access his or her funds at no cost; ( )
- viii. A statement informing the claimant that they have a right to receive payments directly into their personal bank account through direct deposit or by check. ( )
- e.** A self-insured employer shall provide the written disclosure and any notice of term or condition changes required under Subsection 051.08 of this rule that: ( )
- i. Are printed in not less than twelve (12) point font; ( )
- ii. Include the full text in English, Spanish, and any other language common to the claimant population; ( )
- iii. Are written in a clear and coherent manner and wherever practical, words with common and everyday meaning shall be used to facilitate readability; and ( )
- iv. Are appropriately divided and captioned in a meaningful sequence such that each section contains an underlined, boldfaced, or otherwise conspicuous title or caption at the beginning of the section that indicates the nature of the subject matter included in or covered by the section. ( )
- f.** An access card issued to a claimant under Subsection 051.08 of this rule; ( )

i. Shall not bear any information that could reasonably identify the claimant as a participant in the workers' compensation system; and ( )

ii. Shall include on the front or back of the access card a toll-free customer service number and website address. Customer service personnel shall be available by phone Monday through Friday during normal business hours (9:00 a.m. to 6:00 p.m. Mountain Time). ( )

g. The self-insured employer shall provide a written notice to the claimant at least twenty-one (21) days before the effective date of any change in a term or condition of the mutual agreement or disclosure, including terminating the access card program, increased fees, or liability for unauthorized electronic fund transfers. Any terms or conditions that violate the requirements of Subsection 051.08 of this rule are null and void and may result in administrative action against the employer. A self-insured employer shall provide a written notice of term or condition changes that: ( )

i. Provides a comparison of the current terms and the changes; and ( )

ii. References the claimant's ability to request a change in method of payment to electronic fund transfer to his or her personal bank account in accordance with Subsection 051.07 of this rule, or to payment by check. ( )

h. A self-insured employer may close the access card account by issuing a check to the claimant with the remaining balance of the access card if the account has been inactive for twelve (12) months or longer. ( )

i. The self-insured employer shall not remove money from the claimant's account or access card except to remove permitted fees under Subparagraph 051.08.c.iii. of this rule, or to close the account for inactivity of a period of twelve (12) months or more. A self-insured employer seeking to recoup overpayments shall follow the requirements of Section 72-316, Idaho Code. ( )

j. A self-insured employer is considered to have made a compensation payment the date the payment is available on the claimant's access card. ( )

**079. Checks and Drafts.** Checks must be signed and issued within the state of Idaho; drafts are prohibited. (4-7-11)

**a.** The Commission may, upon receipt of a written Application for Waiver, grant a waiver from the provisions of Subsections 051.06 and 051.07 of this rule to permit a self-insured employer to sign and issue checks outside the state of Idaho. (4-7-11)

**b.** An Application for Waiver must be accompanied by an affidavit signed by an officer or principal of the self-insured employer, attesting to the fact that the self-insured employer is prepared to comply with all statutes and rules pertaining to prompt payment of compensation. (4-7-11)

**c.** All waivers shall be effective from the date the Commission issues the order granting the waiver. A waiver shall remain in effect until revoked by the Industrial Commission. At least annually, staff of the Industrial Commission may review the performance of any self-insured employer for which a waiver under this rule has been granted to assure that the self-insured employer is complying with all statutes and rules pertaining to prompt payment of compensation. (4-7-11)

**d.** If at any time after the Commission has granted a waiver, the Commission receives information permitting the inference that the self-insured employer has failed to provide timely benefits to any claimant, the Commission may issue an order to show cause why the Commission should not revoke the waiver; and, after affording the self-insured employer an opportunity to be heard, may revoke the waiver and order the self-insured employer to comply with the requirements of Subsections 051.06 and 051.07 of this rule. (4-7-11)

**0810. Copies of Checks.** Copies of checks and/or electronically reproducible copies of the information contained on the checks must be maintained in the in-state files for Industrial Commission audit purposes. A copy of the first income benefit check, showing signature and date, shall be sent to the Industrial Commission the same day of

issuance. (3-25-16)

**1011.** **Prompt Claim Servicing.** Prompt claim servicing includes, but is not limited to: (4-7-11)

**a.** Making an initial decision to accept or deny a claim for an injury or occupational disease within thirty (30) days of the date the claims administrator receives knowledge of the same. The worker shall be given notice of that initial decision in accordance with Section 72-806, Idaho Code. Nothing in this rule shall be construed as amending the requirement to start payment of income benefits no later than four (4) weeks or twenty-eight (28) days from the date of disability under the provisions of Section 72-402, Idaho Code. (3-28-18)

**b.** Payment of medical bills in accordance with the provisions of IDAPA 17.02.09, Medical Fees, Sections 031, 032, 033, and 034. (4-7-11)

**c.** Payment of income benefits on a weekly basis, unless otherwise approved by the Commission. (4-7-11)

**i.** The first payment of income benefits under Section 72-408, Idaho Code, shall constitute application by the self-insured employer for a waiver to pay Temporary Total Disability (TTD) benefits on a bi-weekly basis, Temporary Partial Disability (TPD) benefits on other than a weekly basis, Permanent Partial Disability (PPD) benefits based on permanent impairment and Permanent Total Disability (PTD) benefits every twenty-eight (28) days, rather than on a weekly basis. (3-28-18)

**ii.** Such waiver application shall be granted upon receipt and remain in effect unless revoked by the Industrial Commission in accordance with Subparagraph 051.09.c.iii., below. (3-28-18)

**iii.** If at any time after a waiver has been granted pursuant to this section the Commission receives information permitting the inference that the self-insured employer has failed to service claims in accordance with Idaho law, or that such waiver has created an undue hardship on a claimant, the Commission may issue an order to show cause why the Commission should not revoke that waiver, and after affording the employer an opportunity to be heard, may revoke the waiver with respect to all or certain claimants and order the self-insured employer to comply with the requirements of Subsection 051.09.c. of this rule. (3-28-18)

**d.** Payment of the first Permanent Partial Disability (PPD) benefit based on permanent impairment no later than fourteen (14) days after receipt of the medical report providing the impairment rating. The first payment shall include payment of benefits retroactive to the date of medical stability. (3-28-18)

**e.** Temporary Partial Disability (TPD) payments shall be calculated using the employee's pay period, whether weekly, bi-weekly, or semi-monthly. For employees paid pursuant to any other schedule, TPD benefits shall be calculated semi-monthly. TPD payments owed for a particular pay period shall issue no later than seven (7) days following the date on which employee is ordinarily paid for that pay period. (3-28-18)

**102.** **Audits.** The Industrial Commission will perform periodic audits to ensure compliance with the above requirements. (4-7-11)

**143.** **Non-Compliance.** Non-compliance with the above requirements may result in the revocation of the authority of a self-insured employer to self-insure its workers' compensation obligations in the state of Idaho, or such lesser sanctions as the Industrial Commission may impose. (4-7-11)

## IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE

### 18.01.30 – INDIVIDUAL DISABILITY AND GROUP SUPPLEMENTAL DISABILITY INSURANCE MINIMUM STANDARDS RULE

DOCKET NO. 18-0130-1801

#### 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 41-4207, 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 17, 2018.

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

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

This rulemaking follows House Concurrent Resolution 45 adopted in 2018 and some meetings that have already occurred with the Department of Insurance. Health insurers have not covered hearing aids for children based on exclusionary language in this rule addressing the individual market. This rulemaking seeks to revise language related to exclusions for hearing aids so that hearing loss interventions will be covered with certain parameters. (This rule impacts individual insurance coverage; companion rulemaking will address the small group market in IDAPA 18.01.70.)

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, page 134](#). Public meetings were held July 23 and September 6, 2018.

**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 Weston Trexler at [weston.trexler@doi.idaho.gov](mailto:weston.trexler@doi.idaho.gov), or (208) 334-4315.

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 24, 2018.

Dated this 7th day of September, 2018.

Dean L. Cameron  
Director Idaho Department of Insurance  
700 W. State Street, 3rd Floor  
P.O. Box 83720  
Boise, ID 83702-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0130-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**011. PROHIBITED POLICY PROVISIONS.**

**01. Probationary or Waiting Period.** Except as provided in Subsection 004.10 pertaining to the definition of a preexisting condition, a policy shall not contain provisions establishing a probationary or waiting period during which no coverage is provided under the policy. Accident policies shall not contain probationary or waiting periods. (3-30-01)

**02. Additional Coverage as Dividend.** A policy or rider for additional coverage may not be issued as a dividend unless an equivalent cash payment is offered as an alternative to the dividend policy or rider. A dividend policy or rider for additional coverage shall not be issued for an initial term of less than six (6) months. (3-30-01)

**a.** The initial renewal subsequent to the issuance of a policy or rider as a dividend shall clearly disclose that the policyholder is renewing the coverage that was provided as a dividend for the previous term and that the renewal is optional. (3-30-01)

**03. Return of Premium or Cash Value Benefit.** A disability income policy, accident only policy, limited benefit policy, specified disease policy or hospital confinement indemnity policy may contain a “return of premium” or “cash value benefit” so long as the return of premium or cash value benefit is not reduced by an amount greater than the aggregate of claims paid under the policy, and the insurer demonstrates that the reserve basis for the policies is adequate. No other policy subject to this rule shall provide a return of premium or cash value benefit, except return of unearned premium upon termination or suspension of coverage, retroactive waiver of premium paid during disability, payment of dividends on participating policies, or experience rating refunds. (3-28-18)

**04. Federally Operated Hospital.** Policies providing hospital confinement indemnity coverage shall not contain provisions excluding coverage because of confinement in a hospital operated by the federal government. (3-30-01)

**05. Exclusions.** A policy shall not limit or exclude coverage by type of illness, accident, treatment or medical condition, except as follows: (3-30-01)

- a.** Preexisting conditions or diseases, except for congenital anomalies of a covered dependent child; (3-30-01)
- b.** Mental or emotional disorders, alcoholism and drug addiction; (3-30-01)
- c.** Pregnancy, except for complications of pregnancy; (3-30-01)
- d.** Illness, treatment or medical condition arising out of: (3-30-01)
  - i.** War or act of war (whether declared or undeclared); participation in a felony, riot or insurrections; service in the armed forces or units auxiliary to it; (3-30-01)
  - ii.** Suicide (sane or insane), attempted suicide or intentionally self-inflicted injury; (3-30-01)
  - iii.** Aviation; (3-30-01)
  - iv.** With respect to short-term nonrenewable policies, interscholastic sports; and (3-30-01)
  - v.** With respect to disability income protection policies, incarceration. (3-30-01)

**e.** Cosmetic surgery, except that “cosmetic surgery” shall not include reconstructive surgery when the service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part, and reconstructive surgery because of congenital disease or anomaly of a covered dependent child; (3-30-01)

**f.** Foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain or symptomatic complaints of the feet; (3-30-01)

**g.** Care in connection with the detection and correction by manual or mechanical means of structural imbalance, distortion, or subluxation in the human body for purposes of removing nerve interference and the effects of it, where the interference is the result of or related to distortion, misalignment or subluxation of, or in the vertebral column; (3-30-01)

**h.** Benefits provided under Medicare or other governmental program (except Medicaid), a state or federal worker’s compensation law, employers liability or occupational disease law, or motor vehicle no-fault law; services performed by a member of the covered person’s immediate family; and services for which no charge is normally made in the absence of insurance; (3-30-01)

**i.** Dental care or treatment; (3-30-01)

**j.** Eye glasses, ~~hearing aids~~, and examination for the prescription, or fitting of them; ~~(3-30-01)~~( )

**k.** Rest cures, custodial care, transportation, and routine physical examinations; ~~and (3-30-01)~~( )

**l.** Territorial limitations: ~~and (3-30-01)~~( )

**m.** Hearing aids, auditory osseointegrated (bone conduction) devices, cochlear implants and examination for or fitting of them, except for congenital or acquired hearing loss that without intervention may result in cognitive or speech development deficits of a covered dependent child, covering not less than one (1) device every thirty-six (36) months per ear with loss and not less than forty-five (45) language/speech therapy visits during the first twelve (12) months after delivery of the covered device. ( )

**06. Authority of Director to Disapprove.** Policy provisions precluded in Section 011 shall not be construed as a limitation on the authority of the Director to disapprove other policy provisions in accordance with Chapters 21, 22 and 42 of Title 41 of the Idaho Code, or that in the opinion of the Director are unjust, unfair or unfairly discriminatory to the policyholder, beneficiary or a person insured under the policy. (3-30-01)

## IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE

### 18.01.54 – RULE TO IMPLEMENT THE NAIC MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS MODEL ACT

DOCKET NO. 18-0154-1802

#### NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2018. The temporary rule will expire January 1, 2019.

**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 41-211 and 41-4409, Idaho Code.

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

Two years ago the rule was changed to allow a Medicare beneficiary who was under the age of 65 to buy a Medicare supplement policy within 6 months of qualifying for coverage effective January 1, 2018. As part of that rule change a six-month open enrollment period was included for those consumers who had previously been unable to buy a Medicare supplement policy. We did our best to inform the agent community, the carriers and the providers of this rule change. The six-month open enrollment began January 1st and ended June 30th, 2018. Recognizing that some Idahoans in this category were not aware of the change in Rule 54 that would benefit them by providing access to a Medicare Supplement policy, the Department would like to extend the open enrollment period.

**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:

Some Medicare beneficiaries under the age of 65 were unaware of the open enrollment period allowed from January 1 to June 30, 2018, during which they were eligible to purchase a Medicare supplement policy. This is largely because they had not been previously eligible to purchase a Medicare supplement policy until the rule changed effective in 2017. Secondly, because the previous open enrollment did not align with the part D prescription open enrollment, consumers were forced to choose between their existing plan and a Medicare supplement without prescription coverage. This temporary rule will provide an additional three-month period that more closely aligns with the ability to purchase a standalone Medicare part D plan, allowing Medicare beneficiaries under the age of 65 to be eligible to purchase a Medicare supplement policy.

**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: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Elaine Mellon (208) 334-4340 or Weston Trexler (208) 334-4315.

Dated this 28th day of September, 2018.

Dean L. Cameron  
Director Idaho Department of Insurance  
700 W. State Street, 3rd Floor  
P.O. Box 83720  
Boise, ID 83702-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 18-0154-1802  
(Only Those Sections With Amendments Are Shown.)**

**026. OPEN ENROLLMENT.**

**01. Offer of Coverage.** (3-29-17)

**a.** An issuer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this state, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six (6) month period beginning with:  
(3-29-17)

**i.** The first day of the first month in which an individual is both sixty-five (65) years of age or older and is enrolled for benefits under Medicare Part B. (3-29-17)

**ii.** January 1, 2018 or the first day of the first month of Medicare Part B eligibility due to disability or end stage renal disease, whichever is later, for an individual that is both under sixty-five (65) years of age and enrolled for benefits under Medicare Part B; or (3-29-17)

**iii.** The first day of the first month after the individual receives written notice of retroactive enrollment under Medicare Part B due to a retroactive eligibility decision made by the Social Security Administration. (3-29-17)

**b.** Each Medicare supplement policy and certificate currently available from an issuer shall be made available to all applicants who qualify under Paragraph 026.01.a. without regard to age. (3-29-17)

**c.** In addition, for an individual that is eligible for Medicare Part B who is both under sixty-five (65) years of age and enrolled for benefits under Medicare Part B, an issuer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this state, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care, or medication of an applicant in the case of an application for a policy or certificate that is submitted between October 1, 2018, and December 31, 2018, for effective dates between October 1, 2018 through February 1, 2019. (10-1-18)T

**02. Treatment of Preexisting Conditions.** (3-29-17)

**a.** If an applicant qualifies under Subsection 026.01 and submits an application during the time period referenced in Subsection 026.01 and, as of the date of application, has had a continuous period of creditable coverage of at least six (6) months, the issuer shall not exclude benefits based on a preexisting condition. (3-29-10)

**b.** If the applicant qualifies under Subsection 026.01 and submits an application during the time period referenced in Subsection 026.01 and, as of the date of application, has had a continuous period of creditable coverage that is less than six (6) months, the issuer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The Secretary of Health and Human Services shall specify the manner of the reduction under this Subsection. (3-29-10)

**c.** Except as provided in Paragraphs 026.02.a. and 02.b., and Sections 027 and 038, nothing in this rule shall be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificateholder received treatment or was otherwise diagnosed during the six (6) months before the coverage became effective. (3-29-17)

**03. Discrimination in Pricing.** An issuer shall not discriminate in the pricing of a Medicare supplement policy or certificate issued pursuant to Subsection 026.01, except on the basis of the following criteria:  
(3-29-17)

**a.** Issue age; and (3-29-17)

**b.** Smoking or tobacco use. (3-29-17)

**IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE**  
**18.01.70 – RULES GOVERNING SMALL EMPLOYER HEALTH INSURANCE**  
**AVAILABILITY ACT PLAN DESIGN**

**DOCKET NO. 18-0170-1801**

**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 41-4715, 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 17, 2018.

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

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

This rulemaking follows House Concurrent Resolution 45 adopted in 2018 and some meetings that have already occurred with the Department of Insurance. Health insurers have not covered hearing aids for children based on exclusionary language in this rule addressing the small group market. This rulemaking seeks to revise language related to exclusions for hearing aids so that hearing loss interventions will be covered within certain parameters. (This rule is a companion rule to that affecting the individual insurance market IDAPA 18.01.30.)

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, page 139](#). Public meetings were held July 23 and September 6, 2018.

**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 Weston Trexler at [weston.trexler@doi.idaho.gov](mailto:weston.trexler@doi.idaho.gov), or (208) 334-4315.

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 24, 2018.

Dated this 7th day of September, 2018.

Dean L. Cameron  
Director Idaho Department of Insurance  
700 W. State Street, 3rd Floor  
P.O. Box 83720  
Boise, ID 83702-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0170-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**016. LIMITATIONS AND EXCLUSIONS.**

A health benefit plan shall not limit or exclude coverage by type of illness, accident, treatment, or medical condition, except as follows: ( )

**01. Services Not Medically Necessary.** Excluded. Any service not medically necessary or appropriate unless specifically included within the coverage provisions. (1-25-95)

**02. No Coverage.** Custodial, convalescent or intermediate level care or rest cures. (1-25-95)

**03. Experimental or Investigational.** Services which are experimental or investigational. (1-25-95)

**04. Workers' Compensation, Medicare, CHAMPUS.** Services eligible for coverage by Workers' Compensation, Medicare or CHAMPUS. (1-25-95)

**05. No Charges.** Services for which no charges are made or for which no charges would be made in the absence of insurance or for which the insured has no legal obligation to pay. (1-25-95)

**06. No Medical Diagnosis.** Services for weight control, nutrition, and smoking cessation, including self-help and training programs as well as prescription drugs, used in conjunction with such programs and services. (7-1-98)

**07. Cosmetic Surgery.** Cosmetic surgery and services, except for treatment or surgery for congenital anomaly. Mastectomy reconstruction is covered as described in the Women's Health and Cancer Rights Act. (3-15-02)

**08. Artificial Insemination, Infertility, Sexual Dysfunction.** Artificial insemination and infertility treatment. Treatment of sexual dysfunction not related to organic disease. (1-25-95)

**09. Induced Infertility.** Services for reversal of elective, surgically or pharmaceutically induced infertility. (1-25-95)

**10. Vision.** Vision therapy, tests, glasses, contact lenses and other vision aids. Radial keratotomy, myopic keratomileusis and any surgery involving corneal tissue to alter or correct myopia, hyperopia or stigmatic error. Vision tests and glasses will be covered for children under the age of twelve (12), except in catastrophic health benefit plans. (7-1-98)

**11. Limitation Foot Care.** For treatment of weak, strained, or flat feet, including orthopedic shoes or other supportive devices, or for cutting, removal, or treatment of corns, calluses, or nails other than corrective surgery, or for metabolic or peripheral vascular disease. (7-1-98)

**12. Manipulative Therapy and Related Treatment.** Manipulative therapy and related treatment, including heat treatments and ultrasound, of the musculoskeletal structure for other than fractures and dislocations of the extremities will be subject to one thousand dollars (\$1,000) per year limit, subject to the policy deductible, co-insurance, or co-payment. (4-5-00)

**13. Dental, Orthodontic Services.** (7-1-98)

**a.** For Basic and Standard plans: Dental and orthodontic services, except those needed for treatment of a medical condition or injury or as specifically allowed in the policy for children under the age of twelve (12). (7-1-98)

- b. For Catastrophic plans: Dental care or treatment, except for injury sustained while insured under this policy, or as a result of nondental disease covered by the policy. (7-1-98)
14. **Hearing Tests.** Hearing tests without illness being suspect. (1-25-95)
15. **Hearing Aids, ~~Supplies~~.** Hearing aids, auditory osseointegrated (bone conduction) devices, cochlear implants and ~~supplies, tinnitus maskers, cochlear implants and exams~~ examination for ~~the prescription~~ or fitting of ~~hearing aids~~ them, except for congenital or acquired hearing loss that without intervention may result in cognitive or speech development deficits of a covered dependent child, covering not less than one (1) device every thirty-six (36) months per ear with loss and not less than forty-five (45) language/speech therapy visits during the first twelve (12) months after delivery of the covered device. (1-25-95)( )
16. **Speech Tests.** Speech tests and therapy except as specifically allowed in the policy for children under the age of twelve (12). (1-25-95)
17. **Private Room Accommodation Charges.** Private room accommodation charges in excess of the institution's most common semi-private room charge except when prescribed as medically necessary. (1-25-95)
18. **Services Performed by a Member of the Insured's Family.** Services performed by a member of the insured's family or of the insured's spouse's family. Family includes parents or grandparents of the insured or spouse and any descendants of such parents or grandparents. (1-25-95)
19. **No Coverage Prior to Effective Date of Coverage.** Care incurred before the effective date of the person's coverage. (1-25-95)
20. **Covered Injury or Disease.** Immunizations and medical exams and tests of any kind not related to treatment of covered injury or disease, except as specifically stated in the policy. (1-25-95)
21. **Act of War or Armed Conflict.** Injury or sickness caused by war or armed international conflict. (1-25-95)
22. **Operation and Treatment, Sexual Change.** Sex change operations and treatment in connection with transsexualism. (1-25-95)
23. **Counseling.** Marriage and family and child counseling except as specifically allowed in the policy. (1-25-95)
24. **Acupuncture.** (7-1-98)
- a. For Basic and Standard plans: Acupuncture except when used as anesthesia during a covered surgical procedure. (7-1-98)
- b. For Catastrophic plans: Acupuncture. (7-1-98)
25. **Private Duty Nursing.** Private duty nursing except as specifically allowed in the policy. (1-25-95)
26. **Employer Maintained Medical or Dental Care.** Services received from a medical or dental department maintained by or on behalf of an employer, a mutual benefit association, labor union, trust, or similar person or group. (1-25-95)
27. **Termination.** Services incurred after the date of termination of a covered person's coverage except as allowed by the extension of benefits provision of the policy, if any. (7-1-98)
28. **Personal Convenience Items.** Expenses for personal hygiene and convenience items such as air conditioners, humidifiers, and physical fitness equipment. (1-25-95)

- 29. Failure to Keep a Scheduled Visit.** Charges for failure to keep a scheduled visit, charges for completion of any form, and charges for medical information. (1-25-95)
- 30. Screening Examinations.** Charges for screening examinations except as otherwise provided in the policy. (1-25-95)
- 31. No Allowance.** Charges for wigs or cranial prostheses, hair analysis, hair loss and baldness. (1-25-95)
- 32. Preexisting Conditions.** Pre-existing conditions, except as provided specifically in the policy. (1-25-95)

**IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES**  
**24.03.01 – RULES OF THE STATE BOARD OF CHIROPRACTIC PHYSICIANS**  
**DOCKET NO. 24-0301-1801**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-707, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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

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

The Board of Chiropractic Physicians' proposed rules will allow the Board to consider current qualifications for applicants applying by endorsement. This change would allow the Board to not require all endorsement applicants to take and pass the National Board Special Purposes Examination for Chiropractors (SPEC). The rules clarify the procedure to put a license into inactive status, to renew it, and to return it to active status in alignment with the 2017 amendments to the Chiropractic Practice Act, and establish a reinstatement fee.

The rule includes a procedure for reissuance of a clinical nutrition certification when an inactive license is reactivated. Continuing education options for licensees are improved by expanding distance learning opportunities and by adding a carryover option and hardship waiver. An outdated requirement that the Board approve new schools of chiropractic is removed as unnecessary, along with a rulemaking history.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes to these rules were discussed during noticed, open meetings of the Board.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jennifer Carr 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 24, 2018.

Dated this 29th day of August, 2018.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
700 W. State Street  
P.O. Box 83720  
Boise, ID 83720  
Phone: (208) 334-3233  
Fax: (208) 334-3945

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-0301-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**100. APPLICATIONS (RULE 100).**

**01. Application.** Applications on forms furnished by the Bureau of Occupational Licenses must be accompanied by an unmounted passport photograph taken within the twelve (12) months preceding the date of application. (3-15-02)

**02. Qualifications.** (7-1-93)

**a.** New applicants will meet the following requirements: (7-1-93)

i. National Boards Parts I, II, III, and IV. (7-1-99)

ii. Graduation from a CCE approved college or university. (7-1-93)

iii. Applicants will be required to sign an affidavit swearing under oath that they have fully reviewed and understand and will abide by the Chiropractic Act, Title 54, Chapter 7, Idaho Code, and the Board's Rules, IDAPA 24, Title 03, Chapter 01, "Rules of the State Board of Chiropractic Physicians." (7-1-99)

**b.** Endorsement applicants will meet the following requirements: (7-1-93)

i. Successful passage of the National Boards Parts which were in effect at the time of graduation from chiropractic college and physiotherapy. (4-2-08)

ii. If licensed prior to January, 1980, CCE approved college or university not required. If licensed after January, 1980, applicant must have graduated from a CCE approved college or university. (7-1-93)

iii. Five (5) years of consecutive practice without discipline immediately prior to application ~~in~~ another state without discipline and holds a current, valid license to practice in a state, territory, or district of the United States or Canada. (4-2-08)( )

iv. Applicants must demonstrate that they possess the requisite qualifications to provide the same standard of chiropractic care as provided by physicians in this state. The Board may, in its sole discretion, require further examination to establish such qualifications, such as passage of the National Board Special Purposes Examination for Chiropractors (SPEC). (7-1-99)( )

v. Applicants will be required to sign an affidavit swearing under oath that they have fully reviewed and understand and will abide by the Chiropractic Act, Title 54, Chapter 7, Idaho Code, and the Board's Rules, IDAPA 24, Title 03, Chapter 01, "Rules of the State Board of Chiropractic Physicians." (7-1-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**250. RENEWAL OR REINSTATEMENT OF LICENSE (RULE 250).**

**01. Expiration Date.** All chiropractic licenses expire and must be renewed annually in accordance with Section 67-2614, Idaho Code. Licenses not so renewed will be canceled. (5-3-03)

**02. Reinstatement.** Any license canceled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code, with the exception that the reinstatement fee shall be two hundred fifty dollars (\$250)

and the applicant shall submit proof of having met the required continuing education for the year of reinstatement. (5-3-03)

**03. Canceled License.** A licensee ~~that~~ whose license has been canceled for a period of more than five (5) years may ~~be re-issued~~ apply for a new license in accordance with section 67-2614, Idaho Code. ~~(5-3-03)~~( )

**251. -- 299. (RESERVED)**

**300. ~~RENEWAL REQUIREMENT~~ INACTIVE LICENSE (RULE 300).**

A licensee holding a current active license in this state who is not practicing chiropractic in this state may be issued an inactive license in accordance with Section 54-708(2), Idaho Code, as follows: ( )

- ~~01. Active Status. Each renewal application must be accompanied by:~~ (7-1-93)
  - ~~a. The established fee; and~~ (7-1-93)
  - ~~b. Certification of having attended and completed a minimum of twelve (12) hours of scientific clinics, forums, or chiropractic study within the previous twelve (12) months, as approved by the Idaho Board of Chiropractic Physicians. Effective January 1, 2009, certification of having attended and completed a minimum of eighteen (18) hours of scientific clinics, forums, or chiropractic study within the previous twelve (12) months, as approved by the board.~~ (4-2-08)

**021. Inactive Status.** Each application for an Inactive status license must be accompanied by: (3-15-02)

- a. The established fee; and (3-15-02)
- b. A written request application to change a current active license to an inactive license. ~~(3-15-02)~~( )
- c. An inactive license shall be issued for one (1) year. ( )

~~03. Waiving Continued Education Requirements. All continued education requirements will be waived for any year or portion thereof that a licensee maintains an inactive license and is not actively practicing in Idaho. Inactive license renewal notices and licenses will be marked "Inactive." When the licensee desires active status, he must show acceptable fulfillment of continuing educational requirements for the current year and submit a fee equivalent to the difference between the inactive and active renewal fee. The continuing educational requirement and the fees will not be prorated for a partial year.~~ (3-15-02)

**02. Inactive License Status Renewal.** ( )

a. An inactive license must be renewed annually by submitting the established fee and renewal application. Inactive licenses not renewed will be cancelled. ( )

b. An inactive license cancelled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code, with the exception that the reinstatement fee shall be one hundred fifty dollars (\$150). ( )

c. Inactive license renewals and licenses will be marked "inactive." ( )

d. An inactive license holder may not practice in Idaho while on inactive status. ( )

e. 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. ( )

**03. Return to Active Status of License Inactive for Five (5) or Fewer Years.** An inactive license holder whose license has been inactive for five (5) or fewer years may convert from inactive to active license status by: ( )

- a. Making written application to the Board on a form prescribed by the Board; ( )
- b. Providing documentation to the Board showing successful completion within the previous twelve (12) months of the continuing education requirements for renewal of an active license; and ( )
- c. Paying a fee equivalent to the difference between the current inactive fee and the active renewal fee. ( )

**04. Return to Active Status of License Inactive for More Than Five (5) Years.** An inactive license holder whose license has been inactive for more than five (5) years may convert from inactive to active license status by; ( )

- a. Making written application to the Board on a form prescribed by the Board. ( )
- b. Providing an account to the Board for that period of time during which the license was inactive and fulfilling requirements that demonstrate competency to resume practice. Those requirements may include, but are not limited to, education, supervised practice, and examination as determined by the Board. The Board may consider practice in another jurisdiction in determining competency. ( )
- c. Paying a fee equivalent to the difference between the current inactive fee and the active renewal fee. ( )

**05. Clinical Nutrition Certificate Expires.** If a licensee holds a clinical nutrition certificate and places their license on inactive status, the clinical nutrition certificate is immediately cancelled as though the license was not timely renewed as provided in Section 703 of these rules. ( )

**06. Reissuance of Clinical Nutrition Certificate.** An inactive license holder who held a clinical nutrition certificate at the time their license was placed on inactive status who returns to active license status pursuant to this rule may be reissued a clinical nutrition certificate by showing proof of compliance with the provisions of Sections 704, 705, and 706 that apply to their situation. ( )

**301. -- 349. (RESERVED)**

**350. CONTINUING EDUCATION (RULE 350).**

All licensees must comply with the following continuing education requirements; ( )  
*In order to further protect the public health and to facilitate the administration of the Chiropractic Act, the board has formulated the following rules:* (7-1-93)

**01. ~~Subject Material Requirement.~~** The subject material of the continuing education requirement shall be germane to the practice of chiropractic and either: Applicants for renewal shall be required to complete a minimum of eighteen (18) hours of continuing education within the preceding twelve (12) months, as approved by the Board. (3-15-02)( )

a. ~~Sponsored by an approved school of chiropractic; or~~ Continuing education credit will only be given for actual time in attendance or for the time spent participating in the educational activity. (3-15-02)( )

b. ~~Otherwise approved by the board~~ The educational setting may include a classroom, conference/ seminar, on-line, a virtual classroom or home study. (3-15-02)( )

c. ~~"Germane to the practice of chiropractic"~~ shall be limited to Section 54-704(1), Idaho Code If the licensee completes two (2) or more courses having substantially the same content during any one (1) renewal period, the licensee only will receive continuing education credit for one (1) of the courses. (3-15-02)( )

**02. ~~Verification of Attendance Documentation.~~** 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 applicant. This verification shall be maintained by the licensee and provided to the Board upon the request of the Board or its agent Each licensee shall

maintain documentation verifying continuing education attendance and curriculum for a period of five (5) years from the date of completion. This documentation will be subject to audit by the Board. (3-15-02)( )

a. Documented evidence of meeting the continuing education requirement shall be in the form of a certificate or letter from the sponsoring entity that includes verification of attendance by the licensee, the title of the activity, the subject material covered, the dates and number of hours credited, and the presenter's full name and professional credentials. ( )

b. A licensee must submit the verification documentation to the Board if requested by the Board. In the event a licensee fails to provide the Board with acceptable documentation of the hours attested to on the renewal application, the licensee may be subject to disciplinary action. ( )

~~03. **Distance Learning and Home Study Waiver.** The board may approve a course of study for continuing education credit that does not include the actual physical attendance of the applicant in a face to face setting with the course instructor. Distance Learning or Home Study courses shall be eligible for continuing education credits if sponsored by an approved school of chiropractic or upon approval by the board. Licensee shall not accumulate more than six (6) continuing education hours per renewal period from distance learning or home study. The Board may waive the requirements of this rule for reasons of individual hardship including health or other good cause. The licensee should request the waiver in advance of renewal and must provide any information requested by the Board to assist in substantiating hardship cases. This waiver is granted at the sole discretion of the Board.~~ (4-2-08)( )

~~04. **Requests for Approval Carryover of Continuing Education Hours.** All requests for approval or pre-approval of educational programs must be made to the board in writing, and must be accompanied by a statement that includes the name of the instructor or instructors, the date and time and location of the course, the specific agenda for the course, the number of continuing education credit hours requested, and a statement of how the course is believed to be pertinent to the practice of chiropractic. Continuing education hours not claimed in the current renewal year may be claimed in the next renewal year. Hours may be carried forward from the immediately preceding year, and may not be carried forward more than one renewal year.~~ (3-15-02)( )

05. **Exemption.** A licensee is exempt from the continuing education requirements under this section for the period between the initial issuance or the original license and the first expiration date of that license. ( )

**351. APPROVAL OF CONTINUING EDUCATION COURSES (RULE 351).**

01. **Approved Continuing Education Courses.** Approved continuing education courses shall be those courses, programs, and activities that are germane to the practice of chiropractic, as defined in Sections 54-704(1) and (2), Idaho Code, and meet the general requirements and content requirements of these rules, and are approved, sponsored, or provided by the following entities or organizations, or otherwise approved by the Board: ( )

a. Council of Chiropractic Education (CCE) approved chiropractic college or university, a college or university accredited by a nationally recognized accrediting agency as recognized by the United States Secretary of Education or an educational program approved by the Board; ( )

b. Providers of Approved Continuing Education (PACE); ( )

c. National and state chiropractic associations; and ( )

d. **Provider Course Approval.** Other courses that may be approved by the Board based upon documentation submitted by a continuing education provider. Requests for approval of courses made by the provider must be submitted on a form approved by the Board that includes: ( )

i. The nature and subject of the course and how it is germane to the practice of chiropractic; ( )

ii. The name of the instructor(s) and their qualifications; ( )

iii. The date, time and location of the course; ( )

- iv. The specific agenda for the course; ( )
- v. The number of continuing education hours requested; ( )
- vi. The procedures for verification of attendance; and ( )
- vii. Other information as may be requested by the Board. ( )
- viii. Upon review of all information requested, the Board may deny any request for a course that does not meet the requirements of Idaho law or rule. Board approval of a course shall be granted for a period not to exceed two (2) years or until the course materials or instructors are changed, whichever may occur first. ( )

**02. Licensee Course Approval.** Other courses that may be approved by the Board based upon documentation submitted by the licensee. All requests for approval must be made to the Board in writing and include the nature and subject of the course and its relevancy to the practice of chiropractic, name of instructor(s) and their qualifications, date, time and location of the course, and procedures for verification of attendance. ( )

~~357~~2. -- 399. (RESERVED)

**400. APPROVED SCHOOLS OF CHIROPRACTIC (RULE 400).**

**01. Requirement for Approval. (7-1-93)**

a. The Idaho Board of Chiropractic Physicians will consider only that school or college or university of chiropractic as a reputable school, college or university of chiropractic in good standing if such school, college or university conforms to the requirements of "recognized candidate for accreditation," or "accredited" of the Council of Chiropractic Education or any foreign country college which meets equivalent standards as determined by the Idaho Board of Chiropractic Physicians and teaches accredited courses in all the subjects set forth in Section 54-709(1)(b), Idaho Code. (7-1-93)

b. Regardless of the Council on Chiropractic Education status, the Board may make additional requirements for approval as a reputable school, college or university of Chiropractic. (7-1-93)

**02. New Schools.** Those graduates of new schools of chiropractic will only be accepted for licensure application provided the school reaches "recognized candidate for accreditation" status with the Council on Chiropractic Education within one year following the first graduating class ~~and are approved by the Idaho Board of Chiropractic Physicians.~~ (7-1-93)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

~~601. RULEMAKING HISTORY PRIOR TO JULY 1, 1993 (RULE 601).~~

~~Supersedes Rules adopted September 7, 1977  
Authority Chapter 7, Title 54, Idaho Code, July 1, 1980  
Adopted Under Emergency Provisions, June 10, 1982  
Final Adoption, August 21, 1982  
As Amended December 21, 1987  
Effective January 11, 1988  
Adopted Under Emergency Provisions, March 29, 1993  
Adopted Under Temporary Provisions, July 1, 1997 (7-1-98)~~

~~602~~1. -- 604. (RESERVED)

## IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

### 24.05.01 – RULES OF THE BOARD OF DRINKING WATER AND WASTEWATER PROFESSIONALS

DOCKET NO. 24-0501-1801

#### 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 17, 2018.

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 has been working with the Idaho Rural Water Association, Workforce Development Council, Career Technical Education, and the Department of Environmental Quality to address workforce issues. This proposed rule is a result of that collaboration and will confer a benefit to applicants and licensees by reducing barriers to employment and providing additional pathways to licensure.

The proposed rule allows the Board to approve apprenticeship programs which provides an opportunity for individuals to obtain experience and education to qualify for a Class II or Class III license in less time. It lowers the number of semester credit hours, which are considered equivalent to one (1) year, from thirty-five (35) to thirty (30) hours, and increases the continuing education course approval period from two (2) to five (5) years, saving course providers time and money. The rule also clarifies one (1) year of experience. Finally, the rule deletes obsolete language regarding the wastewater grandparent provision and removes language regarding Operator-in-Training covered in other subsections of these rules.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes to these rules were discussed during noticed, open meetings of the Board.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jennifer Carr 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 24, 2018.

Dated this 29th day of August, 2018.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
700 W. State Street  
P.O. Box 83720  
Boise, ID 83720  
Phone: (208) 334-3233  
Fax: (208) 334-3945

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-0501-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**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 or on-call presence at the specific facility. (3-21-12)
- 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~~ based upon a minimum of 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. (3-21-12)
- 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)
- 11. 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)
- 12. 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)
- 13. 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. (3-21-12)

**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. (3-21-12)

**16. 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. (3-21-12)

**18. Very Small Public Drinking Water System.** A community or non-transient non-community 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). (3-21-12)

**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: (3-21-12)

- a.** Aerated lagoons: (3-21-12)
- b.** Non-aerated lagoon(s); (3-21-12)
- c.** Primary treatment; or (3-21-12)
- d.** Primary treatment discharging to a large soil absorption system (LSAS). (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**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%). (3-21-12)

**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 Requirements.** Documentation must be provided showing proof of education required for the type and level of license being sought. (3-21-12)

**03. Experience Requirement.** 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. Applicants shall not receive more than one (1) year of experience for hours worked in excess of one thousand six hundred (1,600) hours in a calendar year unless specifically approved by the Board based upon documentation submitted by the Applicant. (~~3-21-12~~)( )

**04. Apprenticeship Program.** The Board may approve Apprenticeship Programs that are designed to provide either experience or experience and education for individuals seeking licensure in Idaho as an Operator-In-Training, or a Class I, II or III Water or Wastewater Operator. A basic Apprenticeship Program is designed to provide hands on experience and education related to the operation of Class I and II facilities. An advanced Apprenticeship Program is designed to provide hands on experience and education related to Class III facilities. All approved Apprenticeship Programs shall be registered with the U.S. Department of Labor, Office of Apprenticeship, meet the Standards of Apprenticeship developed by the U.S. Department of Labor and meet the intent of these rules regarding the education and experience necessary for Operator-In-Training, Class I, II and III licensure. Sponsors of Apprenticeship Programs shall seek Board approval by application along with all supporting documentation necessary to establish the program meets the intent of these rules regarding education and experience. The Board may revoke the approval of any program that fails to comply with the Board's rules. ( )

**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: (3-21-12)

**01. Education.** Possess a high school diploma or GED; and (3-21-12)

**02. Examination.** Pass the relevant Class I examination or be enrolled in an Apprenticeship Program approved by the Board. (~~3-21-12~~)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**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: (3-21-12)

**01. Education.** Possess a high school diploma or GED; and (3-21-12)

**02. Experience.** Document one (1) year of acceptable relevant on-site operating experience at a Class I or higher system or successfully complete one (1) year of an Approved Apprenticeship Program; and (~~3-21-12~~)( )

**03. Examination.** Pass the relevant Class I examination. (3-21-12)

~~**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. (3-21-12)~~

**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: (3-21-12)

**01. Education.** Possess a high school diploma or GED; and (3-21-12)

**02. Experience.** Document three (3) years of acceptable relevant on-site operating experience at a Class I or higher system or successfully complete an Approved Apprenticeship Program; and ~~(3-21-12)~~( )

**03. Examination.** Pass the relevant Class II examination. (3-21-12)

**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: (3-21-12)

**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 (3-21-12)

**02. Experience.** Document four (4) years of acceptable relevant on-site operating experience, including two (2) years of responsible charge of a major segment of a system in the same or next lower class, of a Class I or higher system for collection or distribution or Class II or higher system for treatment or successful completion of an Approved Apprenticeship Program; and ~~(3-25-16)~~( )

**03. Examination.** Pass the relevant Class III examination. (3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**375. SUBSTITUTIONS (RULE 375).**

**01. Substituting Education for Experience.** Applicants may substitute approved education for operating and responsible charge experience as specified below. (3-21-12)

**a.** No substitution for on-site operating experience shall be permitted for licensure as a very small system operator or a Class I operator. (3-21-12)

**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. (3-21-12)

**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. (3-21-12)

**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. (3-21-12)

e. Education substituted for on-site operating experience may not be also credited toward the education requirement. (3-21-12)

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. (3-21-12)

**02. Substituting Experience for Education.** Where applicable, approved on-site operating and responsible charge experience may be substituted for education as specified below: (3-21-12)

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. (3-21-12)

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. (3-21-12)

**03. Substituting Experience for Experience.** Related experience may be substituted for experience up to one-half (1/2) of the operating experience requirement for Class II, III and IV. Experience that may be substituted includes, but is not limited to, the following: (3-21-12)

a. Experience as an environmental or operations consultant; (3-21-12)

b. Experience in an environmental or engineering branch of federal, state, county, or local government; (3-21-12)

c. Experience as a wastewater collection system operator; (3-21-12)

d. Experience as a wastewater treatment plant operator; (3-21-12)

e. Experience as a water distribution system operator and/or manager; (3-21-12)

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. (3-21-12)

g. Experience in waste treatment operation and maintenance. (3-21-12)

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. (3-21-12)

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. (3-21-12)

**04. Equivalency Policy.** Substitutions for education or experience requirements needed to meet minimum requirements for license will be evaluated upon the following equivalency policies: (3-21-12)

a. High School - High School diploma equals GED or equivalent as approved by the Board equals four (4) years. (3-21-12)

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). (3-21-12) ( )

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.

(3-21-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**450. WASTEWATER GRANDPARENT PROVISION (RULE 450).**

The board issued grandparent licenses to wastewater operators who provided documentation satisfactory to the board of being in responsible charge of an existing public wastewater system on or before April 15, 2006. ~~Grandparent licenses for drinking water operators and backflow assembly testers shall not be issued.~~ (3-21-12)(    )

**01. Grandparent License.** A grandparent license ~~shall~~ allow ~~ed~~ the licensee to operate in responsible charge ~~only~~ of the specific facility identified in the original application. The license ~~shall be~~ **is** site specific and non-transferable and ~~shall~~ **does** not grant authority for the holder to practice at any other system in any capacity as an operator. (3-21-12)(    )

~~02. Application Limitations. The board must receive all applications for a grandparent license no later than April 15, 2006. The provisions for allowing the Board to issue grandfather licenses has expired.~~ (3-21-12)

~~03.2. License Requirements.~~ A grandparent licensed wastewater operator is required to meet all other requirements including the continuing education and renewal requirements. (3-21-12)

~~04.3. 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)

**451. -- 499. (RESERVED)**

**500. CONTINUING EDUCATION (RULE 500).**

In order to further protect the health, safety and welfare of Idaho's public, and to facilitate the continued competence of persons licensed under the drinking water and wastewater professionals licensing act, the Board has adopted the following rules for continuing education. (3-24-05)

**01. Continuing Education Requirement.** Each licensee must successfully complete a minimum of six (6) hours (0.6 CEUs) of approved continuing education annually for license renewal, except that backflow assembly testers shall complete an eight (8) hour refresher course every two (2) years for license renewal. Continuing education must be earned in a subject matter relevant to the field in which the license is issued. A licensee holding one (1) or more drinking water license(s) shall be required to meet the annual continuing education requirement for only one license. A licensee holding one (1) or more wastewater license(s) shall be required to meet the annual continuing education requirement for only one license. A licensee holding both drinking water and wastewater class licenses must complete a minimum of six (6) hours annually for the drinking water license plus six (6) hours annually for the wastewater license. (3-30-06)

**a.** Each licensee shall submit to the Board an annual license renewal application form, together with the required fees, certifying by signed affidavit that compliance with the CE requirements have been met. The Board may conduct such continuing education audits and require verification of attendance as deemed necessary to ensure compliance with the CE requirements. (3-24-05)

**b.** A licensee shall be considered to have satisfied their CE requirements for the first renewal of their license. (3-24-05)

**c.** A water or wastewater licensee may carryover a maximum of six (6) hours of continuing education to meet the next year's continuing education requirement. The same hours may not be carried forward more than one (1) renewal cycle. (3-24-05)

**d.** Continuing Education hours for approved operator training courses, seminars, related college courses, and other training activities may be converted to Continuing Education Units (CEU) as follows: Six (6) classroom hours = point six (0.6) CEU. (3-24-05)

**02. Subject Material.** The subject material of the continuing education requirement shall be relevant to the license for which the continued education is required. "Relevant" shall be limited to material germane to the operation, maintenance and administration of drinking water and wastewater systems as referenced in Chapter 24, Title 54, Idaho Code, and includes those subjects identified in the "need to know" criteria published by the Associations of Boards of Certification. (3-30-06)

**03. Course Approval.** All course providers must submit requests for approval of continuing education courses to the Board in writing no less than thirty (30) days prior to the course being offered, on a form approved by the Board that includes: (3-30-06)

- a.** The name and qualifications of the instructor or instructors; (3-24-05)
- b.** The date, time and location of the course; (3-24-05)
- c.** The specific agenda for the course; (3-24-05)
- d.** The type and number of continuing education credit hours requested; (3-24-05)
- e.** A statement of how the course is believed to be relevant as defined; (3-24-05)
- f.** Any certificate of approval from a governmental agency if the course has been previously approved for continuing education; (3-30-06)
- g.** The training materials; (3-24-05)
- h.** Other information as may be requested by the Board. (3-24-05)
- i.** Upon review of all information requested, the Board may either approve or deny any request for a course. Board approval of a course shall be granted for a period not to exceed ~~two (2)~~ five (5) years or until the course materials or instructors are changed. ~~(3-30-06)~~ ( )

**04. Approved Courses.** Those continuing education courses which are relevant and approved by the states of Nevada, Oregon, Montana, Utah, Wyoming, and Washington are deemed approved by the Board. (2-26-08)

**05. 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 and provided upon request of the Board or its agent. (3-24-05)

**06. Distance Learning and Independent Study.** The Board may approve a course of study for continuing education credit that does not include the actual physical attendance of the licensee in a face-to-face setting with the course instructor. The licensee shall maintain documentation of the nature and details of the course and evidence that the licensee successfully completed the course, which shall be made available to the Board upon request. (3-30-06)

**07. 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. (3-24-05)

**08. Exemptions.** The Board may waive the continuing education requirement or extend the deadline up to ninety (90) days for any one or more of the following circumstances. The licensee must request the exemption

and provide any information requested to assist the Board in making a determination. An exemption may be granted at the sole discretion of the Board. (3-30-06)

**a.** The licensee is a resident of another jurisdiction recognized by the Board having a continuing professional education requirement for licensure renewal and has complied with the requirements of that state or district. (3-24-05)

**b.** The licensee is a government employee working outside the continental United States. (3-24-05)

**c.** The licensee documents individual hardship, including health (certified by a medical doctor) or other good cause. (3-24-05)

**501. -- 599. (RESERVED)**

**600. RENEWAL OR REINSTATEMENT OF LICENSE (RULE 600).**

**01. Expiration Date.** All licenses expire and must be renewed annually on forms approved by the Board in accordance with Section 67-2614, Idaho Code. Licenses not so renewed will be cancelled in accordance with Section 67-2614, Idaho Code. (3-24-05)

**02. Reinstatement.** Any license cancelled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code, with the exception that the applicant shall submit proof of having completed the total number of required continuing education for each year the license or certificate was cancelled. (2-26-08)

**03. Operator-in-Training License.** Applicants for the operator-in-training license shall, upon compliance with the requirements of Subsections 300.01 and 300.02, be issued a "one-time" non-renewable license for the purpose of gaining supervised experience as an operator-in-training (OIT). This license will be valid for three (3) years from the date of issue. ~~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) ( )

**04. Backflow Assembly Testers.** Backflow assembly testers shall complete a Board-approved eight (8) hour refresher course every two (2) years for license renewal. (3-30-06)

**05. Wastewater Land Application License.** Wastewater land application licenses shall not be renewed unless the licensee also maintains a current wastewater treatment license. (3-30-06)

## **IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES**

### **24.06.01 – RULES FOR THE LICENSURE OF OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS**

**DOCKET NO. 24-0601-1801**

#### **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 54-3715, 54-3717, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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

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

The current rules regarding supervision of occupational therapy assistants, limited permit holders, and aides are complex and have been a consistent source of questions for licensees. This proposed rule will reduce confusion for licensees and applicants, provide more flexibility for supervisors, remove outdated language, and better organize the rules on supervision and recordkeeping. This rule also updates language in the application section, updates the Code of Ethics to reflect current terminology, and adds a section that specifies the factors that the Board will consider when reviewing an applicant with criminal or disciplinary history.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed rule was discussed and decided upon during noticed, open meetings of the Board and in stakeholder meetings with members of the national and state associations.

**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 Jennifer Carr 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 24, 2018.

Dated this 30th Day of August, 2018.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
700 W. State Street  
P.O. Box 83720  
Boise, ID 83720  
Phone: (208) 334-3233  
Fax: (208) 334-3945

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-0601-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**010. DEFINITIONS.**

- ~~01.~~ ~~Association.~~ ~~The Idaho Occupational Therapy Association.~~ (1-5-88)
- ~~02~~**1.** **Board.** The Occupational Therapy Licensure Board of Idaho. (1-5-88)
- ~~03~~**2.** **Bureau.** The Idaho Bureau of Occupational Licenses. (7-1-09)
- 03.** **Clients.** Clients are those persons to whom occupational therapy services are delivered. ( )
- 04.** **Client-Related Tasks.** Client-related tasks are routine tasks during which the aide may interact with the client but does not act as a primary service provider of occupational therapy services. The following factors must be present when an occupational therapist or occupational therapy assistant assigns a selected client-related task to the aide: ( )
- a.** The outcome of the assigned task is predictable; ( )
- b.** The situation of the client and the environment is stable and will not require that judgment, interpretations, or adaptations be made by the aide; ( )
- c.** The client has demonstrated some previous performance ability in executing the task; and ( )
- d.** The task routine and process have been clearly established. ( )
- 05.** **Direct Line-of-Site Supervision.** Direct line-of-sight supervision requires the supervisor's physical presence and immediate availability at the site when services are being provided to clients by the individual under supervision. ( )
- 06.** **Direct Supervision.** Direct supervision requires daily, in-person contact by the supervisor at the site where services are provided to clients by the individual under supervision. ( )
- 07.** **Evaluation.** Evaluation is the process of obtaining and interpreting data necessary for treatment, which includes, but is not limited to, planning for and documenting the review, specific observation, interviewing, and administering data collection procedures, which include, but are not limited to, the use of standardized tests, performance checklists, and activities and tasks designed to evaluate specific performance abilities. ( )
- 08.** **General Supervision.** General Supervision requires in-person or synchronous interaction at least once per month by an occupational therapist and contact by other means as needed. Other means of contact include, but are not limited to, electronic communications such as email. ( )
- ~~09~~**9.** **Good Standing.** The individual's license, certification, or registration is not currently suspended or revoked by any state regulatory entity. (3-29-10)
- 10.** **Limited Permit Holder.** A person who has completed the education and experience requirements of Section 54-3706(1) and (2), Idaho Code, for an occupational therapist or occupational therapy assistant, has not yet taken or received the results of the entry level certification examination as required by Section 54-3708, Idaho Code, and Subsection 020.04.a. of these rules, and has applied for and been granted limited permit status as allowed by Section 54-3705(1), Idaho Code, and Subsection 021.03 of these rules. ( )
- ~~05~~**11.** **Occupational Therapist.** A person licensed to practice occupational therapy. (4-2-03)

~~04~~**12.** **Occupational Therapy.** The care and services provided by or under the direction and supervision of an occupational therapist. (3-29-10)

~~09~~**13.** **Occupational Therapy Aide in the Delivery of Occupational Therapy Services.** Also referred to in these rules as an “aide in the delivery of occupational therapy services” or “aide,” is a person who is not licensed by the Board and who provides supportive services to occupational therapists and occupational therapy assistants. ~~An aide shall function only under the guidance, responsibility and direct line-of-sight supervision of the licensed occupational therapist or an occupational therapy assistant who is appropriately supervised by an occupational therapist. The aide provides only specifically selected client related or non-client tasks for which the aide has been trained and has demonstrated competence~~ as provided in these rules. (3-29-10)(    )

~~06~~**14.** **Occupational Therapy Assistant.** A person licensed to practice occupational therapy, and who works under the supervision of an occupational therapist. (3-29-10)

~~07.~~ **Graduate Occupational Therapist.** ~~A person who holds a certificate of graduation from an approved occupational therapy curriculum, who has submitted a completed application for certification by examination, and who may practice occupational therapy in association with and under the supervision of an occupational therapist and under authority of a Limited Permit.~~ (3-29-10)

~~08.~~ **Graduate Occupational Therapy Assistant.** ~~A person who holds a certificate of graduation from an approved occupational therapy assistant curriculum, has submitted a completed application for licensure by examination and is performing the duties of occupational therapy assistant in association with and under the supervision of an occupational therapist and under the authority of a Limited Permit.~~ (3-29-10)

~~14~~**5.** **NBCOT.** The National Board for Certification in Occupational Therapy, Inc., is a not-for-profit credentialing agency that provides certification for the occupational therapy profession. (3-29-10)

~~16.~~ **Non-Client Related Tasks.** Non-client related tasks include clerical and maintenance activities and preparation of the work area or equipment. (    )

~~17.~~ **Routine Supervision.** Routine Supervision requires in-person or synchronous interaction at least once every two (2) weeks by an occupational therapist and contact by other means as needed. Other means of contact include, but are not limited to, electronic communications such as email. (    )

~~18.~~ **Student.** A person who is pursuing a supervised course of study in an accredited or approved educational program under Subsections 020.01.a. or 020.02 of this rule, or who is fulfilling the supervised fieldwork experience requirements to qualify for licensure as an occupational therapist or occupational therapy assistant. (    )

~~19.~~ **Synchronous Interaction.** Synchronous interaction means real-time communication through interactive technology that enables two (2) people at two (2) locations separated by distance to interact simultaneously through two-way video and audio or audio transmission. (    )

**011. SUPERVISION.**

An occupational therapist shall supervise and be responsible for the patient care given by occupational therapy assistants, ~~graduate occupational therapists, graduate occupational therapy assistants, student occupational therapists, student occupational therapy assistants,~~ limited permit holders, and aides, and students. An occupational therapist’s or occupational therapy assistant’s failure to provide appropriate supervision in accordance with these rules is grounds for discipline. (3-29-10)(    )

~~01.~~ **Skill Levels Supervision Requirements.** ~~The following skill levels apply to occupational therapy assistants, graduate occupational therapists, graduate occupational therapy assistants, student occupational therapists, student occupational therapy assistants and aides:~~ Supervision is the direction and review of service delivery, treatment plans, and treatment outcomes. Unless otherwise specified in this rule, General Supervision is the minimum level of supervision that must be provided. Methods of supervision may include, but are not limited to, Direct Line-of-Sight Supervision, Direct Supervision, Routine Supervision, or General Supervision, as needed to ensure the safe and effective delivery of occupational therapy. (4-7-11)(    )

~~a. *Entry Level—Working on initial skill development (zero to one (0-1) year experience) or working in a new area of practice; An occupational therapist and an occupational therapy assistant must ensure the delivery of services by the individual being supervised is appropriate for client care and safety and must evaluate:*~~ (3-29-10)( )

~~i. *The complexity of client needs;*~~ ( )

~~ii. *The number and diversity of clients;*~~ ( )

~~iii. *The skills of the occupational therapist and the occupational therapist assistant, aide, or limited permit holder;*~~ ( )

~~iv. *The type of practice setting;*~~ ( )

~~v. *The requirements of the practice setting; and*~~ ( )

~~vi. *Other regulatory requirements applicable to the practice setting or delivery of services.*~~ ( )

~~b. *Intermediate Level—Increased independence and mastery of basic roles and functions. Demonstrates ability to respond to new situations based on previous experience (generally one to five (1-5) years' experience); Supervision must be documented in a manner appropriate to the individuals and the setting. The documentation must be kept as required by Section 013 of these rules.*~~ (3-29-10)( )

~~c. *Advanced Level—Refinement of skills with the ability to understand complex issues and respond accordingly. Supervision must include consultation at appropriate intervals regarding evaluation, intervention, progress, reevaluation and discharge planning for each patient. Consultation must be documented and signed by the supervisor and supervisee.*~~ (3-29-10)( )

~~02. *Supervision Levels. The following supervision levels apply to occupational therapy assistants, graduate occupational therapists, graduate occupational therapy assistants, student occupational therapists, student occupational therapy assistants and aides:*~~ (4-7-11)

~~a. *Direct Line of Site Supervision—An occupational therapist or occupational therapy assistant must provide direct line of site supervision to an aide;*~~ (3-29-10)

~~b. *Direct Supervision—Daily, direct contact at the site of work with the supervisor physically present at all times within the facility when the supervisee renders care and requires the supervisor to co sign all documentation that is completed by the supervisee. This supervision is the minimal level of supervision required for students, for entry or intermediate level occupational therapy assistants applying deep thermal and electrotherapeutic modalities, and for advanced level occupational therapy assistants who apply such modalities while lacking the education and training required in Subsection 012.01 of these rules;*~~ (4-7-11)

~~c. *Close Supervision. The occupational therapist provides daily direction in developing the plan of treatment and inspects on-site the actual implementation of the plan at least every two (2) weeks. This supervision is the minimal level of supervision required for entry level occupational therapy assistants and graduate occupational therapy assistants;*~~ (4-4-13)

~~d. *Routine Supervision—Requires direct contact at least every two (2) weeks at the site of work, with interim supervision occurring by other methods, such as by telephone or written communication. This supervision is the minimal level of supervision required for graduate occupational therapists and intermediate level occupational therapy assistant. It also is the minimum level of supervision required for advanced level occupational therapy assistants applying deep thermal and electrotherapeutic modalities while possessing the education and training specified in Subsection 012.01 of these rules;*~~ (4-7-11)

~~e. *General Supervision—Initial direction and periodic review of the following: service delivery; update of treatment plans, and treatment outcomes. The supervisor need not at all times be present at the premises*~~

~~where the occupational therapy assistant is performing the professional services. However, not less than monthly direct contact must be provided, with supervision available as needed by other methods. This supervision is the minimal level of supervision required for an intermediate to advanced occupational therapy assistant. (3-29-10)~~

~~**03. Supervision Ratios.** An occupational therapist may supervise up to three (3) full time occupational therapy assistants, but never more than two (2) entry level occupational therapy assistants. The total number of supervised occupational therapy assistants, non-licensed occupational therapy personnel (including any graduate occupational therapists, graduate occupational therapy assistants, student occupational therapy, student occupational therapy assistants, and aides), and occupational therapists in training to provide deep thermal, electrotherapeutic modalities and wound care may not exceed five (5) without prior Board approval. The Board may permit the supervision of a greater number by an occupational therapist if, in the Board's opinion, there would be adequate supervision and the public's health and safety would be served. It is the supervising occupational therapist's responsibility to notify the Board of any circumstances requiring approval of a greater number and to submit a written plan for resolution of the situation. (4-7-11)~~

~~**04. Record Keeping.** The occupational therapy assistant, graduate occupational therapist, and graduate occupational therapy assistant must maintain on file at the job site signed documentation reflecting supervision activities. This supervision documentation must contain the following: date of supervision, means of communication, and information discussed. Both the supervising occupational therapist and the person being supervised must sign each entry. (4-7-11)~~

~~**052. Occupational Therapy Assistants.** Occupational ~~T~~therapy ~~A~~assistants may deliver occupational therapy services under the supervision of occupational therapists as follows. The occupational therapy assistant: must be supervised by an occupational therapist. General Supervision must be provided at a minimum. (3-29-10)(    )~~

~~**a.** May only select, implement, and modify therapeutic activities and interventions that are consistent with client goals, the requirements of the practice setting, and the occupational therapy assistant's demonstrated competency levels; (3-29-10)~~

~~**b.** Must not initiate a treatment program until the occupational therapist has evaluated the client and planned treatment for the client, or discharge the client from a treatment program without supervision from the occupational therapist; (3-29-10)~~

~~**c.** Must not perform an evaluation, but may contribute to the evaluation process with the supervision of the occupational therapist; (3-29-10)~~

~~**d.** May participate in the screening process by collecting data, such as records, by general observation and by conducting a general interview, and may communicate the information gathered to the occupational therapist; (3-29-10)~~

~~**e.** May track the need for reassessment, report changes in status that might warrant reassessment or referral, and administer the reassessment under the supervision of the occupational therapist; (3-29-10)~~

~~**f.** Must immediately discontinue any specific treatment procedure which appears harmful to the client, and so notify the occupational therapist; (3-29-10)~~

~~**g.** Is responsible for knowing about the client's targeted occupational therapy outcomes and for providing information and documentation related to outcome achievement; (3-29-10)~~

~~**h.** May implement outcome measurements and provide needed client discharge resources. (3-29-10)~~

~~**03. Limited Permit Holders.** Limited permit holders must be supervised by an occupational therapist or occupational therapy assistant. Direct supervision must be provided at a minimum. The occupational therapist is responsible for the overall use and actions of the limited permit holder. (    )~~

~~**064. Occupational Therapy Aides.** Occupational therapy ~~A~~aides do not provide skilled occupational~~

therapy services. An aide ~~is~~ must be trained by an occupational therapist or an occupational therapy assistant to perform specifically delegated tasks. The occupational therapist is responsible for the overall use and actions of the aide. ~~An aide first must demonstrate competency to be able to perform the assigned, delegated client and non-client tasks.~~ The occupational therapist must oversee the development, documentation, and implementation of a plan to supervise and routinely assess the ability of the occupational therapy aide to carry out non-client related and client-related tasks. The occupational therapy assistant may contribute to the development and documentation of this plan. ~~An aide shall function only under the direct line of sight supervision of an occupational therapist or occupational therapy assistant. An aide may provide:~~ (3-29-10)(    )

~~a. Non-client related tasks, including clerical and maintenance activities and preparation of the work area or equipment~~ Before assigning client-related and non-client related tasks to an aide, the occupational therapist or occupational therapy assistant must ensure that the aide is able to competently perform the task. (3-29-10)(    )

~~b. Client related, routine tasks during which the aide may interact with the client. The following conditions must exist when an occupational therapist or occupational therapy assistant delegates a selected client-related task to the aide:~~ The occupational therapist or occupational therapy assistant must train the aide to perform client-related and non-client related tasks at least once per month. (3-29-10)(    )

~~i. The outcome anticipated for the delegated task is predictable.~~ (3-29-10)

~~ii. The client and environment are stable and will not require that judgment, interpretations, or adaptations be made by the aide.~~ (3-29-10)

~~iii. The client has demonstrated some previous performance ability in executing the task.~~ (3-29-10)

~~iv. The task routine and process have been clearly established.~~ (3-29-10)

~~v. The aide has been trained and is able to demonstrate competency in carrying out the task and in using any necessary equipment.~~ (3-29-10)

~~vi. The aide has been instructed on how to specifically carry out the delegated task with the specific client.~~ (3-29-10)

~~vii. The aide knows the precautions, signs, and symptoms for the particular client that would indicate the need to seek assistance from the occupational therapist or occupational therapy assistant.~~ (3-29-10)

~~c. The supervision of the aide needs to be documented for every client-related activity performed by an aide. Documentation must include information about frequency and methods of supervision used, the content of supervision, and the names and credentials of all persons participating in the supervisory process~~ An aide must perform client-related tasks under the direct line-of-sight supervision of an occupational therapist or occupational therapy assistant. (3-29-10)(    )

~~d. Occupational therapists and occupational therapy assistants must document all training and supervision of an aide, and the documentation must be kept in a location that is consistent with standard business practices for the setting in which the occupational therapy is provided.~~ (    )

~~05. Students. Students must be under the direct on-site supervision of an occupational therapist or occupational therapy assistant who is appropriately supervised by an occupational therapist. The occupational therapist is responsible for the overall use and actions of the student.~~ (    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**013. RECORD KEEPING.**

Occupational therapists and occupational therapy assistants must maintain adequate records that are consistent with the standard business practices of the setting in which the licensee is providing occupational therapy or supervision

and that show necessary patient care, supervision provided by the licensee, and compliance with regulatory requirements applicable to the setting. Failure to maintain adequate records constitutes unprofessional conduct. ( )

0134. -- 019. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**021. APPLICATION FOR LICENSURE.**

**01. Licensure by Examination.** Each applicant for licensure by examination shall submit a completed written application to the Board, on forms prescribed by the Board, together with the application fee. The application shall be verified and under oath and shall require the following information: (7-1-99)

**a.** A certificate of graduation from an approved occupational therapy curriculum; or an approved occupational therapy assistant's curriculum accredited by the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education, or an accrediting agency recognized by the United States Secretary of Education, the Council for Higher Education Accreditation, or both; (4-2-03)

**b.** The disclosure of any criminal conviction or charges against the applicant other than minor traffic offenses along with a written statement of suitability for licensure as provided in Section 022 of these rules; (~~1-5-88~~)( )

**c.** The disclosure of any disciplinary action against the applicant by any state professional regulatory agency or professional organization along with a written statement of suitability for licensure as provided in Section 022 of these rules; (~~1-5-88~~)( )

**d.** The disclosure of the issuance or denial of registration or licensure by any state or district regulatory body; (4-2-03)

**e.** Not less than two (2) certificates of recommendation from persons having personal knowledge of the applicant's character; (1-5-88)

**f.** One (1), three by four inch (3" x 4") or smaller unmounted photograph of the applicant's head and shoulders, taken not more than one (1) year before the application date; (3-29-10)

**g.** Such other information as deemed necessary for the Board to identify and evaluate the applicant's credentials; and (1-5-88)

**h.** ~~A copy of the application to write the qualifying exam and the date the examination is scheduled~~ Evidence of successful passage of the written examination or a letter from the examining entity authorizing the applicant to take the examination. (~~1-5-88~~)( )

**02. Licensure by Endorsement.** An applicant may be eligible for licensure without examination if he or she meets all of the other qualifications prescribed in Section 54-3709, Idaho Code, and also holds a current valid license or registration from some other state, territory or district of the United States, or certified by the National Board for Certification in Occupational Therapy providing they meet Idaho standards and are equivalent to the requirements for licensure pursuant to these rules. (3-29-10)

**a.** Each applicant for licensure by endorsement shall submit a completed written application to the Board on forms prescribed by the Board, together with the application fee. The application shall be verified, under oath, and contain the specific information in Subsection 021.01.a. through 021.01.g. of these rules. (3-29-10)

**b.** Proof of such licensure or registration shall be verified in a manner acceptable to the Board. (1-5-88)

**03. Limited Permit.** The Board may issue a Limited Permit to a graduate occupational therapist or graduate occupational therapy assistant who meets the requirements set forth by Sections 54-3706(1) and 54-3706(2), Idaho Code, who has not yet passed the examination as required in Paragraph 020.04.a. of these rules. (3-29-10)

**a.** Each person applying for a limited permit must submit a completed written application to the Board on forms prescribed by the Board, together with the required fee. (3-29-10)

**b.** A Limited Permit shall only allow a person to practice occupational therapy in association with and under the supervision of a licensed occupational therapist. (1-5-88)

**c.** A Limited Permit shall be valid six (6) months from the date of issue. (3-20-14)

**d.** A Limited Permit may be extended by the Board for good cause. (3-20-14)

**04. Temporary License.** The Board may issue a temporary license to a person applying for licensure as an occupational therapist or an occupational therapy assistant if the person is currently licensed and in good standing to practice in another jurisdiction and meets that jurisdiction's requirements for licensure by endorsement. (3-29-10)

**a.** Each person applying for temporary licensure must submit a completed written application to the Board on forms prescribed by the Board, together with the required fee. (3-29-10)

**b.** A temporary license shall automatically expire once the Board has processed the person's application for licensure and issued or denied the applied-for license, or in six (6) months after the date on which the Board issued the temporary license, whichever is sooner. (3-29-10)

**05. Personal Interview.** The Board may, at its discretion, require the applicant to appear for a personal interview. (1-5-88)

~~**06. Occupational Therapists Practicing in Idaho on Effective Date of These Rules.** All persons practicing occupational therapy in Idaho and holding American Occupational Therapy Certification Board (AOTCB) registration on January 5, 1988, shall qualify for license by endorsement. (3-29-10)~~

**022. WRITTEN STATEMENT OF SUITABILITY FOR LICENSURE.**

An applicant who, or whose license, has a criminal charge, conviction, finding of guilt, withheld judgment, or suspended sentence for any crime under any municipal, state, or federal law other than minor traffic offenses, or has been subject to discipline by any state professional regulatory agency or professional organization must submit with the application a written statement and any supplemental information establishing the applicant's current suitability for licensure. ( )

**01. Consideration of Factors and Evidence.** The Board shall consider the following factors or evidence: ( )

**a.** The severity or nature of the crime or discipline; ( )

**b.** The period of time that has passed since the crime or discipline under review; ( )

**c.** The number or pattern of crimes or discipline or other similar incidents; ( )

**d.** The circumstances surrounding the crime or discipline that would help determine the risk of repetition; ( )

**e.** The relationship of the crime or discipline to the practice of occupational therapy; ( )

**f.** The applicant's activities since the crime or discipline under review, such as employment, education, participation in treatment, payment of restitution, or any other factors that may be evidence of current rehabilitation; and ( )

**g.** Any other information regarding rehabilitation or mitigating circumstances. ( )

**02.** Interview. The Board may, at its discretion, grant an interview of the applicant. ( )

**03.** Applicant Bears the Burden. The applicant shall bear the burden of establishing the applicant's current suitability for licensure. ( )

**02~~23~~.** LICENSE EXPIRATION AND RENEWAL.

**01. Expiration Date.** An individual's license expires on the individual's birthday. The individual must annually renew the license before the individual's birthday in accordance with Section 67-2614, Idaho Code. Licenses not so renewed will be cancelled in accordance with Section 67-2614, Idaho Code. (3-25-16)

**02. Reinstatement.** A license cancelled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code. Reinstatement of a license from inactive to active status is governed by Section 030. (4-7-11)

**03. Application for Renewal.** In order to renew a license, a licensee must submit a timely, completed, Board-approved renewal application form and pay the required renewal fees. (3-29-10)

~~023.~~ 024. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**APPENDIX A**  
**OCCUPATIONAL THERAPY CODE OF ETHICS**  
**PREAMBLE**

All Occupational Therapists, Occupational Therapy Assistants, ~~Graduate Occupational Therapists, Graduate Occupational Therapy Assistants, and Occupational Therapy Aides~~ and Limited Permit Holders (collectively, "occupational therapy personnel") are responsible for maintaining and promoting the ethical practice of occupational therapy. Occupational therapy personnel shall act in the best interest of the patient/client at every level of practice. This Code of Ethics, modeled in principle and the spirit of the Code of Ethics of the American Occupational Therapy Association, sets forth principals for the ethical practice of occupational therapy for occupational therapy personnel. This Code of Ethics shall be binding on all ~~Occupational Therapists, Occupational Therapy Assistants, Graduate Occupational Therapists, Graduate Occupational Therapist Assistants, and Occupational Therapy Aides~~ occupational therapy personnel.

**Principle 1.**  
Occupational therapy personnel shall demonstrate, a concern for the well-being of the recipients of their services. (beneficence).

**Principle 2.**  
Occupational therapy personnel shall take reasonable precautions to avoid imposing or inflicting harm upon the recipient of services or to his or her property. (nonmaleficence)

**Principle 3.**  
Occupational therapy personnel shall respect the recipient and/or their surrogate(s) as well as the recipient's rights. (autonomy, privacy, confidentiality)

**Principle 4.**  
Occupational therapy personnel shall achieve and continually maintain high standards of competence. (duties)

**Principle 5.**

Occupational therapy personnel shall comply with laws and policies guiding the profession of occupational therapy. (justice)

**Principle 6.**

Occupational therapy personnel shall provide accurate information about occupational therapy services. (veracity)

**Principle 7.**

Occupational therapy personnel shall treat colleagues and other professionals with fairness, discretion, and integrity. (fidelity)

# **IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES**

## **24.08.01 – RULES OF THE STATE BOARD OF MORTICIANS**

**DOCKET NO. 24-0801-1801**

### **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 54-1110, 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 17, 2018.

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 Morticians' proposed rule will address what happens to a certificate of authority when a mortician or funeral director chooses to place their license on inactive status, or if they choose to return their license to active status. The proposed rule change will establish that a licensee's certificate of authority expires when their license goes inactive, and provides that it may be reissued when their license is returned to active status.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed rule was discussed and decided upon during noticed, open meetings of the Board.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jennifer Carr 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 24, 2018.

Dated this 29th day of August, 2018.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
700 W. State Street  
P.O. Box 83720  
Boise, ID 83720  
Phone: (208) 334-3233  
Fax: (208) 334-3945

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-0801-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**380. INACTIVE LICENSE.**

**01. Request for Inactive License.** Persons holding an unrestricted mortician or funeral director license in this state may apply for inactive status by making written application to the Board on a form prescribed by the Board and paying the established fee. (3-22-18)

**02. Inactive License Status.** (3-22-18)

**a.** Inactive license renewal notices and licenses will be marked “inactive”. (3-22-18)

**b.** Inactive license holders may not practice in Idaho while on inactive status. (3-22-18)

**c.** If a licensee holds a certificate of authority and places their license on inactive status, their certificate of authority expires as of the date their license becomes inactive. ( )

**d.** 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. (3-22-18)

**03. Return to Active License Status.** An inactive license holder may convert from inactive to active license status by: (3-22-18)

**a.** Making written application to the Board on a form prescribed by the Board; (3-22-18)

**b.** Providing documentation to the Board showing successful completion within the previous twelve (12) months of the continuing education requirements for renewal of an active license; and (3-22-18)

**c.** Paying a fee equivalent to the difference between the current inactive fee and the active renewal fee. (3-22-18)

**d.** An inactive licensee who held a certificate of authority at the time their license became inactive who returns to active license status pursuant to this rule may be reissued a certificate of authority by paying the renewal fee for the certificate of authority. ( )

## **IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES**

### **24.09.01 – RULES OF THE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS**

**DOCKET NO. 24-0901-1802**

#### **NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-1604, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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

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

This proposed rule will allow the Board of Examiners of Nursing Home Administrators to review applications received less than seven (7) days prior to a board meeting and provide clear notice of the denial of an application for lack of activity. The proposed rule will improve continuing education options by adding a carryover option and hardship waiver. In addition, the rule will clarify a temporary permit's expiration and remove outdated language.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes to these rules were discussed during noticed, open meetings of the Board.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jennifer Carr 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 24, 2018.

Dated this 30th day of August, 2018.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
700 W. State Street  
P.O. Box 83720  
Boise, ID 83720  
Phone: (208) 334-3233  
Fax: (208) 334-3945

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-0901-1802**  
**(Only Those Sections With Amendments Are Shown.)**

**050. APPLICATIONS (RULE 050).**

Applications will be on forms approved by the Board. (4-6-05)

**01. Board Consideration.** No application will be considered for any action unless accompanied by the appropriate fees and until the required supporting documentation is received by the Bureau. (4-6-05)

**02. Filing Deadline.** ~~To be considered by the Board, properly completed applications must be received by the Bureau at least thirty (30) days prior to the first day of the month in which the Board will meet~~ Applications received less than seven (7) days prior to a Board meeting may be held over to the next meeting. (4-6-05)( )

**03. Lack of Activity.** Applications on file with the Board that lack activity for any period of twelve (12) months shall be deemed denied and terminated upon thirty (30) days written notice unless good cause is demonstrated to the Board. (4-6-05)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. CONTINUING EDUCATION ~~AL AND TRAINING~~ REQUIREMENTS (RULE 200).**

**01. Educational Requirements.** In order to ~~be credited toward the educational requirements of the Act~~ qualify as continuing education, a seminar or course of study must be relevant to nursing home administration as determined by the Board and sponsored by accredited universities or colleges, State or National health related associations, and/or approved by NCERS (National Continuing Education Review Service). (7-1-93)( )

~~**02. Requirements for License Renewal.** The department shall refuse to renew a Nursing Home Administrators license unless the required fee is accompanied by evidence of having met the educational and training requirement set forth in these rules on the form provided for that purpose by the Bureau of Occupational Licenses.~~ (7-1-98)

~~**03.2. Renewal of License.** Applicants for renewal of license shall be required to attend complete~~ a minimum of twenty (20) clock hours of courses approved under Subsection 200.01 within the preceding twelve-month (12) period. Licensees shall not be required to comply with this requirement during the first year in which they become licensed under this chapter. (4-2-08)( )

~~**04.3. Credit Received Toward Renewal of License Waiver.** Credit received toward renewal of license may not be used again toward renewal of license for another license year~~ The Board may waive the requirements of this rule for reasons of individual hardship including health or other good cause. The licensee should request the waiver in advance of renewal and must provide any information requested by the Board to assist in substantiating hardship cases. This waiver is granted at the sole discretion of the Board. (7-1-98)( )

**04. Carryover of Continuing Education Hours.** Continuing education hours not claimed in the current renewal year may be claimed in the next renewal year. A maximum of twenty (20) hours may be carried forward from the immediately preceding year, and may not be carried forward more than one (1) renewal year.( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**500. PERMITS (RULE 500).**

**01. Requirements for Issuance.** A temporary permit may be issued ~~for one (1) year upon application upon submission of an endorsement application evidencing a license in good standing in another state~~ and payment of fees. ~~The permit shall be valid until the Board acts upon their endorsement application.~~ No more than one (1) temporary permit may be granted to any applicant for any reason. (7-1-98)( )

**02. Issuance of a Temporary Permit Does Not Obligate the Board.** Issuance of a temporary permit does not obligate the board to subsequently issue a license. Issuance of a subsequent license depends upon a successful application to the Board. (7-1-98)

**(BREAK IN CONTINUITY OF SECTIONS)**

~~700. RULEMAKING HISTORY PRIOR TO JULY, 1993 (RULE 700).~~

~~Adoption date December 7, 1978~~

~~Effective date January 1, 1979~~

~~Adoption date December 24, 1985~~

~~Effective date January 13, 1986~~

~~Effective date January 18, 1990~~

~~Adoption date March 26, 1993~~

~~Effective date April 15, 1993~~

(7-1-93)

~~701. -- 999. (RESERVED)~~

## **IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES**

### **24.11.01 – RULES OF THE STATE BOARD OF PODIATRY**

#### **DOCKET NO. 24-1101-1801**

#### **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 17, 2018.

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

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

This proposed rule removes outdated language regarding continuing education (CE) requirements and rulemaking history. The proposed rule also removes the limit of CE that can be obtained online. Finally, the proposed rule expands CE options to include a variety of formats, such as lectures, conferences, seminars, moderator-guided panel discussions, clinical and practical workshops, internet based learning and home study.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes to these rules were discussed during noticed, open meetings of the Board.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jennifer Carr 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 24, 2018.

Dated this 29th day of August, 2018.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
700 W. State Street  
P.O. Box 83720  
Boise, ID 83720-0063  
Phone: (208) 334-3233  
Fax: (208) 334-3945

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-1101-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**401. LICENSURE BY ENDORSEMENT (RULE 401).**

Under Section 54-613, Idaho Code, applicants for licensure by endorsement may be granted a license upon the approval of the Board. Each applicant for licensure by endorsement must provide documentation for each of the following before licensure will be considered: (3-15-02)

- 01. Complete Application.** A complete application together with the required fee. (4-11-06)
- 02. Certification of License.** Certification of having maintained a current license or other authority to practice issued by a regulatory board of Podiatry in any state or territory. (4-11-06)
- 03. Credentials.** Credentials as required in Subsections 200.02 through 200.05. (3-29-10)
- 04. Examination.** Successful passage of a written licensure examination covering all those subjects noted in Section 54-606, Idaho Code. Official certification of examination must be received by the board directly from: (4-11-06)
  - a.** The applicant's state or territory of licensure; or (3-15-02)
  - b.** The national board of podiatric medical examiners. (3-20-14)
- 05. Residency.** Proof of completion of the residency requirement as set forth in Subsection 200.06 of this rule. However, if the applicant graduated from a college of podiatry prior to 1993, this requirement will be waived. (3-29-10)
- 06. Practical Experience.** Having practiced podiatry under licensure for three (3) of the last five (5) years immediately prior to the date of application. (4-11-06)
- 07. Continuing Education.** Having ~~obtained at least twelve (12) hours of continuing education during the twelve (12) months prior to the date of application. Effective January 1, 2015, having obtained~~ **completed** at least fifteen (15) hours of continuing education germane to the practice of podiatry during the twelve (12) months prior to the date of application. ~~(3-20-14)( )~~
- 08. Disciplinary Action.** Has not been the subject of any disciplinary action including pending or unresolved licensure actions within the last five (5) years immediately prior to application and has never had a license to practice podiatry revoked or suspended either voluntarily or involuntarily in any jurisdiction. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**700. CONTINUING EDUCATION (RULE 700).**

**01. Post-Graduate Education Requirement for License Renewal.** ~~Each podiatrist licensed by the state of Idaho shall attend in each twelve (12) month period preceding the renewal of a license to practice podiatry in Idaho, a minimum of twelve (12) full hours of post-graduate podiatry education courses. Effective January 1, 2015, each~~ **Each** podiatrist licensed by the state of Idaho shall ~~attend~~ **complete** in each twelve-month period preceding the renewal of a license to practice podiatry in Idaho, a minimum of fifteen (15) full hours of ~~post-graduate~~ podiatry ~~continuing~~ education ~~courses. No more than ten (10) hours of continuing education may be obtained on-line~~ **Continuing education includes lectures, conferences, seminars, moderator-guided panel discussions, clinical and practical workshops, internet based learning and home study. Courses** **Education** must be germane to the practice of

podiatry; and

~~(3-20-14)~~( )

- a. Approved by the Council on Podiatric Medical Education; or (4-2-08)
- b. Otherwise approved by the Board. (4-2-08)

**02. Submission of License Renewal Application Form.** Each licensed Idaho podiatrist will be furnished a license renewal application form by the Bureau of Occupational Licenses on which each podiatrist shall be required to certify by signed affidavit that compliance with the continuing education requirements has been met and shall submit the renewal application together with the required fees to the Bureau. (3-15-02)

**03. Verification of Attendance Completion.** It shall be necessary for each licensee to maintain verification of ~~attendance completion~~ by securing authorized signatures or other documentation from the course instructors or sponsoring institution substantiating any and all hours ~~attended completed~~ by the licensee. This verification shall be maintained by the licensee and provided to the Board upon the request of the Board or its agent. The Board will conduct random audits to monitor compliance. Failure to provide proof of meeting the continuing education upon request of the Board shall be grounds for disciplinary action. ~~(3-20-14)~~( )

**04. Carryover of Continuing Education Hours.** Continuing education ~~courses~~ not claimed for credit in the current renewal year may be credited for the next renewal year. A maximum of fifteen (15) hours may be carried forward from the immediately preceding year. ~~(3-20-14)~~( )

**05. Special Exemption.** The Board shall have authority to make exceptions for reasons of individual hardship, including health, when certified by a medical doctor, or for 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. (3-20-14)

~~701. -- 799. (RESERVED)~~

~~**800. RULEMAKING HISTORY PRIOR TO JULY 1, 1993 (RULE 800).**  
*All previous rules of this board are hereby repealed and these Rules approved by the board on January 25, 1978, shall become effective on this date. Amended and readopted effective October 15, 1987. Amended and readopted effective May 29, 1991. Amended and readopted effective August 1, 1997.* (7-1-98)~~

~~§701. -- 999. (RESERVED)~~

## **IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES**

### **24.12.01 – RULES OF THE IDAHO STATE BOARD OF PSYCHOLOGIST EXAMINERS**

**DOCKET NO. 24-1201-1801**

#### **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 54-2305, 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 17, 2018.

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 Board of Psychologist Examiners has adopted the National Examination for Professional Practice in Psychology (EPPP) as the national competency examination that applicants for licensure must pass. This proposed rule change is necessary to comply with changes being made to the examination. The proposed change will remove the specific raw score and scaled score and simply state that the passing score is determined by the examination developer.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes to these rules were discussed during noticed, open meetings of the Board.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jennifer Carr 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 24, 2018.

Dated this 30th day of August, 2018.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
700 W. State Street  
P.O. Box 83720  
Boise, ID 83720  
Phone: (208) 334-3233  
Fax: (208) 334-3945

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-1201-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**200. EXAMINATIONS (RULE 200).**

**01. Written Exam Required.** ~~The Board will require a written examination of applicants. The written examination will be the~~ **Applicants for licensure must successfully pass the** ~~National Examination for Professional Practice in Psychology (EPPP).~~ **national Examination for Professional Practice in Psychology (EPPP).** (3-20-04)(    )

**02. Passing Score.** ~~The Board has determined that a  $\Delta$  passing score on the EPPP shall be a raw score of one hundred forty (140) or, for examinations after April 1, 2001, a scaled score of five hundred (500) for licensure will be determined by the Association of State and Provincial Psychology Boards (ASPPB).~~ (3-20-04)(    )

**03. Time and Place of Exam.** The examination will be conducted at a time and place specified by the administrator of the ~~national examination for professional practice in psychology (EPPP).~~ (5-8-09)(    )

**04. Failure of Exam.** The first time the examination is failed the applicant may take it again the next time it is given upon application and payment of fees. If the examination has been failed twice, the individual must wait at least one (1) year and petition the Board for approval to take the examination the third time. The petition shall include evidence satisfactory to the Board that the applicant has taken additional study in the field of Psychology before approval will be granted. (5-8-09)

**05. Waiver of Exam.** Upon application, the examination may be waived to an applicant who is a diplomat in good standing of the American Board of Professional Psychology. (3-20-04)

## **IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES**

### **24.12.01 – RULES OF THE IDAHO STATE BOARD OF PSYCHOLOGIST EXAMINERS**

#### **DOCKET NO. 24-1201-1802 (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 54-2305(12), 54-2318, and 54-2320, 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 17, 2018.

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 2017 Legislature passed House Bill 212, which allows licensed psychologists who meet certain educational, examination, and experience requirements to be granted prescriptive authority. This proposed rule establishes the qualifications for provisional certification of prescriptive authority and certification of prescriptive authority. These include minimum requirements for a clinical practicum as part of the educational program, supervised practice requirements, and the adoption of the national competency examination. This rule also sets a formulary for the medications that may be prescribed. Finally, the rule establishes standards of practice for prescriptive authority and collaboration between the prescribing psychologist and a patient's licensed medical provider.

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

The Board operates on dedicated funds and must be self-supporting. The following fees are established in accordance with Section 54-2318, Idaho Code, as follows: original application fee of \$250 for certification or provisional certification for prescriptive authority; and renewal fee of \$250 for certification or provisional certification for prescriptive authority.

**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 rules were discussed during noticed, open meetings of the advisory panel and the Board. As required by statute, the rules were developed in conjunction with an advisory panel consisting of a psychiatrist and a pediatric psychiatrist recommended by the Idaho state board of medicine, a pharmacist recommended by the Idaho state board of pharmacy, and two psychologists licensed in Idaho.

**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 Jennifer Carr 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 24, 2018.

Dated this 30th day of August, 2018.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
Phone: (208) 334-3233 / Fax: (208) 334-3945

700 W. State Street  
P.O. Box 83720  
Boise, ID 83720

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-1201-1802**  
**(Only Those Sections With Amendments Are Shown.)**

**010. DEFINITIONS (RULE 10).**

**01. Board.** The Idaho State Board of Psychologist Examiners as prescribed in Section 54-2301, Idaho Code. (7-1-93)

**02. Bureau.** The Bureau means the Bureau of Occupational Licenses, as prescribed in Sections 54-605 and 67-2602, Idaho Code. (3-15-02)

**03. Certificate of Professional Qualification.** A certificate of professional qualification shall mean the certificate of professional qualification granted to a psychologist by the Association of State and Provincial Psychology Boards. (3-15-02)

**04. Collaboration or Collaborative Relationship.** Collaboration or collaborative relationship means a cooperative working relationship between a prescribing psychologist and a licensed medical provider in the provision of patient care, including cooperation in the management and delivery of physical and mental health care, to ensure optimal patient care. ( )

**05. Controlled Substance.** Any substance defined, enumerated, or included in federal or state statute or regulations 21 C.F.R. 1308.11-15 or article II, chapter 27, Title 37, Idaho Code. ( )

**06. Drug.** Drug has the same meaning as defined in Section 37-2701, Idaho Code. ( )

**07. Geriatric Patient.** A person sixty-five (65) years of age or older. ( )

**08. Licensed Medical Provider.** A physician or physician assistant licensed pursuant to chapter 18, title 54, Idaho Code, or an advanced practice registered nurse licensed pursuant to chapter 14, title 54, Idaho Code. ( )

**09. Medication.** Medication has the same meaning as drug. ( )

**10. Mental, Nervous, Emotional, Behavioral, Substance Abuse, and Cognitive Disorders.** Disorders, illnesses, or diseases listed in either the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association or those listed in the International Classification of Diseases published by the World Health Organization. ( )

**11. Pediatric Patient.** A person seventeen (17) years of age or younger. ( )

**12. Prescribing Psychologist.** A person who holds a license to practice psychology issued by the Board and who holds a Certification or Provisional Certification of Prescriptive Authority issued by the Board under Sections 54-2317, 54-2318, 54-2319, Idaho Code, and these rules. ( )

**13. Supervising Physician.** A board-certified psychiatrist, neurologist, or other physician with specialized training and experience in the management of psychotropic medication and who is licensed under chapter 18, title 54, Idaho Code, or an equivalent licensing provision of the law of a state adjoining Idaho. ( )

**011. -- 099. (RESERVED)**

**100. ~~CREDENTIALS TO BE FILED BY ALL APPLICANTS~~ APPLICATION (RULE 100).**

**01. ~~Completed~~ Filing an Application.** ~~An application shall be completed by all applicants for~~

~~licensure upon a form prescribed by the State Board of Psychologist Examiners. No application shall be accepted or considered by the Board prior to the date the required doctoral degree was conferred upon the applicant~~ **Applicants for licensure or certification or provisional certification of prescriptive authority shall submit a complete application, verified under oath, to the Board at its official address. The application shall be on the forms approved by the Board and submitted together with the appropriate fee(s) and supporting documentation.** (3-20-04)(    )

**02. Official Transcripts Supporting Documents.** ~~All applicants shall arrange for official transcripts of all credits earned, at each approved college or university, to be transmitted by the registrars of the educational institutions directly to the Board~~ **The applicant must provide or facilitate the provision of any supporting third party documents that may be required under the qualifications for the license being sought.** (7-1-93)(    )

**a.** ~~Any third party documents, including letters of reference, must be received by the Board directly from the third party.~~ (    )

**b.** ~~One (1) of the two (2) years of supervised experience as required by Section 2307(b), Idaho Code, for initial licensure may be pre-doctoral. The second year must be post-doctoral work under appropriate supervision and must be verified by the appropriate supervisor.~~ (    )

**03. Letters of Reference Applications Must Be Complete.** ~~Letters of reference, regarding the character, training, and experience of the applicant shall be returned to the Board by the references before decision is rendered on the application~~ **Applications shall not be considered complete until all required information, documents, and fees are received by the Board. An application shall not be considered complete until the required degree(s) has been conferred upon the applicant.** (7-1-93)(    )

**04. Supervised Experience Application Deadline Date.** ~~One (1) of the two (2) years of supervised experience as required by Section 2307(b), Idaho Code, may be pre-doctoral. The second year must be post-doctoral work under appropriate supervision and must be verified by the appropriate supervisor~~ **Applications for licensure or certification or provisional certification of prescriptive authority received fewer than thirty (30) days prior to a Board meeting may be held over to the next regular board meeting.** (3-29-10)(    )

**05. Official Documentation Lack of Activity.** ~~Official documentation of meeting the requirements of Chapter 23, Title 54, Idaho Code and IDAPA 24.12.01, must be received by the Board directly from the entity or person responsible for providing such official documentation. Applicants are responsible for requesting the required documentation from the appropriate entities and persons~~ **If an applicant fails to respond to a Board request or an application has been on file with the Board for a period in excess of five (5) years, the application on file with the Board will be deemed denied and will be terminated upon a thirty (30) day written notice, unless good cause is demonstrated to the Board.** (3-15-02)(    )

**06. Applications on File.** ~~Applications on file with the Board for a period in excess of five (5) years from the date of receipt by the Bureau shall be terminated unless good cause is demonstrated to the Board.~~ (3-20-04)

**07. Deadline.** ~~To be considered by the Board, a properly completed application together with all supporting documentation and required fees must be received by the Bureau at least seven (7) calendar days prior to the next scheduled meeting of the Board.~~ (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**150. FEES (RULE 150).**

- 01. Annual Renewal Fee.** Annual renewal fee -- two hundred fifty dollars (\$250). (3-24-16)
- 02. Annual Renewal Fee for Inactive License.** Annual renewal fee - one hundred twenty-five dollars (\$125). (3-24-16)
- 03. Original Application Fee For Licensure by Exam.** Application fee - one hundred fifty dollars (\$150). (3-24-16)

**04. Original Application Fee For Licensure by Endorsement/Senior Psychologist.** Original application fee for licensure by endorsement/senior psychologist fee - two hundred fifty dollars (\$250). (3-24-16)

~~05. Original Application Fee for Provisional Certification of Prescriptive Authority.~~ Original application fee for provisional certification of prescriptive authority – two hundred and fifty dollars (\$250). ( )

~~06. Annual Renewal Fee for Provisional Certification of Prescriptive Authority.~~ Annual renewal fee – two hundred fifty dollars (\$250). ( )

~~07. Original Application Fee for Certification of Prescriptive Authority.~~ Original application fee for certification of prescriptive authority – two hundred fifty dollars (\$250). ( )

~~08. Annual Renewal Fee for Certification of Prescriptive Authority.~~ Annual renewal fee – two hundred fifty dollars (\$250). ( )

~~09. Original Application Fee For Certification of Prescriptive Authority by Endorsement.~~ Original application fee for certification of prescriptive authority by endorsement – two hundred fifty dollars (\$250). ( )

~~105. Service Extender Application Fee.~~ Application fee - one hundred dollars (\$100). (3-19-07)

~~0611. Service Extender Annual Renewal Fee.~~ Annual renewal fee - one hundred dollars (\$100). (3-19-07)

~~0712. Examination and Reexamination Fee.~~ Examination and reexamination fees are those charged by the national examining entity plus a processing fee of twenty-five dollars (\$25). (5-3-03)

~~0813. Examination and Reexamination in Addition to Application Fee.~~ The examination or reexamination fee are in addition to the application fee and must accompany the application. (3-19-07)

~~0914. Reinstatement Fee.~~ Reinstatement fee is as provided in Section 67-2614, Idaho Code. (3-24-16)

~~105. Fees are Non-Refundable.~~ All fees are non-refundable. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**201. EXAMINATION FOR PROVISIONAL CERTIFICATION OF PRESCRIPTIVE AUTHORITY (RULE 201).**

The approved examination for provisional certification of prescriptive authority shall be the Psychopharmacology Examination for Psychologists (PEP). ( )

01. Passing Score. A passing score will be determined by the Association of State and Provincial Psychology Boards (ASPPB). ( )

02. Date of Exam. The passage of the exam may have occurred prior to the effective date of these rules. ( )

03. Time and Place of Exam. The examination will be conducted at a time and place specified by the administrator of the PEP. ( )

~~2042.~~ -- 249. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**251. ENDORSEMENT FOR CERTIFICATION OF PRESCRIPTIVE AUTHORITY (RULE 251).**

The Board may grant a provisional certification or certification of prescriptive authority by endorsement to an applicant who completes an application as set forth in Section 100 of these rules, pays the required fee, and meets the following requirements: ( )

**01. Holds a Current License.** The applicant must be the holder of a current and unrestricted license to practice psychology in another state and in Idaho: ( )

**02. Holds a Current Certificate of Prescriptive Authority.** ( )

**a.** The applicant must be the holder of a current and unrestricted certification of prescriptive authority from another state; or ( )

**b.** The applicant must have training from the United States department of defense demonstration project or other similar program developed and operated by any branch of the armed forces that imposes substantially equivalent educational and training requirements as those contained in Sections 54-2317 and 54-2318, Idaho Code, and these rules. ( )

**03. Credit Toward Requirements.** In the event that an applicant has not met the requirements for certification of prescriptive authority, the Board may consider an applicant's experience in prescribing in another state as meeting a portion of the requirements necessary to qualify for provisional certification or certification of prescriptive authority in this state. In that event, the Board may require additional education, supervision, or both to satisfy the requirements to obtain a provisional certification or certification of prescriptive authority in this state. ( )

**04. Advisory Panel.** The Advisory Panel, as established in Section 54-2320, Idaho Code, will review the education and training of an applicant seeking certification by endorsement and advise the Board as to its sufficiency to meet the requirements for provisional certification or certification of prescriptive authority under Chapter 23, Title 54, Idaho Code, and these rules. ( )

~~254.2.~~ -- 259. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**401. CONTINUING EDUCATION REQUIREMENTS FOR RELICENSURE IN PSYCHOLOGY (RULE 401).**

**01. Number of Hours Required.** All licensed psychologists, in order to renew their license, must have accumulated twenty (20) hours per year of continuing education credits. All prescribing psychologists, in order to renew their provisional certification or certification of prescriptive authority, must have accumulated twenty (20) hours per year of continuing education credits in psychopharmacology or psychopharmacotherapy offered in accordance with Subsection 402.01 of these rules. Continuing education credits for a prescribing psychologist are in addition to the continuing education credits required to renew their psychologist license. At the time of renewal of the psychologists' licenses and prescribing psychologists' certifications, they will certify that they are aware of the requirements for continuing education and that they have met those requirements for the preceding year. At the time of reinstatement of a psychologist's license or a prescribing psychologist's provisional certification or certification, they psychologist shall provide proof ~~that they have met~~ of meeting the requirements for continuing education for the preceding year. A minimum of four (4) hours credit in ethics, standards of care, and/or review of laws pertaining to the practice of psychology is required every three (3) years. Areas covered may include practice, consultation, research, teaching, and/or supervision. These units may be used as part of the continuing education credit required. (3-24-16)( )

**02. Professional Level of Continuing Education -- Time Period Records Kept - Audit.** This continuing education experience must be at an appropriate level for professional training in psychology. The

licensees have responsibility for demonstrating the relevance and adequacy of the educational experience they select. The licensees are also responsible for keeping an accurate record of their own personal continuing education hours for a period of five (5) years. A random audit may be conducted to insure compliance. (7-1-93)

**03. Newly Licensed Individuals.** Newly licensed individuals will be considered to have satisfied the continuing education requirements for the remainder of the year in which their license is granted. (7-1-93)

**04. Certificates of Satisfactory Attendance and Completion.** Certificates of satisfactory attendance and completion, cancelled checks, participant lists, transcripts from universities, letters of certification on instructor's letterhead, and other reasonably convincing proof of the submitted activities may serve as documentation when persons audited are required to submit proof of continuing education. (7-1-93)

**05. Licensees Who Do Not Fulfill the Continuing Education Requirements.** Licensees who do not fulfill the continuing education requirements may be subject to disciplinary action. (7-1-93)

**06. Carryover of Continuing Education Hours.** Continuing education courses not claimed for CE credit in the current renewal year, may be credited for the next renewal year. A maximum of twenty (20) hours may be carried forward from the immediately preceding year. (5-3-03)

**07. Special Exemption.** The Board has the authority to make exceptions for reasons of individual hardship including health, when 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. Request for special exemption must be made prior to licensure renewal. (3-29-10)

**402. GUIDELINES FOR APPROVAL OF CONTINUING EDUCATION CREDITS (RULE 402).**

**01. Continuing Education Credit.** Continuing education credit will be given to formally organized workshops or classes with an attendance roster and preassigned continuing education credit offered in association with or under the auspices of: (7-1-93)

- a. Regionally accredited institutions of higher education. (7-1-93)
- b. The American Psychological Association. (7-1-93)
- c. A Regional Psychological Association. (7-1-93)
- d. A State Psychological Association. (7-1-93)

e. For prescribing psychologists, in addition to the approved organizations above, workshops or classes may be offered in association with or under the auspices of: ( )

- i. The American Medical Association; ( )
- ii. A regional medical association; ( )
- iii. A state medical association; or ( )

iv. Offered by sponsors accredited by the Accreditation Council for Continuing Medical Education (ACCME). ( )

**ef.** Credit will be given for the number of credit hours preauthorized by the sponsoring agency with no upper limit on the number of hours. (7-1-93)

**02. Credit for International, National and Regional Meetings of Psychological Organizations.** Six (6) hours of continuing education credit will be allowed for documented attendance at international, national and regional meetings of psychological organizations. (7-1-93)

**03. Credit for Other Relevant Workshops, Classes or Training Experiences.** Other relevant workshops, classes or training experiences when not offered, approved, or provided by an entity in Subsection 402.01, may receive up to six (6) hours of credit per experience provided they are conducted by a licensed or reputable psychologist or other mental health professional. Each documented hour of training experience counts as one (1) hour of continuing education experience. (4-4-13)

**04. Presentation of Papers.** Presentation of papers at international, national, regional or state psychological or other professional associations may be counted as equivalent to six (6) hours per event. Only actual presentation time may be counted; preparation time does not qualify for credit. The licensee must provide the Board with a letter from a sponsor, host organization, or professional colleague, copy of the program, and a summary of the evaluations from the event. (3-29-10)

**05. Self-Study, Lectures or Public or Professional Publications and Presentations.** The Board also recognizes the value of self-study, lectures or public or professional publications and presentations (including for example, in the case of the university faculty, preparation of a new course). Therefore, the Board will allow credit for six (6) hours of individual study per year. (7-1-93)

**a.** Self-Study. The reading of a publication may qualify for credit with proper documentation verifying completion. A licensee seeking credit for reading a publication must submit results from a test on the information contained within the publication. If a test is not available, the licensee must seek pre-approval of the Board. (3-29-10)

**b.** Professional publications. Publication activities are limited to articles in professional journals, a chapter in an edited book, or a published book. The licensee must provide the Board with a copy of the cover page of the article or book in which the licensee has been published. For chapters of an edited book, licensees must submit a copy of the table of contents. (3-29-10)

**06. Board Assessment of Continuing Education Activities.** The Board of Psychologist Examiners may avail itself of help and consultation from the American Psychological Association or the Idaho Psychological Association in assessing the appropriateness of continuing education activities. (3-29-10)

**07. On-Line Education.** A maximum of ten (10) on-line continuing education hours relevant to the practice of psychology may be counted during each reporting period. (3-29-10)

**a.** Continuing education credit will be given to on-line education offered in association with or under the auspices of the organizations listed in Subsections 402.01.a. through 402.01.d. of these rules. (3-29-17)

**b.** The licensee must provide the Board with a copy of the certification, verified by the authorized signatures from the course instructors, providers, or sponsoring institution, substantiating any hours completed by the licensee. (3-29-10)

**08. Teleconferences.** To qualify for credit, teleconferences must feature an interactive format. Interactive conferences are those that provide the opportunity for participants to communicate directly with the instructor or that have a facilitator present at the conference site. The licensee must provide the Board with a copy of the certificate, or a letter signed by course instructors, providers, or sponsoring institution, substantiating any hours attended by licensee. (4-4-13)

**a.** When offered, approved, or provided by entities in Subsection 402.01, the number of hours that may be counted during each reporting period is not limited. (4-4-13)

**b.** When not offered, approved, or provided by an entity in Subsection 402.01, a maximum of six (6) hours may be counted during each reporting period. (4-4-13)

**(BREAK IN CONTINUITY OF SECTIONS)**

**651. -- 699. (RESERVED)**

**700. QUALIFICATIONS FOR PROVISIONAL CERTIFICATION OF PRESCRIPTIVE AUTHORITY (RULE 700).**

The Board may grant a provisional certification of prescriptive authority to an applicant who holds a current license to practice psychology in Idaho, who completes an application as set forth in Section 100 of these rules, pays the required fee, and who meets the following educational and training qualifications. ( )

**01. Doctoral Degree.** The applicant must have been awarded a doctoral degree in psychology from an institution of higher education that meets the requirements in Section 54-2317(2), Idaho Code. ( )

**02. Master's Degree.** The applicant must have been awarded a master's degree in clinical psychopharmacology from an accredited program that meets the requirements in Section 54-2317(3), Idaho Code. ( )

**03. Clinical Experience.** An applicant must have successfully completed clinical experience as part of the master's clinical psychopharmacology program that includes a diverse population of patients. ( )

**a.** Clinical experience must include a minimum of four hundred (400) hours consisting of direct patient contact and collaboration with licensed medical providers involving a minimum of one hundred (100) separate patients. ( )

**b.** A diverse population of patients includes diversity in: ( )

**i.** Gender; ( )

**ii.** Different ages throughout the life cycle, including adults, children/adolescents, and geriatrics, as possible and appropriate; ( )

**iii.** Range of disorders listed in the most recent diagnostic and statistical manual of mental disorders published by the American psychiatric association and acute and chronic disorders; ( )

**iv.** Ethnicity; ( )

**v.** Socio-cultural background; and ( )

**vi.** In-patient and out-patient settings, as possible and appropriate. ( )

**04. Examination.** An applicant must successfully pass the national examination in psychopharmacology, as approved by the Board under Section 201 of these rules. ( )

**05. Supervision Agreement.** An applicant must submit to the Board a supervision agreement that identifies the supervising physician(s) who will directly supervise the applicant's prescribing under a provisional certification of prescriptive authority. The documentation submitted to the Board must also identify: ( )

**a.** For each supervising physician, the supervisor's name, address, license number, state in which granted, licensure status, length of licensure, and area of specialization; ( )

**b.** For each supervising physician, documentation of the physician's board-certification as a psychiatrist or neurologist or of specialized training and experience in the management of psychotropic medication; ( )

**c.** For an applicant seeking to prescribe for pediatric or geriatric patients, the supervising physician(s)' specialized training and experience in treating the patient population for which the applicant seeks to prescribe; ( )

**d.** Designate a primary supervising physician when more than one (1) supervising physician is identified. The primary supervising physician will be responsible for coordinating between the other supervising

physician(s) to obtain written progress reports at least every six (6) months concerning how the provisional prescribing psychologist is performing in the domains for supervision. ( )

e. The types of cases for which each supervisor will be responsible for supervising and in which the supervisor has specialized training and experience. ( )

f. The number of provisional certification holders supervised by each supervising physician. A supervising physician may not concurrently supervise more than three (3) provisional certification holders unless otherwise approved by the Board; and ( )

g. The name and nature of setting in which the applicant will practice; ( )

h. Prior to a change in supervisors or a change in the supervision agreement, the supervisee must notify the Board and the change must be approved by the Board, or a designated member of the Board, prior to the commencement of supervision by a new supervisor or implementation of the change. ( )

**701. SUPERVISED PRACTICE OF PROVISIONAL CERTIFICATION HOLDER (RULE 701).**

A holder of a provisional certification of prescriptive authority may only prescribe under the supervision of physician(s) approved by the Board. Prior to application for a certification of prescriptive authority, a provisional certification holder must complete two (2) years of satisfactory prescribing, which includes: ( )

**01. Hours of Supervision.** A minimum of two thousand (2,000) hours acquired in not less than twenty-four (24) months and not more than forty-eight (48) months. ( )

a. The two thousand (2,000) hours may consist of direct patient contact, supervision, case consultations, and collaboration with licensed health care providers for the purpose of evaluation and treatment of patients with medication(s) within the formulary set forth in Section 730 of these rules. ( )

b. Supervised practice time during which the supervisor(s) deem(s) a supervisee's performance to have been unsatisfactory shall not be credited towards the required supervised practice hours. A supervisor who believes the supervisee's practice is unsatisfactory must notify the supervisee and the primary supervisor as soon as possible and identify the basis for such conclusion including, but not limited to, specific domains or issues needing remediation. ( )

**02. Number of Patients.** A minimum of fifty (50) separate patients who are seen for the purpose of evaluation and treatment with those medications that are within the formulary established in Section 730 of these rules. ( )

**03. Amount of Supervisory Contact.** Supervision on a one-to-one basis for a minimum of four (4) hours each month and a minimum of a total of forty-six (46) hours each year. One-to-one supervision must be provided either face-to-face, telephonically, or by live video communication. ( )

**04. Domains for Supervision.** Supervision must include assessment of the provisional certification holder with regard to each of the following domains: ( )

a. Basic science; ( )

b. Neurosciences; ( )

c. Physical assessments and laboratory exams; ( )

d. Clinical medicine and pathophysiology; ( )

e. Clinical and research pharmacology and psychopharmacology; ( )

f. Clinical pharmacotherapeutics; ( )

- g.** Research; and ( )
- h.** Professional, ethical, and legal issues. ( )

**702. QUALIFICATIONS TO PRESCRIBE FOR PEDIATRIC OR GERIATRIC PATIENTS (RULE 702).**  
A prescribing psychologist may not prescribe for pediatric or geriatric patients unless approved by the Board. The Board may grant prescriptive authority for pediatric patients or geriatric patients to an applicant for certification of prescriptive authority who has completed one (1) year of satisfactory prescribing, as attested to by the supervising physician, for the patient population for which the prescribing psychologist seeks to prescribe. ( )

**01. Credit Toward Certification.** The one (1) year of satisfactory prescribing for a pediatric or geriatric population may be counted as one (1) year of the two (2) years of satisfactory prescribing required to qualify for a certification of prescriptive authority. ( )

**02. Hours of Supervision.** One (1) year of satisfactory prescribing includes a minimum of one thousand (1,000) hours acquired in not less than twelve (12) months and not more than twenty-four (24) months. ( )

**a.** The one thousand (1,000) hours may consist of direct patient contact, supervision, case consultations, and collaboration with licensed medical providers for the purpose of evaluation and treatment of patients with medication(s) within the formulary set forth in Section 730 of these rules. A minimum of eight hundred (800) hours of the one thousand (1,000) hours must be directly related to the population for which the prescribing psychologist seeks to prescribe. ( )

**b.** Supervised practice time during which the supervisor(s) deem(s) a supervisee's performance to have been unsatisfactory shall not be credited towards the required supervised practice hours. A supervisor who believes the supervisee's practice is unsatisfactory must notify the supervisee and the primary supervisor as soon as possible and identify the basis for such conclusion including, but not limited to, specific domains or issues needing remediation. ( )

**02. Number of Patients.** One (1) year of satisfactory prescribing includes a minimum of twenty-five (25) separate patients in the population for which the prescribing psychologist seeks to prescribe and who are seen for the purpose of evaluation and treatment with those medications that are within the formulary established in Section 730 of these rules. For a prescribing psychologist who seeks to prescribe for pediatric patients, a minimum of ten (10) separate patients must be twelve (12) years of age or younger and a minimum of ten (10) separate patients must be between thirteen (13) years of age and seventeen (17) years of age. ( )

**03. Amount of Supervisory Contact.** Supervision shall be provided in accordance with Subsection 701.03 of these rules, and under a supervision agreement approved by the Board in accordance with Subsection 700.05 of these rules. ( )

**04. Domains for Supervision.** Supervision must include assessment in each of the domains set forth in Subsection 701.04 of these rules. ( )

**703. -- 709. (RESERVED)**

**710. QUALIFICATIONS FOR CERTIFICATION OF PRESCRIPTIVE AUTHORITY (RULE 710).**  
The Board may grant a certification of prescriptive authority to an applicant who completes an application as set forth in Section 100 of these rules and who meets the following educational and training qualifications. ( )

**01. Holds a License to Practice Psychology.** The applicant must hold a current license to practice psychology issued by the Board. ( )

**02. Holds Provisional Certification.** The applicant must hold a provisional certification of prescriptive authority issued by the Board. ( )

**03. Supervision.** The applicant must have successfully completed at least two (2) years of satisfactory

prescribing under supervision that meets the requirements of Section 701 of these rules, as attested to by the supervising physician(s). ( )

**711. -- 719. (RESERVED)**

**720. STANDARDS OF PRACTICE FOR PRESCRIPTIVE AUTHORITY (RULE 720).**

A prescribing psychologist who issues a prescription for medication to a patient must collaborate with the patient's licensed medical provider and follow standards of practice as set forth in these rules. ( )

**01. Licensed Medical Provider.** A prescribing psychologist may only prescribe medication to a patient who has a licensed medical provider. If a patient does not have a licensed medical provider, the prescribing psychologist must refer the patient to a licensed medical provider prior to prescribing medication. ( )

**a.** In the event a patient terminates the relationship with the patient's licensed medical provider, with whom the prescribing psychologist has established a collaborative relationship, and the patient declines to secure a new licensed medical provider, the prescribing psychologist must advise the patient that the prescribing psychologist cannot continue to psychopharmacologically manage the patient. ( )

**b.** The prescribing psychologist shall document that the psychologist has made every reasonable effort to encourage the patient to maintain or establish a relationship with a licensed medical provider. ( )

**c.** In those cases, in which an abrupt discontinuation of a psychopharmacologic medication could represent a health risk or result in adverse effects, the prescribing psychologist, with concurrence from the previously established licensed medical provider, may prescribe the medication in a manner that is customarily recognized as a discontinuation regimen until the medication has been completely discontinued. The prescribing psychologist must document the discontinuation regimen in the patient's medical records. ( )

**02. Release of Information.** A prescribing psychologist must obtain a release of information from the patient or the patient's legal guardian authorizing the psychologist to contact the patient's licensed medical provider. If the patient or the patient's legal guardian refuses to sign a release of information for the patient's licensed medical provider, the prescribing psychologist must inform the patient or the patient's legal guardian that the psychologist cannot treat the patient pharmacologically without an ongoing collaborative relationship with the patient's licensed medical provider. The psychologist must refer the patient to another mental health care provider who is not required to maintain an ongoing collaborative relationship with a licensed medical provider. ( )

**03. Initial Collaboration with Licensed Medical Provider.** Prior to prescribing medication, a prescribing psychologist must contact the patient's licensed medical provider as provided in these rules and receive the results of the licensed medical provider's assessment. ( )

**a.** The prescribing psychologist must inform the licensed medical provider of: ( )

**i.** The medication(s) the prescribing psychologist intends to prescribe for mental, nervous, emotional, behavioral, substance abuse, cognitive disorders; and ( )

**ii.** Any laboratory tests that the prescribing psychologist ordered or reviewed. ( )

**b.** The prescribing psychologist must discuss with the licensed medical provider the relevant indications and contraindications to the patient of prescribing the medication(s) that the prescribing psychologist intends to prescribe. ( )

**c.** The prescribing psychologist shall document the date and time of contacts with the licensed medical provider, a summary of what was discussed, and the outcome of the discussions or decisions reached. ( )

**04. Ongoing Collaboration with Licensed Medical Provider.** After the initial collaborative relationship with the patient's licensed medical provider is established, the prescribing psychologist must maintain and document the collaborative relationship to ensure that relevant information is exchanged accurately and in a timely manner. At a minimum the prescribing psychologist must: ( )

a. Contact the licensed medical provider for any changes in medication not previously discussed with the licensed medical provider. ( )

b. Contact the licensed medical provider if and when the patient experiences adverse effects from medications prescribed by the psychologist that may be related to the patient's medical condition for which he or she is being treated by a health care practitioner. ( )

c. Contact the licensed medical provider regarding results of laboratory tests related to the medical care of the patient that have been ordered by the psychologist in conjunction with psychopharmacological treatment. ( )

d. Inform the licensed medical provider as soon as possible of any change in the patient's psychological condition that may affect the medical treatment being provided by the licensed medical provider. ( )

e. Request that as part of the collaborative relationship, the licensed medical provider inform the prescribing psychologist of any new medical diagnosis or changes in the patient's medical condition that may affect the treatment being provided by the prescribing psychologist. ( )

f. Request that as part of the collaborative relationship, the licensed medical provider inform the prescribing psychologist of any psychotropic medications prescribed or discontinued by the licensed medical provider or other licensed medical provider, of which the licensed medical provider is aware, the dates of any subsequent changes in psychotropic medications prescribed by the licensed medical provider or other licensed medical provider, of which the licensed medical provider is aware, and the efforts to coordinate the mental health care of the patient as soon as possible. ( )

05. Disagreement between Prescribing Psychologist and Licensed Medical Provider. If the licensed medical provider and the prescribing psychologist do not agree about a particular psychopharmacological treatment strategy, the prescribing psychologist must document the reasons for recommending the psychopharmacological treatment strategy that is in disagreement and must inform the licensed medical provider of that recommendation. If the licensed medical provider believes the medication is contraindicated because of a patient's medical condition, the prescribing psychologist shall defer to the judgment of the licensed medical provider and may not prescribe that psychopharmacological treatment strategy. ( )

06. Prohibited Agreements with Licensed Medical Providers. A prescribing psychologist is prohibited from employing a licensed medical provider or entering into an independent contractor or similar contractual or financial relationship with a licensed medical provider with whom the prescribing psychologist collaborates, unless approved by the Board. The Board may grant an exception to this requirement on a case-by-case basis where the prescribing psychologist shows that such relationship is structured so as to prohibit interference with the licensed medical provider's relationship with patients, the licensed medical provider's exercise of independent medical judgment, and satisfaction of the obligations and responsibilities in Chapter 23, Title 57, Idaho Code, and these rules. ( )

07. Prescriptions. All prescriptions issued by a prescribing psychologist shall comply with all applicable federal and state laws, rules and regulations and these rules. ( )

08. Emergencies. If a prescribing psychologist determines that an emergency exists that may jeopardize the health or well being of the patient, the prescribing psychologist may, without prior consultation with the patient's licensed medical provider, prescribe psychotropic medications or modify an existing prescription for psychotropic medication previously written for that patient by that prescribing psychologist. The prescribing psychologist shall consult with the licensed medical provider as soon as possible. The prescribing psychologist must document in the patient's psychological evaluation/treatment records the nature and extent of the emergency and the attempt(s) made to contact the licensed medical provider prior to prescribing or other reason why contact could not be made. ( )

09. Disaster Areas. If a prescribing psychologist is working in a declared emergency/disaster area, the

on-site medical staff can serve as the evaluating licensed medical provider. ( )

**721. -- 729. (RESERVED)**

**730. FORMULARY (RULE 730).**

A prescribing psychologist may prescribe medications and controlled substances that are recognized in or customarily used in the diagnosis, treatment and management of individuals with mental, nervous, emotional, behavioral, substance abuse and cognitive disorders and that are relevant to the practice of psychology or other procedures directly related thereto under the following limitations. ( )

**01. Prohibited Medications and Controlled Substances.** A prescribing psychologist may not prescribe: ( )

**a.** Any medication or controlled substance designated or included as a Schedule I controlled substance; or ( )

**b.** Any opioid. ( )

**02. Disorders and Conditions.** A prescribing psychologist may not prescribe medication to treat a primary endocrine, cardiovascular, orthopedic, neurologic, gynecologic, obstetric, metabolic, hematologic, respiratory, renal, gastrointestinal, hepatic, dermatologic, oncologic, infectious, ophthalmologic, or rheumatologic illness or disorder. The provisions of this rule do not prohibit a prescribing psychologist from prescribing to treat a mental, nervous, emotional, behavioral, substance abuse or cognitive disorder that arises secondary to a primary physical illness, provided that the primary illness is being treated and the prescribing psychologist collaborates with the patient's licensed medical provider, as provided in these rules. ( )

**~~657~~31. -- 999. (RESERVED)**

## **IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES**

### **24.13.01 – RULES GOVERNING THE PHYSICAL THERAPY LICENSURE BOARD**

**DOCKET NO. 24-1301-1801**

#### **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 54-2206 and 54-2225, 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 17, 2018.

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 2018, the Legislature passed and the Governor signed into law House Bill 505. This legislation added dry needling to the Physical Therapy Practice Act, allowing licensed physical therapists in Idaho to perform dry needling after completion of certain education and training. The Physical Therapy Licensure Board is proposing rules to implement the practice of dry needling, including establishing education and training requirements, as well as informed consent requirements.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes to these rules were discussed during noticed, open meetings of the Board and in stakeholder meetings with 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 Jennifer Carr 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 24, 2018.

Dated this 30th day of August, 2018.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
700 W. State Street  
P.O. Box 83720  
Boise, ID 83720  
Phone: (208) 334-3233  
Fax: (208) 334-3945

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-1301-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**010. DEFINITIONS (RULE 10).**

- 01. Board.** The Physical Therapy Licensure Board. (3-19-07)
- 02. Bureau.** Bureau means the Idaho Bureau of Occupational Licenses as created in section 67-2602, Idaho Code. (3-19-07)
- 03. Physical Therapist.** An individual who meets all the requirements of Title 54, Chapter 22, Idaho Code, holds an active license and who engages in the practice of physical therapy. (3-19-07)
- 04. Physical Therapist Assistant.** An individual who meets the requirements of Title 54, Chapter 22, Idaho Code, holds an active license, and who performs physical therapy procedures and related tasks that have been selected and delegated only by a supervising physical therapist. (3-19-07)
- 05. Supportive Personnel.** An individual, or individuals, who are neither a physical therapist or a physical therapist assistant, but who are employed by and/or trained under the direction of a licensed physical therapist to perform designated non-treatment patient related tasks and routine physical therapy tasks. (3-19-07)
- 06. Non-Treatment Patient Related Tasks.** Actions and procedures related to patient care that do not involve direct patient treatment or direct personal supervision, but do require a level of supervision not less than general supervision, including, but not limited to: treatment area preparation and clean-up, equipment set-up, heat and cold pack preparation, preparation of a patient for treatment by a physical therapist or physical therapist assistant, transportation of patients to and from treatment, and assistance to a physical therapist or physical therapist assistant when such assistance is requested by a physical therapist or physical therapist assistant when safety and effective treatment would so require. (3-19-07)
- 07. Routine Physical Therapy Tasks.** Actions and procedures within the scope of practice of physical therapy, which do not require the special skills or training of a physical therapist or physical therapist assistant, rendered directly to a patient by supportive personnel at the request of and under the direct personal supervision of a physical therapist or physical therapist assistant. (3-19-07)
- 08. Testing.** (3-19-07)
- a.** Standard methods and techniques used in the practice of physical therapy to gather data about individuals including: (3-19-07)
- i.** Electrodiagnostic and electrophysiological measurements; (3-19-07)
  - ii.** Assessment or evaluation of muscle strength, force, endurance and tone; (3-19-07)
  - iii.** Reflexes; (3-19-07)
  - iv.** Automatic reactions; (3-19-07)
  - v.** Posture and body mechanics; (3-19-07)
  - vi.** Movement skill and accuracy; (3-19-07)
  - vii.** Joint range of motion and stability; (3-19-07)
  - viii.** Sensation; (3-19-07)

- ix. Perception; (3-19-07)
  - x. Peripheral nerve function integrity; (3-19-07)
  - xi. Locomotor skills; (3-19-07)
  - xii. Fit, function and comfort of prosthetic, orthotic, and other assistive devices; (3-19-07)
  - xiii. Limb volume, symmetry, length and circumference; (3-19-07)
  - xiv. Clinical evaluation of cardiac and respiratory status to include adequacy of pulses, noninvasive assessment of peripheral circulation, thoracic excursion, vital capacity, and breathing patterns; (3-19-07)
  - xv. Vital signs such as pulse, respiratory rate, and blood pressure; (3-19-07)
  - xvi. Activities of daily living; and the physical environment of the home and work place; and (3-19-07)
  - xvii. Pain patterns, localization and modifying factors; and (3-19-07)
  - xviii. Photosensitivity. (3-19-07)
- b.** Specifically excluded are the ordering of electromyographic study, electrocardiography, thermography, invasive vascular study, selective injection tests, or complex cardiac or respiratory function studies without consultation and direction of a physician. (3-19-07)
- 09. Functional Mobility Training.** Includes gait training, locomotion training, and posture training. (3-19-07)
- 10. Manual Therapy.** Skilled hand movements to mobilize or manipulate soft tissues and joints for the purpose of: (3-19-07)
- a.** Modulating pain, increasing range of motion, reducing or eliminating soft tissue swelling, inflammation or restriction; (3-19-07)
  - b.** Inducing relaxation; (3-19-07)
  - c.** Improving contractile and non-contractile tissue extensibility; and (3-19-07)
  - d.** Improving pulmonary function. (3-19-07)
- 11. Dry Needling.** A skilled intervention performed by a physical therapist that uses a thin filiform needle to penetrate the skin and stimulate underlying neural, muscular, and connective tissues for the evaluation and management of neuromusculoskeletal conditions, pain and movement impairments. ( )
- 12. Physical Agents or Modalities.** Thermal, acoustic, radiant, mechanical, or electrical energy used to produce physiologic changes in tissues. (3-19-07)
- 13. General Supervision.** A physical therapist's availability at least by means of telecommunications, which does not require a physical therapist to be on the premises where physical therapy is being provided, for the direction of a physical therapist assistant. (3-19-07)
- 14. Direct Supervision.** A physical therapist's or physical therapist assistant's physical presence and availability to render direction in person and on the premises where physical therapy is being provided. (3-19-07)
- 15. Direct Personal Supervision.** A physical therapist's or physical therapist assistant's direct and continuous physical presence and availability to render direction, in person and on the premises where physical

therapy is being provided. The physical therapist or physical therapist assistant must have direct contact with the patient during each session and assess patient response to delegated treatment. (3-19-07)

**156. Supervising Physical Therapist.** A licensed physical therapist who developed and recorded the initial plan of care and/or who has maintained regular treatment sessions with a patient. Such physical therapist's designation of another licensed physical therapist if the physical therapist who developed and recorded the initial plan of care or maintained regular treatment sessions is not available to provide direction at least by means of telecommunications. (3-19-07)

**167. Nationally Accredited School.** A school or course of physical therapy or physical therapist assistant with a curriculum approved by: (3-19-07)

**a.** The American Physical Therapy Association (APTA) from 1926 to 1936; or the APTA Accreditation Commission; or (3-19-07)

**b.** The Council on Medical Education and Hospitals of the American Medical Association from 1936 to 1960; or (3-19-07)

**c.** An accrediting agency recognized by the U.S. Department of Education, the Council on Postsecondary Accreditation, or a successor entity, or both. (4-7-11)

**178. Examination.** The examination shall be the National Physical Therapy Examination (NPTE) administered by Federation of State Boards of Physical Therapy. The examination may also include a jurisprudence examination adopted by the Board. (4-2-08)

**011. -- 015. (RESERVED)**

**016. SUPERVISION (RULE 16).**

A physical therapist shall supervise and be responsible for patient care given by physical therapist assistants, supportive personnel, physical therapy students, and physical therapist assistant students. (3-19-07)

**01. Procedures and Interventions Performed Exclusively by Physical Therapist.** The following procedures and interventions shall be performed exclusively by a physical therapist: (3-19-07)

**a.** Interpretation of a referral for physical therapy if a referral has been received. (3-19-07)

**b.** Performance of the initial patient evaluation and problem identification including a diagnosis for physical therapy and a prognosis for physical therapy. (3-19-07)

**c.** Development or modification of a treatment plan of care which is based on the initial evaluation and which includes long-term and short-term physical therapy treatment goals. (3-19-07)

**d.** Assessment of the competence of physical therapist assistants, physical therapy students, physical therapist assistant students, and supportive personnel to perform assigned procedures, interventions and routine tasks. (3-19-07)

**e.** Selection and delegation of appropriate portions of treatment procedures, interventions and routine physical therapy tasks to the physical therapist assistants, physical therapy students, physical therapist assistant students, and supportive personnel. (3-19-07)

**f.** Performance of a re-evaluation when any change in a patient's condition occurs that is not consistent with the physical therapy treatment plan of care, patient's anticipated progress, and physical therapy treatment goals. (3-19-07)

**g.** Performance and documentation of a discharge evaluation and summary of the physical therapy treatment plan. (3-19-07)

**h.**      **Performance of dry needling.**      **( )**

**02. Supervision of Physical Therapist Assistants.** A physical therapist assistant shall be supervised by a physical therapist by no less standard than general supervision. (3-19-07)

**a.** A physical therapist assistant shall not change a procedure or intervention unless such change of procedure or intervention has been included within the treatment plan of care as set forth by a physical therapist. (3-19-07)

**b.** A physical therapist assistant may not continue to provide treatment as specified under a treatment plan of care if a patient's condition changes such that further treatment necessitates a change in the established treatment plan of care unless the physical therapist assistant has consulted with the supervising physical therapist prior to the patient's next appointment for physical therapy, and a re-evaluation is completed by the supervising physical therapist. (3-19-07)

**c.** The supervising physical therapist shall provide direct personal contact with the patient and assess the plan of care on or before every ten (10) visits or once a week if treatment is performed more than once per day but no less often than once every sixty (60) days. The supervising therapist's assessment shall be documented in the patient record. (3-20-14)

**d.** A physical therapist assistant may refuse to perform any procedure, intervention, or task delegated by a physical therapist when such procedure, intervention, or task is beyond the physical therapist assistant's skill level or scope of practice standards. (3-19-07)

**e.** A physical therapist shall not be required to co-sign any treatment related documents prepared by a physical therapist assistant, unless required to do so in accordance with law, or by a third-party. (3-19-07)

**03. Supervision of Supportive Personnel.** Any routine physical therapy tasks performed by supportive personnel shall require direct personal supervision. (3-19-07)

**04. Supervision of Physical Therapy and Physical Therapist Assistant Students.** Supervision of physical therapy students and physical therapist assistant students shall require direct supervision. (3-19-07)

**a.** A physical therapy student shall only be supervised by the direct supervision of a physical therapist. (3-19-07)

**b.** A physical therapy student shall be required to sign all treatment notes with the designation "SPT" after their name, and all such signatures shall require the co-signature of the supervising physical therapist. (3-19-07)

**c.** A physical therapist assistant student shall be required to sign all treatment notes with the designation "SPTA" after their name, and all such signatures shall require the co-signature of the supervising physical therapist or supervising physical therapist assistant. (3-19-07)

**05. Supervision Ratios.** (3-19-07)

**a.** At no time during the treatment of a patient or patients for physical therapy shall the number of physical therapist assistants providing such treatment be more than twice in number of such supervising physical therapist(s) providing physical therapy treatment at any physical therapy practice or site. (3-19-07)

**b.** At no time during the treatment of a patient or patients for physical therapy shall the number of supportive personnel performing routine physical therapy tasks be more than twice in number of such supervising physical therapist(s) or supervising physical therapist assistant(s) providing physical therapy treatment at any physical therapy practice or site. (3-19-07)

**c.** At no time during the treatment of a patient or patients for physical therapy shall the number of physical therapy students performing delegated supervised physical therapy tasks be more than twice in number of such supervising physical therapist(s) providing physical therapy treatment at any physical therapy practice or site. (3-19-07)

d. At no time during the treatment of a patient or patients for physical therapy shall the number of physical therapist assistant students performing delegated supervised physical therapy tasks be more than twice in number of such supervising physical therapist(s) or supervising physical therapist assistant(s) providing physical therapy treatment at any physical therapy practice or site. (3-19-07)

e. At no time during the treatment of a patient or patients for physical therapy shall the number of physical therapist assistants, physical therapy students, physical therapist assistants students, and supportive personnel, or a combination thereof, performing delegated supervised physical therapy or routine physical therapy tasks be more than three (3) times in number of such physical therapist(s) providing physical therapy treatment at any physical therapy practice or site; nor shall the number of physical therapist assistant students or supportive personnel, or a combination thereof, performing delegated and supervised physical therapy tasks or routine physical therapy tasks be more than twice in number of such physical therapist assistant(s) providing physical therapy treatment at any physical therapy practice or site. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

176. -- ~~197~~9. (RESERVED)

**180. REQUIREMENTS TO PRACTICE DRY NEEDLING (RULE 180).**

A physical therapist, with at least one (1) year of practice as a licensed physical therapist, may perform dry needling upon successful completion of education and training in dry needling that meets the following requirements: ( )

01. Length of Course. The education and training consists of a minimum of twenty-seven (27) hours of in-person instruction of which no less than sixteen (16) hours must be hands-on application of dry needling techniques by the physical therapist; ( )

02. Safety Training. The education and training includes instruction and training on indications/contraindications for dry needling, safe needling technique, and blood borne pathogens; ( )

03. Course Approval. Each course is approved by the Federation of State Boards of Physical Therapy (FSBPT) or another nationally recognized accrediting body of physical therapy that is approved by the Board; and ( )

04. Proficiency Assessment. Each course requires successful completion of an assessment of proficiency in dry needling, which includes a practical demonstration of the physical therapist's dry needling skills. ( )

05. Course Completion. Completion of this education and training may have occurred prior to the effective date of these rules. ( )

**181. PRACTICE OF DRY NEEDLING (RULE 181).**

A physical therapist who practices dry needling must maintain documentation of having satisfied the requirements of Section 180 of these rules and must obtain and maintain documentation of written informed consent from patients. ( )

01. Documentation of Training. Upon request by the Board, a physical therapist must produce documentation of having satisfied the education and training requirements in Section 180 of these rules. ( )

02. Written Informed Consent. Prior to performing dry needling on a patient, the physical therapist must provide the patient with information that includes a definition and description of the practice of dry needling and a description of the risks, benefits, and potential side effects of dry needling and obtain the patient's written consent to treatment, which documentation must be maintained as part of the patient record. ( )

**182. -- 199. (RESERVED)**

**IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES**  
**24.14.01 – RULES OF THE STATE BOARD OF SOCIAL WORK EXAMINERS**  
**DOCKET NO. 24-1401-1801**  
**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 54-3204 and 54-3208, 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 17, 2018.

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

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

This proposed rule will allow the Board of Social Work Examiners to recognize the Social Work Registry administered by Association of Social Work Boards (ASWB) as a reliable source of credentialing information. The Board is also adding a provision to waive the examination requirement for those applicants for licensure by endorsement who have actively practiced in another state but were not required to pass an examination at the time they obtained a social work license. These changes will eliminate barriers to licensure and increase portability for those coming to Idaho. It also removes an obsolete section from the rule.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes to these rules were discussed during noticed, open meetings of the Board.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jennifer Carr 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 24, 2018.

Dated this 30th day of August, 2018.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
700 W. State Street  
P.O. Box 83720  
Boise, ID 83720  
Phone: (208) 334-3233  
Fax: (208) 334-3945

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-1401-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**075. CREDENTIALS TO BE FILED BY ALL APPLICANTS (RULE 075).**

**01. Completed Application.** An application shall be completed by all applicants for licensure upon a form prescribed by the State Board of Social Work Examiners. (3-30-07)

**02. Official Documents.** All applicants shall arrange for official documents including transcripts to be transmitted by the registrars of the educational institutions or official custodian of documents or from the Social Work Registry administered by the Association of Social Work Boards (ASWB), directly to the board. ~~(3-30-07)~~( )

**03. Applications on File.** Applications on file with the Board for a period in excess of two (2) years from the date of receipt by the Bureau shall be terminated unless good cause is demonstrated to the Board. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. LICENSING QUALIFICATIONS AND DEFINITION OF TERMS (RULE 200).**

All applicants for licensing under the Social Work Licensing Act must meet the minimum qualifications as set forth by this act. (7-1-93)

**01. Good Moral Character.** “Good moral character” is defined by the board as that behavior exhibited on the part of an applicant which is in conformity with the Social Work Code of Professional Conduct and within the limits of state law. (5-3-03)

**02. Application for Licensure.** Application for licensure must be made to the Board of Social Work Examiners on forms provided by the Bureau of Occupational Licenses. (7-1-93)

**03. Educational Requirements.** Educational requirements must be verified by submission of official transcripts sent directly to the Board from the educational institution directly to the Bureau of Occupational Licenses or from the Social Work Registry administered by the Association of Social Work Boards (ASWB). ~~(5-3-03)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**350. EXAMINATIONS, ENDORSEMENT, AND BOARD MEETINGS (RULE 350).**

Applications for examination may be reviewed and approved by a designated Board member upon determination that the applicant meets the qualifications for examination. Approval to sit for examination does not obligate the Board to issue a license if it is later determined that the applicant does not meet the requirements for licensure. (4-4-13)

**01. Board Meetings.** Board meetings will be held at least three (3) times each year at such times and places as the board deems necessary. (5-3-03)

**02. Exam.** The Board approves the uniform, nationally standardized examination of the Association of Social Work Boards (ASWB) as the Idaho licensure examination. (4-4-13)

**a.** Bachelor level candidates shall be required to successfully pass the bachelor’s examination. (4-2-08)

**b.** Masters level candidates shall be required to successfully pass the master’s examination. (4-2-08)

- c. Clinical level candidates shall be required to successfully pass the clinical examination. (5-3-03)
- 03. Dates of Exams.** Examination at all levels of social work licensing will be conducted on dates established for national administration. (7-1-93)
- 04. Graduation Date to Qualify for Exam.** Candidates for examination who can satisfy the board that they will be graduating at the end of the spring, summer or fall terms of any given year, may qualify for examination immediately preceding the date of graduation. (4-4-13)
- 05. Endorsement.** 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: (5-3-03)
- a. Holds a current, active social work license, at the level for which a license is being sought, issued by the authorized regulatory entity in another state or country, the certification of which must be received directly by the Board from the issuing agency; and (3-20-04)
- b. Has 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 (5-3-03)
- c. Is of good moral character and has not been convicted, found guilty, or received a withheld judgment or suspended sentence for any felony; and (5-3-03)
- d. Has successfully passed an examination, as referenced in Subsection 350.02, or an examination provided by the Professional Examination Service (PES) at the clinical social worker and social worker level or the Education Testing Service (ETS) examination; and (5-3-03)
- e. Has certified under oath to abide by the laws and rules governing the practice of social work in Idaho and the code of professional conduct. (5-3-03)
- f. The Board may waive the examination requirement in Subsection 350.05.d. for an applicant who was not required to pass such an examination at the time the applicant initially obtained a social work license, provided that the applicant meets all other requirements in this subsection and has actively practiced social work for five (5) of the last seven (7) years preceding application. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**~~500. RULEMAKING HISTORY PRIOR TO JULY, 1993 (RULE 500):~~**

~~Adopted January 30, 1980  
Re-adopted October 11, 1983  
Revised December 15, 1983  
Rule C.1. and E.1.c. Adopted Emergency  
Re-adopted February 23, 1985  
Re-adopted November 25, 1985  
Re-adopted February 16, 1988  
Re-adopted January 22, 1990~~

~~(7-1-93)~~

**~~501. -- 999. (RESERVED)~~**

## **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. 24-1501-1802**

#### **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 54-3401 and 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 17, 2018.

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 its rules to clarify areas of the rule that are confusing, to increase portability for individuals moving to Idaho, and to increase flexibility for completion of continuing education requirements. Specifically, the proposed rule clarifies confusing language regarding group supervision and the informed consent requirements for patients who are treated by an individual who is practicing under supervision. The changes also increase portability for individuals moving to Idaho by recognizing licenses that are equivalent to an Idaho license but titled differently. It will allow the Board to credit supervision hours that an applicant completed in another state under a registration or permit rather than a “license.” Finally, the rule increases flexibility for licensees by allowing all continuing education requirements to be completed through online and home study courses, and updates and removes outdated and unnecessary language.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed rule was discussed and decided upon during noticed, open meetings of the Board.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jennifer Carr 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 24, 2018.

Dated this 30th day of August, 2018.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
700 W. State Street  
P.O. Box 83720  
Boise, ID 83720  
Phone: (208) 334-3233  
Fax: (208) 334-3945

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-1501-1802**  
**(Only Those Sections With Amendments Are Shown.)**

**149. MATERIALS TO BE FILED BY ALL LICENSURE APPLICANTS (RULE 149).**

Each applicant for licensure shall: (3-13-02)

**01. Complete an Application.** Complete an application upon a form prescribed by the Board. (3-13-02)

**02. Provide Verification of Educational Program.** Verify completion of the approved educational program identified on the application with official graduate transcripts. Official transcripts must be received by the Board directly from the registrar of the appropriate college or university. (3-13-02)

**03. Submit Verification of Supervised Experience.** The verification of supervised experience shall be provided directly to the Board by those supervisors listed on the application. (3-13-02)

**04. Submit Application Fee.** Submit a non-refundable application fee as determined by Subsection 250.01. (3-13-02)

**05. Deadline.** To be considered by the Board, a properly completed application together with all supporting documentation and required fees must be received by the Bureau at least seven (7) calendar days prior to the next scheduled meeting of the Board. (3-30-06)

**06. Lack of Activity.** Applications on file with the Board from an applicant who has not provided any written contact with the Board during the previous twelve (12) consecutive months shall be deemed denied and shall be terminated upon a thirty (30) day written notice, unless good cause is demonstrated to the Board. ~~(3-30-06)~~ ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. COUNSELOR SUPERVISOR REQUIREMENTS (RULE 200).**

Effective July 1, 2004, Idaho licensed counselors shall be registered with the Board in order to provide supervision for those individuals pursuing licensure in Idaho as a counselor. (3-29-12)

**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, provided that the Board may in its discretion approve a supervisor with disciplinary action for failing to complete continuing education requirements. ~~(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.~~ (3-29-12)( )

b. A supervisor's registration shall be valid only so long as the supervisor's counselor license remains current and in good standing, is not disciplined, and is renewed as provided in these rules. (3-25-16)

**03. Supervision.** (4-2-03)

a. A Registered Counselor Supervisor shall provide supervision in conformance with the guidelines for supervisors set forth in the ACA Code of Ethics. (3-29-12)

~~b. A Registered Counselor Supervisor must ensure that informed consent containing information about the roles of the supervisor and supervisee is obtained from clients of the supervisee.~~ ( )

~~bc.~~ 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) supervisees concurrently. (3-29-12)

~~ed.~~ Supervision shall be provided in a face-to-face setting. Face-to-face setting may include a secure live electronic face-to-face connection between the supervisor and supervisee. (3-25-16)

**04. Renewal.** Subject to the conditions in Paragraph 200.04.c. of this rule, a supervisor's registration is valid for a term of five (5) years. To renew a supervisor registration, the registered supervisor must submit to the Board a complete application for registration renewal prior to the expiration of the current registration on forms approved by the Board and meet the following requirements: (3-25-16)

a. Hold an active Idaho counselor license which has not been subject to discipline and is current and in good standing; and (3-25-16)

b. Document six (6) hours of continuing education in advanced supervisor training as approved by the Board and completed within the previous five (5) years. (3-25-16)

~~c. For supervisors registered prior to the effective date of Subsection 200.04 of this rule, the following renewal requirements and conditions apply:~~ (3-25-16)

~~i. A registered supervisor who has been registered for at least five (5) years prior to July 1, 2016 must submit a complete application for registration renewal and meet the renewal requirements by July 1, 2018.~~ (3-25-16)

~~ii.~~ A registered supervisor who has been registered for less than five (5) years prior to July 1, 2016 must submit a complete application for registration renewal and meet the renewal requirements by July 1, 2020. (3-25-16)

**201. -- 224. (RESERVED)**

**225. CLINICAL PROFESSIONAL COUNSELOR LICENSURE (RULE 225).**

Licensure as a "clinical professional counselor" shall be restricted to persons who have successfully passed the required examination and have met the following requirements: (3-29-12)

**01. License.** Hold a ~~valid~~ licensed professional counselor license that is current and in good standing in this state or in another state that has substantially similar requirements to a licensed professional counselor in this state; and (3-25-16)( )

**02. 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 or other authorization to practice in any state. (3-29-12)( )

a. 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, 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. 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 license and supervision are substantially equivalent to the requirements of Title 54, Chapter 34, Idaho Code. (3-25-16)

**b.** 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. Supervision shall be provided in a face-to-face setting. Face-to-face setting may include a secure live electronic face-to-face connection between the supervisor and supervisee. (3-25-16)

**c.** No more than one-half (1/2) of ~~the required supervision hours may be~~ group supervision ~~shall be allowed.~~ ~~(3-30-07)~~ ( )

**03. Examination.** Successful passage of the required written examination. (3-29-12)

**04. 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. (3-29-12)

**(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 participants.~~ 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. ~~(4-4-13)~~ ( )

**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. (3-29-12)

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 or consultation. (4-4-13)

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; (3-29-12)
- ii. Editor or editorial board service of a professional counseling or therapy journal; (3-29-12)
- 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~~ **There is no limit to the contact hours that a licensee may obtain in this category during each reporting period.** ~~Home study or on-line courses~~ **to** qualify for contact hours, **provided that** the course ~~must be~~ **is** provided by a Board-approved continuing education provider or a course pre-approved by the Board. (3-29-12)(      )

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 renewal date may be applied toward meeting the continuing education requirement for the next license renewal. No more than ten (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. (3-29-12)

**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)

**(BREAK IN CONTINUITY OF SECTIONS)**

~~550. RULEMAKING HISTORY PRIOR TO JULY 1, 1993 (RULE 550).~~

~~Adopted October 4, 1983  
Amended and Readopted December 24, 1985  
Effective January 13, 1986  
Amended and Readopted May 10, 1988  
Effective May 30, 1988  
Amended and Readopted May 16, 1991~~

~~(7-1-93)~~

~~551-999. (RESERVED)~~

## **IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES**

### **24.17.01 – RULES OF THE STATE BOARD OF ACUPUNCTURE**

**DOCKET NO. 24-1701-1801**

#### **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 54-4705 and 54-4708, 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 17, 2018.

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

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

This proposed rule will clarify the requirements and qualifications for an acupuncture trainee permit, and ensure trainees demonstrate competency in clean needle techniques prior to providing treatments to patients without the supervisor's presence. In addition, the proposed rule establishes supervision standards for licensed and certified acupuncturists who provide supervision to trainees and technicians.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes to these rules were discussed during noticed, open meetings of the Board.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jennifer Carr 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 24, 2018.

Dated this 30th day of August, 2018.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
700 W. State Street  
P.O. Box 83720  
Boise, ID 83720  
Phone: (208) 334-3233  
Fax: (208) 334-3945

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-1701-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**200. QUALIFICATIONS FOR LICENSURE OR CERTIFICATION (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 (3-21-12)

**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 Trainee Permit.** Applicants for Acupuncture trainee permit shall submit a complete application, required fee, and official certified documentation of either: (3-21-12)~~

~~**a.** Current enrollment in an Approved Acupuncture Program and actively pursuing completion of the~~

~~program; or~~ (3-21-12)

~~b. Must meet the requirement for certification as set forth in Subsection 200.02.e. and complete the one hundred (100) hours of didactic course work as set forth in Subsection 200.02.d.~~ (3-21-12)

~~e. Permit holders must work under the board approved supervision of a licensed or certified acupuncturist.~~ (3-21-12)

~~d. The permit will expire one (1) year from date of issue. The permit may be extended in accordance with Section 54-4708, Idaho Code.~~ (3-21-12)

**201. ACUPUNCTURE TRAINEE PERMIT.**

The Board may issue an acupuncture trainee permit to allow a person to engage in the practice of acupuncture while actively pursuing licensure or certification. 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 holder of an acupuncture trainee permit may only practice under the supervision of a person licensed or certified under this chapter who meets the requirements in Section 404 of these rules. An applicant for a permit must present evidence satisfactory to the Board of meeting the following requirements: ( )

01. Application. An applicant must submit a completed application on a form approved by the Board together with the required fee. ( )

02. Education. An applicant must submit documentation of either: ( )

a. Current enrollment in an Approved Acupuncture Program and actively pursuing completion of the program; or ( )

b. Satisfaction of the requirement for certification as set forth in Paragraph 200.02.c. of these rules, and successful completion of the one hundred (100) hours of didactic course work as set forth in Paragraph 200.02.d. of these rules. ( )

03. Supervision. Submission of a supervision plan specifying at a minimum the name of the supervisor and the setting and location where the permit holder will practice. A supervision plan may be approved by a designated Board member. ( )

~~204. -- 225.~~ (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**404. SUPERVISION OF TRAINEES AND TECHNICIANS (RULE 404).**

A licensed or certified acupuncturist providing supervision to trainees or technicians shall be responsible for the services provided by such individuals. Failure to adequately supervise such an individual may subject the supervisor to discipline. (4-4-13)

01. Qualifications of Supervisors. Prior to providing supervision to a trainee, a supervisor must: ( )

a. Have held a current acupuncture license or certification without restriction for a minimum of five (5) years. ( )

b. Have not been the subject of any disciplinary action within the preceding five (5) years, provided that the Board may in its discretion approve a supervisor with disciplinary action for failing to complete continuing education requirements. ( )

02. Supervision. For the first one hundred (100) hours of practice, the supervisor must provide

supervision in person when the trainee is providing treatment. After the first one hundred (100) hours of practice, the supervisor may provide supervision by making themselves accessible to the trainee by telephone, or video conferencing, provided that the trainee has successfully completed the requirement in Paragraph 404.02.a. of this rule, and provided that the supervisor meets with the trainee in person on at least a monthly basis during which time the supervisor must review case studies and require the trainee to demonstrate acupuncture point location and needle placement technique. ( )

a. Before providing treatment without in-person supervision, the trainee must successfully complete a Blood Borne Pathogen course and comprehensive examination that incorporates clean needle techniques and OSHA procedures and requirements. ( )

b. The supervisor must provide the trainee with adequate training, which must include at a minimum charting, diagnosis, and treatment plans, and opportunities for the trainee to complete at least twenty-five (25) case studies. ( )

c. The supervisor and trainee must keep adequate records of supervision, which shall include at a minimum, summary of case studies in progress or completed by the trainee under supervision, treatment plan for each patient, and the dates of supervision. ( )

**03. Continuing Education.** A supervisor may annually count up to ten (10) hours of supervision of a trainee toward the Category I continuing education requirements. Supervision hours not claimed in the current renewal year may be claimed in the next renewal year. A maximum of ten (10) hours may be carried forward from the immediately preceding year, and may not be carried forward more than one renewal year. ( )

**04. Completion of Supervision.** At the conclusion of supervision of a technician or trainee, the supervisor must verify the hours of supervision, the type of supervision provided to the technician or trainee, and the documentation of at least twenty-five (25) case studies by the technician or trainee. ( )

**05. Termination of Supervision or Change in Supervisor.** A supervisor may terminate supervision at any time by submitting written notice of termination to the Board. ( )

## **IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES**

### **24.18.01 – RULES OF THE REAL ESTATE APPRAISER BOARD**

#### **DOCKET NO. 24-1801-1802 (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 54-4106, 54-4113, 54-4124, and 54-4132, 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 17, 2018.

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 Real Estate Appraiser Board operates on dedicated funds derived primarily from licensing and registration fees. It is recommended that boards maintain a balance equivalent to 100-150% of their annual budget. The Board's balance exceeds that amount. Accordingly, the proposed rule lowers fees and leaves more money in the hands of licensees.

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

Section 150 will reduce the application fee from \$250 to \$200, original license fee from \$140 to \$100, and license renewal fee from \$365 to \$275 for certified general appraisers, certified residential appraisers, and licensed general appraisers. Section 150 will also reduce the registration fee for Appraisal Management Companies (AMCs) from \$1,200 to \$1,000, and reduce the AMC renewal fee from \$1,200 to \$900. In addition, the temporary permit fee will be reduced from \$100 to \$75.

The proposed rule will have no impact on the General Fund. The estimated impact on the Bureau of Occupational Licenses' dedicated fund will be a reduction of approximately \$98,030.00 per 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: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes to these rules were discussed during noticed, open meetings of the Board.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jennifer Carr 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 24, 2018.

Dated this 29th day of August, 2018.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
700 W. State Street  
P.O. Box 83720  
Boise, ID 83720  
Phone: (208) 334-3233 / Fax: (208) 334-3945

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-1801-1802**  
**(Only Those Sections With Amendments Are Shown.)**

**150. FEES (RULE 150).**

Fees are established in accord with Sections 54-4113, 54-4124 and 54-4134, Idaho Code, as follows: (3-24-17)

01. **Application.** Application fee for License and Registration – two hundred ~~fifty~~ dollars (\$~~250~~0).  
(3-24-17)( )
02. **Original License.** Original License – one hundred ~~forty~~ dollars (\$~~140~~0)\*. (3-24-17)( )
03. **Original AMC Registration.** Original Registration – One thousand ~~two hundred~~ dollars (\$~~1,200~~0)\*\*.  
(3-24-17)( )
04. **License Renewal.** License renewal – ~~three~~ ~~two~~ hundred ~~sixty~~ ~~seventy~~-five dollars (\$~~362~~75)\*.  
(3-21-12)( )
05. **AMC Registration Renewal.** Registration renewal – ~~One thousand two~~ ~~nine~~ hundred dollars (\$~~1,290~~0)\*\*.  
(3-24-17)( )
06. **Reinstatement.** Reinstatement fee is as provided in Section 67-2614, Idaho Code. (3-24-16)
07. **Application for Reciprocity.** Application for reciprocity – two hundred ~~fifty~~ dollars (\$~~250~~0)\*.  
(3-30-01)( )
08. **Original License Via Reciprocity.** Original License via reciprocity – one hundred dollars (\$100)\*.  
(3-21-12)
09. **Temporary Permit.** Temporary permit – ~~one hundred~~ ~~seventy-five~~ dollars (\$~~100~~75).  
(7-1-93)( )
10. **Trainee Registration Fee.** Trainee registration fee – fifty dollars (\$50). (3-13-02)
11. **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)
12. **Continuing Education Provider Application Fee.** Continuing Education Provider Application fee - one hundred dollars (\$100). (3-21-12)
13. **Fees are Non-Refundable.** Fees are non-refundable. (7-1-93)
14. **Fees Followed By One Asterisk (\*) Means.** Proposed fees for these categories marked with an asterisk (\*) include forty dollars (\$40) 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 eighty-five dollars (\$85),” 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. (3-21-12)
15. **Fees Followed By Two Asterisks (\*\*)** Means. The fees for the categories marked with two (2) asterisks (\*\*) do not include additional fees assessed pursuant to Title XI, Section 1109 of the FIRREA, as amended, including, but not limited to, an AMC registry fee, such fees to be collected from AMCs by the state and transmitted to the federal government on an annual basis. (3-22-18)

**IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES**  
**24.19.01 – RULES OF THE BOARD OF EXAMINERS OF RESIDENTIAL**  
**CARE FACILITY ADMINISTRATORS**

**DOCKET NO. 24-1901-1801**

**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 54-4205, 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 17, 2018.

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

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

The proposed rule will eliminate a barrier to licensure for a licensed nursing home administrator seeking licensure as a residential care facility administrator by allowing work experience in a nursing home facility to qualify.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes to these rules were discussed during noticed, open meetings of the Board.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jennifer Carr 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 24, 2018.

Dated this 29th day of August, 2018.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
700 W. State Street  
P.O. Box 83720  
Boise, ID 83720  
Phone: (208) 334-3233  
Fax: (208) 334-3945

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-1901-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**160. NURSING HOME ADMINISTRATOR QUALIFICATIONS FOR LICENSE (RULE 160).**

Any applicant who holds a valid Idaho nursing home administrator license must meet the requirements provided in Section 54-4211(2), Idaho Code, and must take and pass the Board-approved residential care administrator examination. This requirement may be waived if the applicant submits evidence satisfactory to the Board that he has at least one (1) year of leadership or management experience working in a residential care facility or nursing home facility within the five (5) years preceding the application. ~~(3-29-10)~~ ( )

## **IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES**

### **24.25.01 – RULES OF THE IDAHO DRIVING BUSINESSES LICENSURE BOARD**

**DOCKET NO. 24-2501-1801**

#### **NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-5403, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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 Driving Businesses Licensure Board's proposed rule changes will allow the Board to consider applications received less than seven (7) days prior to a board meeting. The rule change also provides a waiver for the Instructor Apprenticeship Training Program for individuals who have completed the State Department of Education's instructor training program, and allows a public driver education instructor who was licensed within the last five (5) years to qualify for a private driving instructor license. The rule change will eliminate the requirement that an instructor have five (5) or more continuous years of driver education experience to teach apprentices in a private driving school. The rule change will also provide a provision for the carryover of continuing education hours. These changes will reduce regulation, provide flexibility to licensees and applicants, and eliminate barriers to employment.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes to these rules were discussed during noticed, open meetings of the Board.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jennifer Carr 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 24, 2018.

Dated this 30th day of August, 2018.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
700 W. State Street  
P.O. Box 83720  
Boise, ID 83720  
Phone: (208) 334-3233  
Fax: (208) 334-3945

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-2501-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**150. APPLICATION (RULE 150).**

Each applicant for a license, permit, or other authority from the Board must submit a complete application on Board-approved application forms. The application must be accompanied by required fee(s). ~~The Board will not review completed applications received ten (10) or fewer days before a Board meeting.~~ Applications received less than seven (7) days prior to a Board meeting may be held over to the next meeting. The Board also will not review incomplete applications, including applications submitted without the required fee(s). Further, an applicant must provide, or facilitate the provision of, any supplemental information or documents requested by the Board. Any application on file with the Board where an applicant has failed to respond to a Board request or where the application has lacked activity for twelve (12) consecutive months will be deemed denied and will be terminated upon thirty (30) days written notice to the applicant unless good cause is established to the Board. (4-7-11)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**201. CONTINUING EDUCATION (RULE 201).**

In order to protect the public health and safety and promote the public welfare, the Board has adopted the following rules for continuing education. (4-7-11)

**01. Continuing Education (CE) Requirement.** ~~Beginning July 1, 2012, e~~Each Idaho licensed driving instructor must annually complete a minimum of eight (8) hours of continuing education. (4-7-11)(    )

**a.** The licensee must certify on the licensee's renewal application that the licensee has complied with the annual CE requirements for the preceding twelve (12) months. The Board may conduct such continuing education audits and require verification of attendance as deemed necessary to ensure compliance with the CE requirements. (4-7-11)

**b.** A licensee is considered to have satisfied the CE requirements for the first renewal of the initial license. (4-7-11)

**c.** ~~After July 1, 2012, and p~~Prior to reinstatement of a license lapsed, canceled, or otherwise non-renewed for less than five (5) years, the applicant must provide proof of attendance of eight (8) hours of continuing education for the previous twelve (12) months. A license that has lapsed, been canceled, or otherwise not renewed for more than five (5) years may be reinstated in accordance with Section 67-2614, Idaho Code. (4-7-11)(    )

**02. Hours.** Credit for continuing education hours will only be given for actual time in attendance or for the time spent participating in the educational activity. One (1) hour of continuing education is equal to sixty (60) minutes. Courses taken by correspondence or on-line may be approved for continuing education if the courses require an exam or other proof of successful completion. Only four (4) hours of the required continuing education may be from correspondence, on-line, or self-study in each renewal period. The remaining hours must be in an interactive setting that allows participants to communicate directly with the instructor. Each licensee must maintain proof of attendance or successful completion documentation of all continuing education courses for a period of three (3) years. (4-7-11)

**03. Providers/Sponsors/Subjects of Continuing Education.** The continuing education must be provided by a nationally or regionally accredited college or university, a national or state driver education and traffic safety association such as the Idaho Association of Professional Driving Businesses, Driving School Association of the Americas, the American Driver Traffic Safety Education Association, and the American Automobile Association, transportation and law enforcement agencies, or other person or entity approved by the Board and must be germane to driver education. (4-7-11)

**04. Verification of Attendance.** Each licensee must maintain verification of attendance by securing authorized signatures or other documentation from the course instructors or sponsoring institution substantiating any and all hours attended by the licensee. (4-7-11)

**05. Failure to Fulfill the Continuing Education Requirements.** The license will not be renewed for a licensee who fails to certify compliance with CE requirements. A licensee who makes a false attestation regarding compliance with the CE requirements is subject to disciplinary action by the Board. (4-7-11)

**06. Special Exemption.** The Board has authority to make exceptions for reasons of individual hardship, including health, when certified by a medical doctor, or other good cause. Each licensee must provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board. (4-7-11)

**07. Carryover of Continuing Education Hours.** Continuing education hours not claimed in the current renewal year may be claimed in the next renewal year. A maximum of eight (8) hours may be carried forward from the immediately preceding year, and may not be carried forward more than one (1) renewal year. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**250. DRIVING INSTRUCTOR LICENSE (RULE 250).**

**01. Application.** Each applicant for a driving instructor license must apply as required by Rule 150. Each applicant is required to provide his name, date of birth, and contact information, including mailing address and telephone number, on the Board-approved application form. (4-7-11)

**02. Age.** An applicant for a driving instructor license must be at least twenty-one (21) years old. (4-7-11)

**03. Driving Record and Drivers License.** Each applicant must submit a copy of a valid driver's license in good standing and a copy of a satisfactory driving record. An unsatisfactory record includes, but is not limited to, two (2) moving violations in the past twelve (12) months, or suspension or revocation of a driver's license in the last thirty-six (36) months, or a conviction involving alcohol or controlled substances within the last thirty-six (36) months. (4-7-11)

**04. Criminal History Background Check.** Each applicant must submit to a current, fingerprint-based criminal history check conducted by an organization approved by the Board. Each applicant must submit a full set of the applicant's fingerprints, and any relevant fees, to the Bureau which will forward the fingerprints and fees to the organization that conducts the fingerprint based criminal history background check. The application will not be processed until the completed fingerprint-based criminal history background check has been received. (3-20-14)

**05. Medical Certificate.** A driving instructor licensee may not provide in-vehicle instruction to students if the instructor suffers from a medical condition that may impair the instructor's ability to safely instruct student drivers. Accordingly, each applicant for an instructor's license must obtain a medical examination performed by a licensed medical professional. The examination must be completed within two (2) years preceding the application. The applicant must submit a medical examiner's certificate, issued and signed by a licensed, qualified medical professional documenting that the examination occurred and that the applicant does not suffer from any physical or mental condition or disease that would impair the applicant's ability to safely instruct student drivers. If a medical condition exists, the applicant must re-certify as the medical professional requires and submit that information to the Board. (3-29-17)

**06. Education.** Each applicant must submit written evidence, satisfactory to the Board, of having graduated from a high school or a regionally or nationally accredited college or university, or of having obtained a GED. (4-7-11)

**07. Instructor Apprenticeship Training Program.** Applicants for licensure must demonstrate to the Board's satisfaction that they have successfully completed all required classroom instruction and behind-the-wheel training hours from a Board-approved instructor apprenticeship training program or have met the requirements for a waiver of the apprenticeship training program as set forth in these rules. The applicant must have undertaken and completed the apprenticeship training program within the five (5) year period immediately preceding the application. (4-11-15)

**a.** Proof of successful completion must include written certificate from a Board-approved apprenticeship training program certifying that the applicant has satisfactorily completed the program. An applicant need not have completed all required classroom instruction and behind-the-wheel training hours through a single program so long as the last program attended by the applicant ensures itself, and its business licensee certifies to the Board that the applicant has satisfactorily completed all required hours through Board-approved apprenticeship training programs. (4-7-11)

**b.** A person may not enroll in an apprenticeship training program unless the person has applied for, paid for, and obtained an apprenticeship permit from the Board. The applicant must apply on Board-approved forms, which must identify the applicant and the business licensee in whose approved apprenticeship training program the applicant will be enrolled. The individual applicant must establish that they are at least twenty-one (21) years old, hold a valid driver's license and a satisfactory driver license record, have passed a fingerprint based criminal history background check, and have obtained a medical certificate consistent with the requirements of Subsections 250.02 through 250.05. An apprenticeship permit automatically expires one (1) year after issuance. The Board also may suspend or revoke an apprenticeship permit, and refuse to issue another permit, if the permittee engages in any act or omission that would subject the permittee to discipline if the permittee had an instructor's license. No one may be a permittee for more than three (3) years. (3-20-14)

**08. Waiver of Instructor Apprenticeship Training Program.** An applicant shall be entitled to a waiver of the apprenticeship training program if they possess the requisite training and experience as set forth below. (4-11-15)

**a.** An applicant who holds a current active unrestricted equivalent driving instructor license from another state shall qualify for a waiver of the apprenticeship training program requirement. The applicant is responsible to provide proof to the Board that they hold a current unrestricted driving instructor license from another state, and that said license is equivalent to an Idaho driver instructor license in its qualifications and scope of practice; or (4-11-15)

**b.** An applicant who has held within the past five (5) years an active and unrestricted public driver education instructor license issued by the Idaho State Department of Education ~~for at least two (2) years and has completed eight (8) hours of continuing education within the prior year or an individual who has completed the Idaho State Department of Education driving instructor program within the past five (5) years and has completed eight (8) hours of continuing education within the prior year~~ shall qualify for a waiver of the apprenticeship training program requirement. The applicant is responsible to provide proof to the Board that they ~~hold a current unrestricted Idaho public driver instructor license~~ meet the requirements herein. (4-11-15)( )

**251. -- 274. (RESERVED)**

**275. INSTRUCTOR APPRENTICESHIP TRAINING PROGRAM (RULE 275).**

**01. Application for Approval.** A business licensee may operate a Board-approved instructor apprenticeship training program. The business licensee must apply for program approval on forms provided by the Board, and submit with the application such documentation as the Board may require to enable the Board to assess whether the proposed program meets the Board's approval criteria, as specified in Subsections 275.03 through 275.08 of these rules. (4-7-11)

**02. Suspension or Revocation of Approval and Discipline.** If an approved program fails to consistently adhere to the approval criteria in Subsections 275.03 through 275.08 of these rules, the Board may suspend or revoke the approval. Further, if a business licensee that operates an approved program fails to cooperate with the Board in any inspection or audit of the program, the licensee may be disciplined. (4-7-11)

**03. Apprentices.** The business licensee must ensure that all persons who enroll in the licensee's program possess a valid instructor apprenticeship training permit from the Board. (3-20-14)

**04. Instruction and Training Hours.** The Board must be satisfied that the program has designed its proposed instruction and training to produce safe and effective driving instructors. The business licensee must ensure that the program includes at least the following instruction and training components: (4-7-11)

**a.** Each apprentice must receive at least sixty (60) hours of classroom instruction covering the curriculum components for student classroom instruction specified in Subsections 226.01 through 226.10 of these rules. These hours ~~must include both a didactic component, in which a program instructor provides in-class instruction to the apprentice, and a practical component in which the apprentice provides in-class instruction to students. A program instructor must be physically present in the classroom to supervise at least thirty (30) hours of the apprentice's in-class instruction to students~~ **may also be completed through on-line or internet based instruction.** (4-7-11)(    )

**b.** Each apprentice must receive at least one hundred eight (108) hours of behind-the-wheel-training covering the curriculum components for student in-car instruction specified in Subsections 226.11 through 226.14 of these rules. When an apprentice begins to provide behind-the-wheel driving instruction to students, a program instructor must supervise the apprentice by riding in the vehicle with the apprentice and students for the first six (6) hours. A program instructor also must ride in the vehicle with the apprentice and students to evaluate the apprentice during the final two (2) hours of the apprentice's behind-the-wheel training. (4-7-11)

**05. Instructors.** The business licensee must ensure that only licensed driving instructors ~~with five (5) or more years of continuous driver education experience~~ are allowed to teach in the program. A list of the instructors must accompany the application for approval. (4-7-11)(    )

**06. Recordkeeping.** The business licensee must ensure that the program maintains progress records for each apprentice. A program instructor and the apprentice must sign and date the records each month, and copies of the records must be provided to the apprentice. The records must, at a minimum, identify each lesson completed, the number of hours of instruction involved in the lesson, the date the apprentice completed the lesson, the instructor who taught the lesson, and whether the apprentice passed. When an apprentice's course of instruction has been completed or terminated, the program business licensee must maintain the records of the apprentice's progress, and the total hours recorded and maintained by the program for a period of five (5) years from completion or termination date. These records are subject to inspection by the Board at any time. (4-7-11)

**07. Certificate of Proficiency.** The program must provide each apprentice with a certificate of proficiency evidencing all hours satisfactorily completed by the apprentice while in the program, and that the apprentice is proficient in all areas covered by the certificate. (4-7-11)

**08. Discontinuance of Program.** If the business licensee ceases to operate the program, the business licensee must provide the program's current and prior apprentices with any progress or other records that the program is required to maintain under this Section. (4-7-11)

# IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

## 24.26.01 – RULES OF THE IDAHO BOARD OF MIDWIFERY

DOCKET NO. 24-2601-1801

### 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 54-5504, 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 17, 2018.

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 Midwifery's proposed rule will update two documents incorporated by reference to reflect the most current publications, delete obsolete waiver language, and clarify current cardiopulmonary resuscitation certification for licensure renewal.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes to these rules were discussed during noticed, open meetings of the Board.

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

The Prevention of Perinatal Group B Streptococcal Disease, published by the Centers for Disease Control and Prevention, dated August 16, 2002, will be updated to incorporate the November 19, 2010 publication. The Analysis of the 2001 Job Analysis Survey published by the North American Registry of Midwives will be updated to incorporate the 2016 Job Analysis Survey. By updating these documents, the Board is ensuring they reflect the most current publications.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jennifer Carr 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 24, 2018.

Dated this 29th day of August, 2018.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
700 W. State Street  
P.O. Box 83720  
Boise, ID 83720  
Phone: (208) 334-3233  
Fax: (208) 334-3945

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-2601-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**004. INCORPORATION BY REFERENCE (RULE 4).**

The following documents are incorporated by reference into these rules, and are available at the Board's office and through the Board's website: (3-29-10)

**01. Prevention of Perinatal Group B Streptococcal Disease.** Published by the Centers for Disease Control and Prevention, MMWR 20~~02~~<sup>10</sup>;5~~7~~<sup>9</sup> (No. RR 1~~7~~<sup>0</sup>), dated ~~August~~ **November** 1~~6~~<sup>9</sup>, 20~~10~~<sup>2</sup>, referenced in Paragraph 350.01.d. (3-29-10)(    )

**02. Essential Documents of the National Association of Certified Professional Midwives.** Copyright date 2004, referenced in Subsection 356.01. (3-29-10)

**03. Analysis of the 20~~01~~<sup>16</sup> Job Analysis Survey.** Published by the North American Registry of Midwives (NARM). (3-29-10)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**100. QUALIFICATIONS FOR LICENSURE (RULE 100).**

**01. Applications.** Applications for licensure must be submitted on Board-approved forms. (3-29-10)

**02. Qualifications.** Applicants for licensure must submit a completed application, required application and licensing fees, and documentation, acceptable to the Board, establishing that the applicant: (3-29-10)

**a.** Currently is certified as a CPM by NARM or a successor organization. (3-29-10)

**b.** Has successfully completed Board-approved, MEAC-accredited courses in pharmacology, the treatment of shock/IV therapy, and suturing specific to midwives. (3-29-10)

~~**03. Waiver of Current CPM Certification Requirement.** The Board may waive the current CPM certification requirement, specified here in Paragraph 100.02.a., for any applicant who has continuously practiced midwifery in Idaho for at least five (5) years prior to July 1, 2009. To qualify for the waiver, the applicant must apply for licensure before July 1, 2010 and submit with the application documentation, acceptable to the Board, of the following:~~ (3-29-10)

~~**a.** The applicant's primary attendance at seventy five (75) births within the past ten (10) years, ten (10) of which occurred in the two (2) years immediately preceding the applicant's application for licensure;~~ (3-29-10)

~~**b.** Current certification in adult, infant, and child cardiopulmonary resuscitation and in neonatal resuscitation obtained through completion of American Heart Association approved cardiopulmonary resuscitation courses and American Academy of Pediatrics approved neonatal resuscitation courses; and~~ (3-29-10)

~~**c.** Complete practice data, as referenced in Subsection 200.04, for the two (2) years preceding the application for licensure. The complete practice data documentation must be submitted on a Board approved form.~~ (3-29-10)

**043. Incomplete or Stalled Applications.** The applicant must provide or facilitate the provision of any supplemental third party documents that may be required by the Board. 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 shall be deemed denied and it shall be terminated upon thirty (30) days written notice, unless good cause is established to the Board. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. RENEWAL OF LICENSE (RULE 200).**

**01. Expiration Date.** A licensed midwife's license expires on the licensed midwife's birth date. The license must be annually renewed before the licensed midwife's birth date in accordance with Section 67-2614, Idaho Code. Licenses that are not renewed as required will be cancelled pursuant to Section 67-2614, Idaho Code. (3-29-10)

**02. Reinstatement.** A license that has been cancelled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code. (3-29-10)

**03. Application for Renewal.** In order to renew a license a licensed midwife must submit a timely, completed, Board-approved renewal application form and pay the required application and renewal fees. (3-29-10)

**04. Complete Practice Data.** The information submitted by the licensed midwife on the Board-approved application form must include complete practice data for the twelve (12) months immediately preceding the date of the renewal application. Such information shall include: (3-29-10)

- a.** The number of clients to whom the licensed midwife has provided care; (3-29-10)
- b.** The number of deliveries, including; (3-29-10)
  - i.** The number of cesareans; (3-29-10)
  - ii.** The number of vaginal births after cesarean (VBACs); (3-29-10)
- c.** The average, oldest, and youngest maternal ages; (3-29-10)
- d.** The number of primiparae; (3-29-10)
- e.** All APGAR scores below five (5) at five (5) minutes; (3-29-10)
- f.** The number of prenatal transfers and transfers during labor, delivery and immediately following birth, including; (3-29-10)
  - i.** Transfers of mothers; (3-29-10)
  - ii.** Transfers of babies; (3-29-10)
  - iii.** Reasons for transfers; (3-29-10)
  - iv.** Transfers of all newborns being admitted to the neonatal intensive care unit (NICU) for more than twenty four (24) hours. (3-29-10)
- g.** Any perinatal deaths occurring up to six weeks post-delivery, broken out by: (3-29-10)
  - i.** Weight; (3-29-10)
  - ii.** Gestational Age; (3-29-10)

- iii. Age of the baby; (3-29-10)
- iv. Stillbirths, if any; (3-29-10)
- h. Any significant neonatal or perinatal problem, not listed above, during the six (6) weeks following birth. (3-29-10)

**05.** Current Cardiopulmonary Resuscitation Certification. A licensed midwife to renew their license must certify on their renewal application that they possess a current certification in adult, infant, and child cardiopulmonary resuscitation and in neonatal resuscitation obtained through completion of American Heart Association approved cardiopulmonary resuscitation courses and American Academy of Pediatrics approved neonatal resuscitation courses. ( )

**056.** **Continuing Education Verification.** When a licensed midwife submits a renewal application, the licensed midwife must certify by signed affidavit that the annual continuing education requirements set by the Board have been met. The Board may conduct such continuing education audits and require verification of attendance as deemed necessary to ensure compliance with continuing education requirements. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**325. INFORMED CONSENT (RULE 325).**

**01. Informed Consent Required.** A licensed midwife must obtain and document informed consent from a client before caring for that client. The informed consent must be documented on an informed consent form, signed and dated by the client, in which the client acknowledges, at a minimum, that the following information has been provided to the client by the midwife: (3-29-10)

- a. The licensed midwife's training and experience; (3-29-10)
- b. Instructions for obtaining a copy of the Board's rules; (3-29-10)
- c. Instructions for obtaining a copy of the Essential Documents of the NACPM and Analysis of the 2016 Job Analysis Survey, published by NARM; ~~(3-29-10)~~( )
- d. Instructions for filing complaints with the Board; (3-29-10)
- e. Notice that the licensed midwife does or does not have professional liability insurance coverage; (3-29-10)
- f. A written protocol for emergencies, including hospital transport that is specific to each individual client; and (3-29-10)
- g. A description of the procedures, benefits and risks of out-of-hospital birth, primarily those conditions that may arise during delivery. (3-29-10)

**02. Record of Informed Consent.** All licensed midwives must maintain a record of all signed informed consent forms for each client for a minimum of nine (9) years after the last day of care for such client. (3-29-10)

## **IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES**

### **24.28.01 – RULES OF THE BARBER AND COSMETOLOGY SERVICES LICENSING BOARD**

#### **DOCKET NO. 24-2801-1802 (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 Sections 54-5807 and 54-5822, 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 17, 2018.

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:

Senate Bill 1324, which passed during the 2018 Legislative Session, combined the Boards of Barber Examiners and Cosmetology. The new Barber and Cosmetology Services Licensing Board is adopting rules to implement the new law. These rules are based upon public protection, portability of licenses, and eliminating barriers to employment.

The proposed rules implement Senate Bill 1324, which reduced the minimum hours of instruction required for cosmetology, barber-stylist, and electrology licenses; created a new certificate for individuals who only want to practice make-up artistry; and created a registration for retail thermal styling equipment dealers to do limited demonstration on potential customers. The rules also specify what services a licensee may perform outside a licensed establishment; provide for the transfer of instructional hours between professions; and modernize safety and disinfection requirements.

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

The Board operates on dedicated funds and must be self-supporting. The following fees are established in accordance with Section 54-5822, Idaho Code, as follows: original license fee for individual licenses: \$25; original license fee for instructors: \$30; original license fee for establishments: \$20; original license fee for schools: \$300; original license or registration fee for facilities: \$20; renewal fee for individual licenses: \$25; renewal fee for instructors: \$30; renewal fee for establishments: \$20; renewal fee for schools: \$85; renewal fee for facilities: \$20; registration fee for apprentice: \$25; certificate for makeup artist: \$25; and license by endorsement fee: \$35.

**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 to these rules were discussed during noticed, open meetings of the Board. The Board also requested input from licensed schools and stakeholders who had expressed interest in the rules.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jennifer Carr 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 24, 2018.

Dated this 30th day of August, 2018.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
700 W. State Street  
P.O. Box 83720  
Boise, ID 83720  
Phone: (208) 334-3233  
Fax: (208) 334-3945

**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 24-2801-1802**  
**(Only Those Sections With Amendments Are Shown.)**

**IDAPA 24**  
**TITLE 28**  
**CHAPTER 01**

**24.28.01 – RULES OF THE BARBER AND COSMETOLOGY SERVICES LICENSING BOARD**

**000. LEGAL AUTHORITY.**

These rules are hereby prescribed and established pursuant to the authority vested in the Barber and Cosmetology Services Licensing Board by the provisions of Section 54-5807, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** The rules shall be cited as IDAPA 24.28.01, “Rules of the Barber and Cosmetology Services Licensing Board.” ( )

**02. Scope.** These rules implement the purposes and intent of Chapter 58, Title 54, Idaho Code, to regulate the professions of barbering and cosmetology in the interest of the public health, safety, and welfare. ( )

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, the Board may have written statements that pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. Such interpretations, if any, are available for public inspection and copying at cost in the main office of the Bureau of Occupational Licenses. ( )

**003. ADMINISTRATIVE APPEAL.**

Administrative appeals shall be governed by the Administrative Procedure Act, Chapter 52, Title 67, Idaho Code, and IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General.” ( )

**004. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference into this rule. ( )

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

**01. Location and Contact Information.** The office of the Barber and Cosmetology Services

Licensing Board is located within the Bureau of Occupational Licenses, 700 W. State Street, Boise, Idaho 83702, P.O. Box 83720, Boise, Idaho 83720-0063. The telephone number of the Board is (208) 334-3233 and the fax number is (208) 334-3945. The Board's email address is [bcbl@ibol.idaho.gov](mailto:bcbl@ibol.idaho.gov). The Board's official website can be found at <http://www.ibol.idaho.gov>. ( )

**02. Office Hours.** The office is open between the hours of 8:00 a.m. and 5:00 p.m. Mountain Time each day except Saturdays, Sundays, and holidays. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

The rules contained herein are subject to and in compliance with the Idaho Public Records Act, Chapter 1, Title 74, Idaho Code. The records associated with the Board are subject to the provisions of the Public Records Act. ( )

**007. OPEN MEETINGS.**

This Board operates pursuant to the Idaho Open Meetings Law, Chapter 2, Title 74, Idaho Code. ( )

**008. -- 009. (RESERVED)**

**010. DEFINITIONS.**

**01. Board.** Barber and Cosmetology Services Licensing Board. ( )

**02. Bureau.** Idaho Bureau of Occupational Licenses. ( )

**03. Clean.** Removal of visible or surface debris, washing with soap and water, detergent or chemical "cleaner." Cleaning reduces the number and slows the growth of pathogens on both porous and non-porous surfaces. Cleaning prepares non-porous items for disinfection, but cleaning does not make multi-use items safe for use. ( )

**04. Clinical Services or Clinical Work.** Performing hands-on acts or techniques within the scope of practice of a profession regulated by the Board. ( )

**05. Disinfect.** The process of making a non-porous item safe for use. Disinfecting requires the use of a chemical intended to kill or denature a bacteria, virus or fungus. Items to be disinfected must be cleaned prior to disinfection. Ultraviolet (UV) light is not acceptable for disinfection. ( )

**06. Disinfectant.** Disinfectant registered by the United States Environmental Protection Agency (EPA) and is bactericidal, virucidal and fungicidal with effectiveness against staphylococcus aureus (including methicillin-resistant staphylococcus aureus (MRSA)), human immunodeficiency virus (HIV) and hepatitis B (HEPB). This includes EPA registered Sodium Hypochlorite 5.25% or higher (household bleach) with instructions for disinfection, diluted as instructed on the label and observing the five (5) minute contact time listed on the manufacturer's label. Bleach must be active (not expired) with a manufacture date of less than six (6) months prior to use. ( )

**07. Establishment.** Establishment means a place licensed under Chapter 58, Title 54, Idaho Code, other than a licensed school or licensed facility, where barber-styling, cosmetology, or electrology is practiced. ( )

**08. Facility.** A retail cosmetics dealer, a retail thermal styling equipment dealer, or a makeover or glamour photography business. ( )

**09. First-Aid Kit.** First-aid kit means a packaged and identifiable assortment of medical supplies, including adhesive bandages, skin antiseptic, disposable gloves, and gauze. ( )

**10. Makeup.** Makeup means makeup, cosmetics, or any pigment product that is used to cover, camouflage, or decorate the skin. ( )

**11. Patron.** Patron means any person who receives the services of anyone licensed, certificated or otherwise regulated by the provisions of Chapter 58, Title 54, Idaho Code. ( )

**12. Record of Instruction.** The final documentation of total hours and operations completed by a ( )

student that is maintained by a school or, in the case of an apprentice, by the instructor. ( )

**13. Single-Use.** Any non-electrical item that cannot be properly cleaned and disinfected is considered single-use. This includes, but is not limited to, pumice stones, buffing blocks, wooden cuticle pushers, cotton balls, pads or swabs, toe separators and flip flops, and all nail files or emery boards that are not made entirely of metal, glass, or crystal. ( )

**14. Sterilize.** The eradication of all microbial life through the use of heat, steam or chemical sterilants. Items to be sterilized must be cleaned prior to sterilization. ( )

**15. Sterilant.** Autoclaves or dry heat sterilizers approved by the United States Food and Drug Administration and spore tested through an independent lab at least once every thirty (30) days. Sterilants must be used only as instructed by the manufacturer. Spore testing results and maintenance records for the most recent twelve (12) months must be kept onsite at the establishment. ( )

**011. UPDATE OF RECORDS.**

Applicants, licensees, registrants, and certificants are responsible for keeping their records updated with the Bureau. All changes including name changes and change of address must be submitted in writing to the Bureau within thirty (30) days. The most recent mailing address on file with the Bureau will be used for purposes of all written communication with a licensee, registrant, or certificant including notification of renewal and notices related to disciplinary actions. ( )

**012. -- 099. (RESERVED)**

**100. ORGANIZATION AND OPERATIONS OF THE BOARD.**

**01. Meetings.** The Board shall meet at least annually and at other such times and places as designated by the Chairman, upon the request of the governor, or upon the written request of a majority of the members of the Board. ( )

**a.** A minimum of four (4) Board members shall constitute a quorum and shall be required for the transaction of business, provided at least one (1) board member of the relevant profession is present when any board action is taken that affects the profession, its licensees, or its applicants. A majority vote of the quorum present at a meeting shall be considered the action of the Board as a whole. ( )

**b.** The Chairman shall be a voting member. ( )

**02. Organization.** At the first meeting of each fiscal year, the Board shall elect from its members a Chairman, who shall assume the duty of the office immediately upon such selection. ( )

**a.** The Chairman shall preside at all meetings when present, appoint all committees with the consent of the Board, and otherwise perform all duties pertaining to the office of Chairman. ( )

**b.** The Bureau shall act as an agent of the Board and shall be the official keeper of all records of the Board. The Bureau shall provide such services as may be authorized by Chapter 26, Title 67, Idaho Code, and as defined under contract between the Bureau and the Board. ( )

**200. APPLICATION.**

**01. Filing an Application.** Applicants for licensure, certification, or registration shall submit a complete application, verified under oath, to the Board at its official address. The application shall be on the forms approved by the Board and submitted together with the appropriate fee(s) and supporting documentation. ( )

**02. Supporting Documents.** The applicant must provide or facilitate the provision of any supporting third party documents that may be required under the qualifications for the license, certificate, or registration being sought. ( )

**03. Applications Must Be Complete.** Applications shall not be considered complete until all required information, documents, and fees are received by the Board. ( )

**04. Application Deadline Date.** Applications received less than seven (7) days prior to a Board meeting may be held over to the next meeting. ( )

**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 a thirty (30) day written notice, unless good cause is demonstrated to the Board. ( )

**250. FEES.**  
Fees are established in accordance with Section 54-5822, Idaho Code, as follows: ( )

**01. Fees.** ( )

**a.** Original License Fee for Individual Licenses. The fee for an original license as a barber, barber-stylist, cosmetologist, electrologist, esthetician, haircutter, or nail technician is twenty-five dollars (\$25). ( )

**b.** Original License Fee for Instructors. The fee for an original instructor license is thirty dollars (\$30). ( )

**c.** Original License Fee for Establishments. The fee for an original license as a primary establishment or contiguous establishment is twenty dollars (\$20). ( )

**d.** Original License Fee for Schools. The fee for an original license as a barber or cosmetology school is three hundred dollars (\$300). ( )

**e.** Original License or Registration Fee for Facilities. The fee for an original license as a retail cosmetics dealer or makeover or glamour photography business or an original registration as a retail thermal styling equipment dealer is twenty dollars (\$20). ( )

**f.** Annual Renewal Fee for Individual Licenses. The annual renewal fee for a license as a barber, barber-stylist, cosmetologist, electrologist, esthetician, haircutter, or nail technician is twenty-five dollars (\$25). ( )

**g.** Annual Renewal Fee for Instructors. The annual renewal fee for a license as an instructor is thirty dollars (\$30). ( )

**h.** Annual Renewal Fee for Establishments. The annual renewal fee for a license as a primary establishment or a contiguous establishment is twenty dollars (\$20). ( )

**i.** Annual Renewal Fee for Schools. The annual renewal fee for a license as a barber or cosmetology school is eighty-five dollars (\$85). ( )

**j.** Annual Renewal Fee for Facilities. The annual renewal fee for a license as a retail cosmetics dealer or makeover or glamour photography business or a registration as a retail thermal styling equipment dealer is twenty dollars (\$20). ( )

**k.** Registration Fee for Apprentice. The fee for a registration as an apprentice is twenty-five dollars (\$25). ( )

**l.** Certificate for Makeup Artist. The fee for a certificate as a makeup artist is twenty-five dollars (\$25). ( )

**02. License by Endorsement Fee.** The fee for licensure by endorsement is thirty-five dollars (\$35). ( )

- 03. Duplicate License Fee.** The fee for a duplicate license is ten dollars (\$10). ( )
- 04. Reinstatement Fee.** Reinstatement fee is as provided in Section 67-2614, Idaho Code. ( )
- 05. Examination Fee.** The fee for those examinations administered by a third party administrator shall be that fee determined by the administrator and shall be paid directly to the administrator by the applicant. ( )
- 06. Refund of Fees.** All fees are non-refundable. ( )

**251. -- 299. (RESERVED)**

**300. QUALIFICATIONS FOR ALL LICENSES OR CERTIFICATES FOR INDIVIDUALS.**

In addition to other qualifications set forth in these rules, each applicant for licensure or certification must meet the following general qualifications: ( )

- 01. Age.** Be at least sixteen and one-half (16 ½) years of age. ( )
- 02. Education.** Successful completion of at least two (2) years of high school or have attained an equivalent education as determined by the Board as evidenced by: ( )
- a.** High school transcripts, a copy of a high school diploma, or a letter written on high school stationery, signed by an officer of the high school, indicating that the applicant has satisfactorily completed the tenth grade and is eligible to commence the eleventh grade; or ( )
  - b.** Documents establishing admission to or graduation from an associates, bachelors, or graduate degree program from an accredited college or university; or ( )
  - c.** Successful passage of the General Educational Development (G.E.D.) Test; or ( )
  - d.** Any test approved by the Department of Education to establish education equivalency shall be approved by the Board when an applicant receives a score approved by the Department of Education as meeting the equivalency requirement; or ( )
  - e.** Other proof of satisfactory completion of the tenth grade with eligibility to commence the eleventh grade. ( )
- 03. Good Moral Character.** ( )
- a.** An applicant must certify that he/she has not been found guilty, been convicted, or received a withheld judgment or suspended sentence for a felony or a crime involving moral turpitude. If the applicant has been found guilty, been convicted, or received a withheld judgment or suspended sentence for such a crime, the applicant must submit a written statement of suitability for licensure or certification as set forth in Section 312 of these rules. ( )
  - b.** An applicant must certify that he/she or his/her license has not been subject to any disciplinary action by a regulatory entity in another state, territory, or country including, but not limited to, having an application for licensure denied. If the applicant or his/her license has been subject to discipline, the applicant must submit a written statement of suitability for licensure or certification as set forth in Section 312 of these rules. ( )

**301. QUALIFICATIONS FOR ORIGINAL BARBER LICENSE.**

The Board may grant a license to an applicant for licensure as a barber who completes an application as set forth in Section 200 of these rules, pays the required fee, and who meets the following general, education, experience, and examination qualifications: ( )

- 01. General.** Meet the requirements prescribed in Section 300 of these rules. ( )
- 02. Education.** Successful completion and graduation from a program of barbering consisting of not

less than nine hundred (900) hours of instruction in a licensed barber school, or the following equivalent instruction: ( )

**a.** For a currently licensed cosmetologist, a licensed barber school must credit eight hundred (800) hours toward the required nine hundred (900) hours for a barber course. The school must submit for the Board's approval a written explanation of how the credited hours and the remaining hours of instruction will be allotted among the subjects in the barber course curriculum, provided that the remaining hours of instruction must at a minimum include the following: ( )

i. Barber theory, including male haircuts; and ( )

ii. Shaving. ( )

**b.** For a currently licensed barber in another state, territory, possession or country, and who does not meet the qualifications for licensure by endorsement, fifty (50) hours of instruction may be credited for each three (3) months of practical experience in barbering. ( )

**03. Examination.** Successful passage of a barber examination approved by the Board. ( )

**302. QUALIFICATIONS FOR ORIGINAL BARBER-STYLIST LICENSE.**

The Board may grant a license to an applicant for licensure as a barber-stylist who completes an application as set forth in Section 200 of these rules, pays the required fee, and meets the following general, education, and examination qualifications: ( )

**01. General.** Meet the requirements prescribed in Section 300 of these rules. ( )

**02. Education.** Successful completion and graduation from a program of barber-styling consisting of not less than one thousand five hundred (1,500) hours of instruction in a licensed barber school, or the following equivalent instruction: ( )

**a.** For a currently licensed cosmetologist, a licensed barber school must credit of one thousand four hundred (1,400) hours toward the required one thousand five hundred (1,500) hours for a barber-stylist course. The school must submit for the Board's approval a written explanation of how the credited hours and the remaining hours of instruction will be allotted among the subjects in the barber-stylist course curriculum, provided that the remaining hours of instruction must at a minimum include the following: ( )

i. Barber theory, including male haircuts; and ( )

ii. Shaving. ( )

**b.** For a currently licensed barber-stylist in another state, territory, possession or country, fifty (50) hours of instruction may be credited for each three (3) months of practical experience in barber-styling. ( )

**03. Examination.** Successful passage of a barber-stylist examination approved by the Board. ( )

**303. QUALIFICATIONS FOR ORIGINAL COSMETOLOGIST LICENSE.**

The Board may grant a license to an applicant for licensure as a cosmetologist who completes an application as set forth in Section 200 of these rules, pays the required fee, and meets the following general, education, and examination qualifications: ( )

**01. General.** Meet the requirements prescribed in Section 300 of these rules. ( )

**02. Education.** Successful completion and graduation from a program of cosmetology consisting of not less than one thousand six hundred (1,600) hours of instruction in a licensed cosmetology school or completed at least three thousand two hundred (3,200) hours in an apprenticeship that meets the requirements of Section 550 of these rules, or the following equivalent instruction: ( )

**a.** For a currently licensed barber-stylist, a licensed cosmetology school must credit one thousand three hundred (1,300) hours toward the required one thousand six hundred (1,600) hours for a cosmetology course. The school must submit for the Board's approval a written explanation of how the credited hours and the remaining hours of instruction will be allotted among the subjects in the cosmetology course curriculum, provided that the remaining hours of instruction must at a minimum include the following: ( )

- i. Nail technology; ( )
- ii. Esthetics; and ( )
- iii. Cosmetology theory, including female hairstyling. ( )

**b.** For a currently licensed barber, a licensed cosmetology school must credit nine hundred (900) hours toward the required one thousand six hundred (1,600) hours for a cosmetology course. The school must submit for the Board's approval a written explanation of how the credited hours and the remaining hours of instruction will be allotted among the subjects in the cosmetology course curriculum, provided that the remaining hours of instruction must at a minimum include the following: ( )

- i. Working on the hair with chemicals; ( )
- ii. Nail technology; ( )
- iii. Esthetics; and ( )
- iv. Cosmetology theory, including female hairstyling. ( )

**c.** A currently licensed esthetician, haircutter, or nail technician must be given credit of two hundred (200) hours toward the required one thousand six hundred (1,600) hours for a cosmetology course or four hundred (400) hours toward the required three thousand two hundred (3,200) hours as a cosmetology apprentice. ( )

**d.** For a currently certificated makeup artist in this state, a licensed cosmetology school may credit up to fifty (50) hours toward the required instructional hours for a cosmetology course, or a licensed instructor may credit up to one hundred (100) hours toward the required apprenticeship hours. ( )

**e.** For an esthetician, haircutter, or nail technician student, a licensed cosmetology school may credit eighty percent (80%) of accumulated hours, but no more than two hundred (200) hours, toward the required instructional hours for a cosmetology course. ( )

**f.** For a currently licensed cosmetologist in another state, territory, possession or country, one hundred (100) hours of instruction or two hundred (200) hours as an apprentice may be credited for each six-month period of practical experience in cosmetology. ( )

**03. Examination.** Successful passage of the cosmetology examination approved by the Board. ( )

**304. QUALIFICATIONS FOR ORIGINAL ELECTROLOGIST LICENSE.**

The Board may grant a license to an applicant for licensure as an electrologist who completes an application as set forth in Section 200 of these rules, pays the required fee, and meets the following general, education, and examination qualifications: ( )

**01. General.** Meet the requirements prescribed in Section 300 of these rules. ( )

**02. Education.** Successful completion and graduation from a program of electrology consisting of not less than six hundred (600) hours of instruction in a licensed cosmetology school approved to teach electrology or successful completion of at least one thousand two hundred (1,200) hours in an apprenticeship that meets the requirements of Section 550 of these rules. For a currently licensed electrologist in another state, territory, possession or country, forty (40) hours of instruction or eighty (80) hours as an apprentice may be credited for each six-month period of practical experience in electrology. ( )

**03. Examination.** Successful passage of the electrologist examination conducted or approved by the Board. ( )

**305. QUALIFICATIONS FOR ORIGINAL ESTHETICIAN LICENSE.**

The Board may grant a license to an applicant for licensure as an esthetician who completes an application as set forth in Section 200 of these rules, pays the required fee, and meets the following general, education, and examination qualifications: ( )

**01. General.** Meet the requirements prescribed in Section 300 of these rules. ( )

**02. Education.** Successful completion and graduation from a program of esthetics consisting of not less than six hundred (600) hours of instruction in a licensed cosmetology school or successful completion of at least one thousand two hundred (1,200) hours in an apprenticeship that meets the requirements of Section 550 of these rules, or the following equivalent instruction: ( )

**a.** For a currently certificated makeup artist in this state, a licensed cosmetology school may credit up to fifty (50) hours toward the required instructional hours for an esthetics course or, a licensed instructor may credit up to one hundred (100) hours toward the required apprenticeship hours. ( )

**b.** A licensed cosmetology school may credit one-seventh (1/7) of accumulated hours toward the required instructional hours for an esthetics course for a cosmetology student. ( )

**c.** For a currently licensed esthetician in another state, territory, possession or country, sixty (60) hours of instruction or one hundred twenty (120) hours as an apprentice may be given for each six-month period of practical experience in esthetics. ( )

**03. Examination.** Successful passage of the esthetician examination approved by the Board. ( )

**306. QUALIFICATIONS FOR ORIGINAL HAIRCUTTER LICENSE.**

The Board may grant a license to an applicant for licensure as a haircutter who completes an application as set forth in Section 200 of these rules, pays the required fee, and meets the following general, education, and examination qualifications: ( )

**01. General.** Meet the requirements prescribed in Section 300 of these rules. ( )

**02. Education.** Successful completion of and graduation from a program of haircutting consisting of not less than nine hundred (900) hours of instruction in a licensed cosmetology school or the following equivalent instruction: ( )

**a.** A licensed cosmetology school may credit one-seventh (1/7) of accumulated hours toward the required instructional hours for a haircutter course for a cosmetology student. ( )

**b.** For a currently licensed haircutter in another state, territory, possession or country, ninety (90) hours of instruction or one hundred twenty (120) hours as an apprentice may be credited for each six-month period of practical experience in haircutting, hair design, or cosmetology. ( )

**307. QUALIFICATIONS FOR ORIGINAL NAIL TECHNICIAN LICENSE.**

The Board may grant a license to an applicant for licensure as a nail technician who completes an application as set forth in Section 200 of these rules, pays the required fee, and meets the following general, education, and examination qualifications: ( )

**01. General.** Meet the requirements prescribed in Section 300 of these rules. ( )

**02. Education.** Successful completion and graduation from a program of nail technology consisting of not less than four hundred (400) hours of instruction in a cosmetology school approved by the Board or completed at least eight hundred (800) hours in an apprenticeship that meets the requirements of Section 550 of these rules, or the

following equivalent instruction: ( )

**a.** A licensed cosmetology school may credit one-seventh (1/7) of accumulated hours toward the required instructional hours for a nail technology course for a cosmetology student. ( )

**b.** For a currently licensed nail technician in another state, territory, possession or country, forty (40) hours of instruction or eighty (80) hours as an apprentice may be credited for each six-month period of practical experience in nail technology. ( )

**03. Examination.** Successful passage of the nail technician examination approved by the Board. ( )

**308. QUALIFICATIONS FOR MAKEUP ARTIST CERTIFICATE.**

The Board may grant a certificate to an applicant for certification as a makeup artist who completes an application as set forth in Section 200 of these rules, pays the required fee, and meets the following general and education/training requirements: ( )

**01. General.** Meet the requirements prescribed in Section 300 of these rules. ( )

**02. Education/Training.** Successful completion of instruction of not less than one hundred (100) hours in makeup artistry, which must include instruction and practical experience in safety and infection control. Hours may be classroom instruction, training, practical experience, or a combination. Instruction may be received from one or more of the following sources: ( )

**a.** A cosmetology school licensed in this state or another state, territory, possession, or country;( )

**b.** A cosmetology or esthetics instructor licensed in this state or another state, territory or possession; ( )

**c.** A retail cosmetics dealer licensed in this state or another state, territory or possession; or ( )

**d.** Other source of instruction that includes: ( )

**i.** Knowledgeable and experienced instructor with a record of safe practices; ( )

**ii.** Instruction in client safety and safe product selection; and ( )

**iii.** Hands-on practice and training in infection control. ( )

**e.** Any combination of the sources listed in Subsections 308.02.a. through d. of these rules. ( )

**03. Documentation of Education/Training.** An applicant may present proof of education/training in makeup artistry in the following ways: ( )

**a.** A current cosmetology or esthetician license from another state, territory, possession or country. ( )

**b.** Transcripts or records of instruction. ( )

**c.** Documentation of work history and training as an employee for a retail cosmetics dealer licensed in this state or another state, territory or possession of the United States. ( )

**d.** Membership in the International Alliance of Theatrical Stage Employees Make-Up Artists and Hair Stylists Guild or other similar organization whose membership requirements meet or exceed the requirements of these rules. ( )

**e.** Documentation of other training/experience must include: ( )

- i. Identity and qualifications of the person delivering the instruction/training; ( )
- ii. Method of instruction/training and amount of hands-on training provided; and ( )
- iii. Subject matters covered, particularly pertaining to topics listed in Subsection 308.02.d. of these rules. ( )

**04. Additional Education/Training.** The Board may require an applicant who does not have a documented record of sufficient training in safety and infection control to obtain additional training or other demonstration of competency in that area. ( )

**309. QUALIFICATIONS FOR ORIGINAL BARBER OR BARBER-STYLIST INSTRUCTOR LICENSE.**

The Board may grant a license to an applicant for licensure as a barber instructor or barber-stylist instructor who completes an application as set forth in Section 200 of these rules, pays the required fee, and meets the following licensure, education, experience, and examination qualifications: ( )

**01. Licensure.** Hold a current barber license for a barber instructor applicant or hold a current barber-stylist or cosmetologist license for a barber-stylist instructor applicant. ( )

**02. Education and Experience.** At least five (5) years of experience as a licensed barber for a barber instructor applicant or as a licensed barber-stylist for a barber-stylist instructor applicant or have satisfactorily completed: ( )

**a.** A minimum six (6) month course of barber instructing for a barber instructor applicant or barber-stylist instructing for a barber-stylist instructor applicant as a student in a licensed barber school, provided that the course consist of no less than nine hundred (900) hours; or ( )

**b.** A minimum three (3) month course of barber instructing for a barber instructor applicant or barber-stylist instructing for a barber-stylist instructor applicant as a student in a licensed barber school, if the applicant has at least two (2) years of experience as a licensed barber for a barber instructor applicant or as a barber-stylist for a barber-stylist instructor applicant, provided that the course consist of no less than five hundred (500) hours; or ( )

**c.** Hold a cosmetology instructor license in this state. ( )

**03. Examination.** Successful passage of the instructor examination approved by the Board. ( )

**310. QUALIFICATIONS FOR ORIGINAL COSMETOLOGY INSTRUCTOR LICENSE.**

The Board may grant a license to an applicant for licensure as an instructor of cosmetology, electrology, esthetics, or nail technology who completes an application as set forth in Section 200 of these rules, pays the required fee, and meets the following licensure, education, experience, and examination qualifications: ( )

**01. General.** Meet the requirements prescribed in Section 300 of these rules. ( )

**02. Licensure.** Hold a current license as a cosmetologist, electrologist, esthetician, or nail technician. ( )

**03. Education.** Earned twelve (12) college credit hours or the equivalent. Credit hours must be obtained from the Education Department, Speech Communications Department or from the Psychology/Sociology Department and other credit at the discretion of the Board. Equivalency is determined as: ( )

**a.** Completion of teaching seminars focusing on cosmetology, nail technology, esthetics, or electrology approved by the Board. Fourteen (14) clock hours is equivalent to one (1) semester college credit hour in an approved seminar. Verification of satisfactory completion must be submitted to the Board for its approval. ( )

**b.** Verified satisfactory teaching as a qualified instructor from another state for one (1) of the previous

three (3) years immediately prior to application. ( )

**04. Experience.** At least five (5) years of experience as a licensed cosmetologist, electrologist, esthetician, or nail technician, which must be immediately preceding the application, or have satisfactorily completed: ( )

**a.** A minimum six (6) month course of cosmetology instructing as a student in a licensed cosmetology school, provided that the course consist of no less than nine hundred (900) hours; or ( )

**b.** A minimum three (3) month course of cosmetology instructing as a student in a licensed cosmetology school, if the applicant has at least two (2) years of experience as a licensed cosmetologist, electrologist, esthetician, or nail technician, provided that the course consist of no less than five hundred (500) hours; or ( )

**c.** Hold a barber or barber-stylist instructor license in this state. ( )

**05. Examination.** Successful passage of the instructor examination approved by the Board. ( )

**311. APPROVED EXAMINATION.**

Approved examinations shall be the written and practical examination provided by the National Interstate Council of State Boards of Cosmetology (NIC) for the discipline for which licensure is sought. A passing score must be obtained on both the written and practical examination. A passing score will be determined by NIC. ( )

**312. WRITTEN STATEMENT OF SUITABILITY FOR LICENSURE OR CERTIFICATION.**

An applicant who or whose license has a conviction, finding of guilt, withheld judgment, or suspended sentence for a felony or crime involving moral turpitude, or has been subject to discipline in another state, territory or country must submit with his/her application a written statement and any supplemental information establishing his/her current suitability for licensure or certification. ( )

**01. Consideration of Factors and Evidence.** The Board shall consider the following factors or evidence: ( )

**a.** The severity or nature of the crime or discipline; ( )

**b.** The period of time that has passed since the crime or discipline under review; ( )

**c.** The number or pattern of crimes or discipline or other similar incidents; ( )

**d.** The circumstances surrounding the crime or discipline that would help determine the risk of repetition; ( )

**e.** The relationship of the crime or discipline to the practice of barbering or cosmetology; ( )

**f.** The applicant's activities since the crime or discipline under review, such as employment, education, participation in treatment, payment of restitution, or any other factors which may be evidence of current rehabilitation; and ( )

**g.** Any other information regarding rehabilitation or mitigating circumstances. ( )

**02. Interview.** The board may, at its discretion, grant an interview of the applicant. ( )

**03. Applicant Bears the Burden.** The applicant shall bear the burden of establishing his/her current suitability for licensure or certification. ( )

**313. REQUIREMENTS FOR LICENSURE BY ENDORSEMENT.**

The Board may grant a license to an applicant for licensure by endorsement who completes an application as set forth in Section 200 of these rules and meets the following requirements: ( )

- 01. General Requirements.** The applicant must: ( )
- a. Be at least eighteen (18) years of age; ( )
  - b. Meet the education requirements set forth in Subsection 300.02 of these rules; and ( )
  - c. Meet the good moral character requirements set forth in Subsection 300.03 of these rules. ( )

**02. Hold a Current License and Have Experience.** The applicant must be the holder of a current active license or certificate of qualification in the profession and at the level for which a license is being sought, issued by the authorized regulatory entity in another state, territory, possession, or foreign country. The certification of licensure must be received by the Board from the issuing agency; and ( )

- a. Must show that the state, territory, possession, or foreign country has licensing requirements substantially equivalent to or higher than those required for new applicants in Idaho; or ( )
- b. Document at least one (1) year of actual practice under certification or licensure in the three (3) years immediately prior to application in the profession for which a license is being sought. ( )

**314. -- 324. (RESERVED)**

**325. LICENSURE AND OPERATION OF PRIMARY AND CONTIGUOUS ESTABLISHMENTS.**

Except as otherwise provided in statute and these rules, a licensed individual must practice within a licensed establishment. An establishment may be licensed as a primary establishment or a contiguous establishment that operates within a primary establishment. ( )

**01. Primary Establishment License.** A primary establishment license may be issued and annually renewed only under the following conditions: ( )

a. Application for establishment license shall be made on forms furnished by the Board and shall include plans and specifications complying with the Board's safety and disinfection requirements. The fully completed application form, with the required fees, must be submitted to the Board and a license issued prior to the opening or operation of any barber or cosmetology primary establishment; and ( )

b. There is a clearly defined and designated working floor space of adequate dimension to allow the safe and sanitary practice of any one (1) or combination of defined practices of cosmetology or barber-styling for all individual stations that may be in operation in addition to any restroom and access areas; and ( )

c. There is an approved hot and cold running water source and drainage system that is available to any contiguous establishment or other establishment or facility that may exist; and must be within the perimeters of the licensed establishment and separate from the toilet facilities; and ( )

d. There are restroom facilities conveniently located and accessible from within the building in which the primary establishment is located and which shall be accessible from the primary area and to all areas designated for the operation of contiguous establishments. Restroom facilities shall contain an approved hot and cold running water source and approved drainage system. The water source shall be in addition to the work area facilities; and ( )

e. Any areas designated by the primary establishment for the operation of contiguous establishments shall be clearly defined and fixed, and shall provide adequate dimension to allow the safe and sanitary practice of any one or a combination of the defined practices of cosmetology or barber-styling for all stations that may be operated in that area. ( )

f. The holder of the primary establishment license is responsible for complying with the safety and disinfection requirements and all other applicable statutes and rules for the designated licensed area of the primary establishment, including areas that are cooperatively or jointly used as "common areas" such as shampoo bowls, restrooms, entrance or reception areas. ( )

**02. Contiguous Establishment License.** A contiguous establishment license may be issued and annually renewed only under the following conditions: ( )

**a.** Application for establishment license shall be made on forms furnished by the Board. The fully completed application form, with the required fees, must be submitted to the Board and a license issued prior to the opening or operation of any barber or cosmetology contiguous establishment; and ( )

**b.** The contiguous establishment is associated with a currently licensed primary establishment and a holder of the primary establishment license provides proof that the primary shop is equipped to meet the safety and disinfection requirements and rules of the Board; and ( )

**c.** The contiguous establishment shall only operate in the contiguous establishment designated areas within the associated primary establishment. ( )

**d.** The holder of the contiguous establishment license will be responsible for complying with the safety and disinfection requirements and all other applicable statutes and rules for the contiguous designated area where it operates. ( )

**03. Businesses Other Than a Licensed Establishment or Facility.** Businesses other than one licensed under Chapter 58, Title 54, Idaho Code, and living quarters shall be separate and apart. Home establishments must provide a separate outside entrance directly into the establishment and substantial partitions or walls shall extend from the floor to not less than seven (7) feet high, separating the establishment from adjoining rooms used for business or domestic purposes. All doors to an establishment from adjacent rooms shall be closed. ( )

**04. Conditions for Issuance.** No primary establishment license may be issued which includes or overlaps all or any portion of an existing establishment license. ( )

**326. ESTABLISHMENT CHANGES IN OWNERSHIP OR LOCATION.**

Whenever a change of ownership or fixed location of an establishment occurs, an original license fee must be paid and compliance with all rules concerning a new establishment must be met before a new license will be issued. Establishment licenses are not transferable. ( )

**01. Board Must Be Informed of All Changes.** The Board must be informed in writing of any and all changes of ownership and location of establishments. ( )

**02. Deletion of an Owner.** Deletion of an owner in a multiple ownership may be effected by filing a written statement with the Board signed by the person withdrawing and the remaining owner(s). ( )

**03. Transfer of Ownership.** If the transfer involves change of corporate structure or deleting one (1) or more owners, a written notarized statement signed by all former owners as registered with the Board shall be accepted. ( )

**04. Addition of an Owner.** Addition of an owner to a multiple ownership constitutes a change in ownership and the requirements for a new establishment apply. ( )

**05. Out of Business.** Whenever any establishment ceases operation at the licensed location, the owner(s) or authorized agent of the establishment shall notify the Board by submitting: ( )

**a.** A signed letter advising that the establishment is out of business; or ( )

**b.** The establishment license bearing the signature of the owner(s) or authorized agent and marked out-of-business; or ( )

**c.** For a contiguous establishment license, a signed statement by the associated primary establishment advising that the contiguous establishment is out of business. ( )

**06. License Status.** A new primary establishment license will not be issued for any location that is currently licensed as a primary establishment at the time of application. ( )

**327. RETAIL COSMETICS DEALER LICENSE.**

The Board may grant a retail cosmetic dealer license to allow the application of cosmetic products to customers' faces in connection with the sale of the products. An applicant for a retail cosmetic dealer license must complete an application as set forth in Section 200 of these rules, pay the required fee, and meet the following requirements: ( )

**01. Requirements.** All retail cosmetic dealers shall provide an area within the business premises for disinfection and storage of equipment and supplies necessary to perform any cosmetic application services provided. The business premises must have: ( )

- a. Access to hot and cold running water; ( )
- b. Access to restroom facilities; ( )
- c. Disinfectants, as defined in these rules; ( )
- d. Single-use samples, wipes, spatulas or other dispensing techniques designed to prevent contamination of the cosmetic product; and ( )
- e. First-aid kit. ( )

**02. Change in Ownership or Location.** Licenses are not transferable. Whenever a change of ownership or location of a facility occurs, a new application for a facility license must be submitted together with the required fee to the Board, and all the facility requirements must be met. ( )

**03. Cessation of Operation.** Whenever any facility ceases operation at the licensed location, the owner(s) shall notify the Board in writing that the facility is out of business and the facility license shall be submitted to the Bureau. ( )

**328. RETAIL THERMAL STYLING EQUIPMENT DEALER REGISTRATION.**

The Board may grant a registration as a retail thermal styling equipment dealer to an applicant who completes an application as set forth in Section 200 of these rules, pay the required fee, and meet the following requirements: ( )

**01. Training.** The dealer is responsible to train all employees on the proper and safe use of the thermal styling equipment and all disinfection related to the demonstration of the equipment prior to permitting an employee's use of the equipment on customers. ( )

**02. Requirements.** All retail thermal styling equipment dealers shall provide the equipment and supplies necessary to perform any demonstration of the thermal styling equipment. The area where the demonstration is being performed must have: ( )

- a. Disinfectants, as defined in these rules; and ( )
- b. First-aid kit. ( )

**03. Change in Ownership or Location.** Registrations are not transferable. Whenever a change of ownership or location of a facility occurs, a new application for a registration must be submitted together with the required fee to the Board, and all the facility requirements must be met. ( )

**04. Cessation of Operation.** Whenever any facility ceases operation at the licensed location, the owner(s) shall notify the Board in writing that the facility is out of business and the registration shall be submitted to the Bureau. ( )

329. -- 399. (RESERVED)

**400. RENEWAL OR EXPIRATION OF LICENSE.**

A licensee must renew his/her/its license annually as set forth in Section 67-2614, Idaho Code, and may reinstate his/her/its license within five (5) years after expiration as provided in Section 67-2614, Idaho Code. ( )

401. -- 499. (RESERVED)

**500. BARBER AND COSMETOLOGY SCHOOL REQUIREMENTS.**

The Board may grant a license to an applicant for licensure to operate a barber or cosmetology school who completes an application as set forth in Section 200 of these rules, pays the required fee, and who meets the following requirements: ( )

**01. Premises.** The premises of a barber or cosmetology school must: ( )

**a.** Possess sufficient apparatus and equipment for the proper and full teaching of all subjects or its curriculum. Each barber chair in each barber school shall be of such construction that it may be readily cleaned and it shall be mechanically workable and in good working order. Space between barber chairs and the workstand or wall shall be adequate so that no student will be hampered in the performance of his/her work. ( )

**b.** Provide adequate space, ventilation, lighting, and facilities to safely accommodate all students, instructors, and customers. ( )

**c.** Have classroom and training areas equipped with sufficient seating capacity and work stations for all enrolled students. ( )

**d.** Provide a restroom with a sink with hot and cold running water and approved drainage system. ( )

**02. Faculty or Instructors.** A school must be under the direct, personal supervision at all times of a licensed cosmetology instructor if a cosmetology school or a licensed barber or barber-stylist instructor if a barber school and must employ and maintain a licensed instructor for every twenty (20) students or fraction thereof, with an instructor trainee counting as an instructor for the purposes of the student-instructor ratio. ( )

**a.** An instructor shall teach only those subject areas for which the instructor is licensed. ( )

**b.** Instructors must devote their time during school or class hours to instructing students rather than engaging in occupational practice. ( )

**03. Operations.** A barber or cosmetology school must: ( )

**a.** Maintain regular class and instruction hours, establish grades and hold monthly examinations. This information will be transferred to the record of instruction; ( )

**b.** Prescribe a school term for training in all aspects of the practice being taught; and ( )

**c.** Offer school hours for the purpose of instruction on at least five (5) days per week. ( )

**04. Curriculum.** A school must submit a curriculum and course catalog that covers the subjects, as set forth in Section 54-5815(1)(g), Idaho Code, relating to the profession for which the school is seeking approval to teach. Any proposed changes to a curriculum or catalog must be approved by the Board. The submission must identify what specific changes are being made to the curriculum. ( )

**05. Clinical Work.** Each school shall advertise to the public that it is a school and that all work is done by students. The clinic area shall not have connecting entrances to establishments or businesses other than barber or cosmetology schools. ( )

a. Students shall not be permitted to render any clinical service to patrons until students have completed at least five percent (5%) of the required hours of instruction. ( )

b. All clinical work shall be performed under the supervision of a licensed instructor. ( )

c. Clinical work shall be recorded on the record of instruction for each month. ( )

**06. Student Records To be Maintained by the School.** A school must maintain the following records for each enrolled student: ( )

a. Proof of age showing student is no less than sixteen and one-half (16 ½) years of age; ( )

b. Proof of showing student has satisfactorily completed two (2) years of high school (tenth grade) or having equivalent education as evidenced in a manner identified in Subsection 300.02 of these rules; ( )

c. Daily attendance record for each student; ( )

d. Record of instruction for each student showing the classroom hours, the clinical hours, and operations done for each month in which the student is enrolled; and ( )

e. When a student's course of instruction has been completed or terminated, the completed operations, and number of hours of instruction are to be recorded by the school on the record of instruction form. This form is to be provided to the student and maintained by the school for five (5) years from completion or termination. ( )

**07. Change in Ownership or Location.** ( )

a. Licenses are not transferable. ( )

b. A new application must be submitted to the Board and a license issued for a new or additional location or a change of ownership of an existing school. ( )

**08. Cessation of School.** When a school ceases to operate as a school, the school must provide each enrolled student his/her records of instruction at or before the cessation of operations. ( )

**501. RULES FOR COSMETOLOGY SCHOOLS APPROVED TO TEACH ELECTROLOGY.**

The Board may grant a license to an applicant to operate an electrology school to an applicant who completes an application as set forth in Section 200 of these rules, pays the required fee, and meets the following requirements: ( )

**01. Premises.** Schools provide a minimum of three hundred (300) square feet of designated floor space per six (6) students. ( )

**02. Required Equipment.** Each school shall have the following equipment, which is considered the minimum equipment necessary for the proper instruction of students. This amount of equipment is based on six (6) students. ( )

a. Work stations equal to seventy-five percent (75%) of total enrollment; ( )

b. Two (2) brands of machines, one (1) of which has three (3) method capability: Galvanic, Thermolysis, and Blend; ( )

c. Two (2) treatment tables and adjustable technician chairs; ( )

d. Two (2) swing arm lamps with magnifying lens; ( )

e. Two (2) magnifying glasses; ( )

- f. Tweezers; ( )
- g. One (1) basin with approved water source; ( )
- h. Necessary sanitation equipment for implements; and ( )
- i. Closed storage cabinet. ( )

**03. Student Supplies.** Each student is to be issued a basic kit containing two (2) tweezers, disposable probes, eye shields, disposable gloves, before treatment solution, after treatment lotion, hair pins or clips, and one (1) sharps container. ( )

**04. Faculty or Instructors.** A school must be under the direct, personal supervision at all times of one (1) licensed electrologist instructor for every six (6) students or portion thereof being trained therein. ( )

**05. Curriculum.** A school must submit a curriculum and course catalog that covers the subjects relating to electrology as set forth in Section 54-5815(1)(g)(iv), Idaho Code. Any changes to a curriculum or catalog must be approved by the Board prior to implementing the proposed changes. The submission must identify what specific changes are being made to the curriculum. ( )

**06. Clinical Work.** A cosmetology school approved to teach electrology must meet the same requirements regarding clinical work as a school of cosmetology as set forth in Subsection 500.05 of these rules. ( )

**07. Student Records To be Maintained by the School.** Records required of cosmetology schools approved to teach electrology shall be maintained in accordance with the records required for schools of cosmetology as set forth in Subsection 500.06 of these rules. ( )

**08. Change in Ownership or Location.** ( )

a. Licenses are not transferable. ( )

b. A new application must be submitted to the Board and a license issued for a new or additional location or a change of ownership of an existing school. ( )

**09. Cessation of School.** When a school ceases to operate as a school, the school must provide each enrolled student his/her records of instruction at or before the cessation of operations. ( )

**502. EDUCATIONAL PROGRAM STANDARDS FOR COURSES OF INSTRUCTION.**

A licensed school must maintain the following educational program standards for each course of instruction for which it is approved to teach. ( )

**01. Barber.** Coursework must include courses in the following content areas: ( )

a. Haircut; ( )

b. Blow dry (does not include haircut); ( )

c. Shampoo; ( )

d. Shave and Beard Trim; ( )

e. Facial; ( )

f. Hair and Scalp Treatment; ( )

g. Curling Iron; and ( )

- h.** Hygiene and disinfection shall be taught on a continuing basis and indicated on the record of instruction. ( )
- 02. Barber-Stylist.** Coursework must include courses in the following content areas: ( )

  - a.** Haircut; ( )
  - b.** Style/blow dry (does not include haircut); ( )
  - c.** Shampoo; ( )
  - d.** Permanent Wave; ( )
  - e.** Shave and Beard Trim; ( )
  - f.** Facial; ( )
  - g.** Color/Bleach/Rinse; ( )
  - h.** Hair and Scalp Treatment; ( )
  - i.** Curling Iron; and ( )
  - j.** Hygiene and disinfection shall be taught on a continuing basis and indicated on the record of instruction. ( )
- 03. Cosmetology.** A record of the operations completed by each student shall be maintained and include the following: ( )

  - a.** Creative hair styling which shall include hair styles, wet sets/styling, thermal styles, fingerwaving, braiding/free styling; ( )
  - b.** Scalp Treatments; ( )
  - c.** Permanent Waves (All Methods); ( )
  - d.** Haircutting/shaping which shall include scissor and razor/clipper; ( )
  - e.** Bleaching; ( )
  - f.** Tinting; ( )
  - g.** Semi Permanent/Temporary Color; ( )
  - h.** Frosting/Highlights; ( )
  - i.** Facials; ( )
  - j.** Makeup Application; ( )
  - k.** Waxing; ( )
  - l.** Manicures which shall include plain and oil; ( )
  - m.** Pedicures ( )

- n. Artificial Nails; and ( )
- o. Hygiene and disinfection shall be taught on a continuing basis and indicated on the record of instruction. ( )
- 04. Esthetics.** The recorded operations completed by each student shall be maintained and include the following: ( )
  - a. Massage and manipulation application of lotions, creams, tonics, solutions, skin care masks, and similar cosmetic preparations and their effects on the skin and body; ( )
  - b. Cleansing, steaming, exfoliation, and extraction procedures; ( )
  - c. Cosmetics and makeup application; ( )
  - d. Machine Application: use of mechanical or electrical equipment; ( )
  - e. Bacteriology, disinfection and sterilization, and safety precautions; ( )
  - f. Human anatomy, physiology and histology of skin care; ( )
  - g. Follicle growth cycle and hair removal procedures; ( )
  - h. Skin analysis, conditions, disorders, and diseases; and ( )
  - i. Hygiene and disinfection shall be taught on a continuing basis and indicated on the record of instruction. ( )
- 05. Nail Technology.** The recorded operations completed by each student shall be maintained and include the following: ( )
  - a. Form nails; ( )
  - b. Finished tips; ( )
  - c. Wraps and mends; ( )
  - d. Basic manicures and pedicures; and ( )
  - e. Hygiene and disinfection shall be taught on a continuing basis and indicated on the record of instruction. ( )
- 06. Haircutter.** The recorded operations completed by each student shall be maintained and include the following: ( )
  - a. Haircutting and Hair shaping; ( )
  - b. Creative hair styling which shall include hair styles, wet sets/styling, thermal styles, fingerwaving, braiding/free styling; ( )
  - c. Use of cutting implements; ( )
  - d. Basic shampooing and conditioning; and ( )
  - e. Hygiene and disinfection shall be taught on a continuing basis and indicated on the record of instruction. ( )

- 07. Electrology.** The recorded operations completed by each student shall be maintained and include the following: ( )
- a.** Bacteriology, disinfection and sterilization, safety precautions, anatomy, and physiology; ( )
  - b.** Electricity which shall include the nature of electrical current, principles of operating electrical devices and the various safety precautions used when operating electrical equipment; ( )
  - c.** Electrolysis which shall include the use and study of galvanic current; ( )
  - d.** Thermolysis, including the use and study of high frequency current, automatic and manual; ( )
  - e.** A combination of high frequency and galvanic currents; ( )
  - f.** The study and cause of hypertrichosis; and ( )
  - g.** Hygiene and disinfection shall be taught on a continuing basis and indicated on the record of instruction. ( )

- 08. Instructor.** The recorded operations completed by each student shall be maintained and include the following: ( )
- a.** Lesson planning; ( )
  - b.** Audio-Visual aid preparation; ( )
  - c.** Theory class; ( )
  - d.** Practical demonstrations; ( )
  - e.** Testing and evaluation theory; ( )
  - f.** Testing and evaluation; and ( )
  - g.** Clinic floor supervision. ( )

**503. -- 549. (RESERVED)**

**550. APPRENTICE REGISTRATION AND APPRENTICESHIPS.**

The Board may issue a registration as an apprentice to allow a person to engage in the practice of cosmetology, nail technology, esthetics, electrology, or makeup artistry while completing the required instructional hours for a license or certificate. An apprentice may only practice under direct supervision as provided below. ( )

- 01. Application and Qualifications.** An applicant must submit a completed application on a form approved by the Board, pay the required fee, and meet the following qualifications: ( )
- a.** Be at least sixteen and one-half (16 ½) years of age; ( )
  - b.** Have successfully completed at least two (2) years of high school or have attained an equivalent education as determined by the board as evidenced in a manner identified in Subsection 300.02 of these rules; ( )
  - c.** Have certification from the establishment that the applicant is enrolled as an apprentice in the establishment; ( )
  - d.** Identify the names and license numbers of the licensed cosmetologists, electrologists, estheticians, and nail technicians employed in the establishment in which the applicant will serve as an apprentice; and ( )

e. Identify the name(s) and license number(s) of the licensed cosmetology, electrology, esthetics, or nail technology instructor who will instruct the applicant during the apprenticeship. ( )

**02. Instruction.** The instructor for any apprenticeship must submit to the Board a curriculum for the entire course of apprenticeship instruction. The Board must approve the curriculum prior to the beginning of instruction. The curriculum must cover the subjects relating to the profession for which the apprentice is pursuing licensure as set forth in Section 54-5815(1)(g), Idaho Code. ( )

**03. Supervision.** There must be at least one (1) licensed instructor and one (1) separate supervising licensee for each apprentice in the establishment at all times when an apprentice is being trained, except that an electrology apprentice may be supervised solely by the electrology instructor. ( )

a. The instructor must be licensed to teach the profession for which the registrant is pursuing licensure and the supervising licensee must be licensed to practice the profession for which the apprentice is pursuing licensure. ( )

b. An instructor may not train more than three (3) currently registered apprentices, except that an electrology instructor may not train more than one (1) currently registered electrology apprentice. ( )

c. An establishment may not have more than six (6) currently registered apprentices, unless otherwise approved by the Board. ( )

d. An establishment or an instructor under current discipline may not supervise an apprentice. ( )

e. An apprentice shall not be permitted to render any clinical service to patrons until the apprentice has completed at least five percent (5%) of the required hours of instruction. ( )

**04. Recordkeeping.** Establishments employing an apprentice shall keep a daily work record of the attendance of the apprentice and a record of the types of instruction given and the work performed by the apprentice as set forth below. ( )

a. An apprentice must be given monthly progress records, and the monthly record shall be signed and dated by the apprentice and the instructor. The establishment shall maintain the records for a period of five (5) years following completion or termination of the apprentice instruction. ( )

b. When an apprentice's course of instruction has been completed or terminated, the completed operations and number of hours of instruction are to be recorded by the establishment on the Record of Instruction Form. The instructor must submit the Record of Instruction to the Board within fourteen (14) days of the completion of the apprenticeship. The establishment must maintain a copy of the Record of Instruction for a period of five (5) years from completion or termination date. ( )

c. Attendance, instruction, and work records must be kept in the establishment in which the apprentice is employed. ( )

d. Apprenticeship records are subject to inspection by the Board at any time. ( )

**05. Termination of Registration.** A registration as an apprentice is valid from the date of issuance until the apprentice is no longer enrolled as an apprentice in the establishment identified on the apprentice's application. ( )

a. When an apprentice discontinues a course of study, the establishment must complete a Record of Instruction Form with the total number of hours worked and the types of instruction given to the apprentice. The Record of Instruction Form must be submitted to the Board within thirty (30) days of the discontinuance of the apprenticeship. If an apprentice discontinues a course of instruction and does not transfer to another salon within sixty (60) days, the apprentice registration is automatically canceled and is to be submitted to the Board along with the Record of Instruction. ( )

**b.** When an establishment where apprentices are being trained ceases operation as an establishment, the establishment must submit the records of instruction for each apprentice to the Board within thirty (30) days. ( )

**c.** An apprentice who has discontinued a course of study must apply for and be granted a new registration under Subsection 550.01 of these rules, prior to resuming instruction. ( )

**06. Out of State Apprenticeship.** An applicant who has received instruction as an apprentice in another state must file with the Board a copy of the record of instruction from the out of state apprenticeship. For purposes of this section, the record of instruction will be a statement which gives detailed information regarding operations and hours of instruction, and which is to be verified by the licensing agency or instructor(s) in the state in which the instruction was obtained. ( )

**551. -- 699. (RESERVED)**

**700. SCOPE OF PRACTICE.**

All licensees shall practice in a competent manner consistent with their level of education, training, and experience. ( )

**701. -- 709. (RESERVED)**

**710. PRACTICE OUTSIDE OF A LICENSED ESTABLISHMENT.**

All licensees and certificants must practice in a place or establishment that is licensed for such practice, except as provided for in Section 54-5804, Idaho Code, or when the services provided by the licensee or certificant are limited to the following: ( )

**01. Hair Styling.** Arranging, styling, dressing of the hair. Trimming of the hair may be performed when it is incidental to the arranging, styling, or dressing of the hair, including facial hair such as beards, mustaches, and eyebrows. ( )

**02. Coloring.** Wash out topical color, tinted powder, spray or chalk to temporarily camouflage the hair.

**03. Extensions.** Application of extensions with non-permanent adhesive or thread, such as clip in hair, halos, wig and toupees. ( )

**04. Temporary Hair Removal.** Tweezing of hairs on the face and neck. ( )

**05. Cleansing.** Cleansing of the face for the limited purpose of removing makeup and debris and cosmetic preparations for the application of makeup. ( )

**06. Nail Services.** Application of nail polish by painting without the use of a lamp or light, removal of polish that is incidental to the painting of the nail, and shaping of the nail with a single-use emery board. ( )

**07. Makeup Application.** Application of makeup. ( )

**08. Safety and Disinfection.** All licensees and certificants must comply with the safety and disinfection rules applicable to the services being performed, regardless of the location where the services are performed. ( )

**711. -- 799. (RESERVED)**

**800. UNPROFESSIONAL CONDUCT.**

A licensee shall not engage in unprofessional conduct in the course of his/her practice. Unprofessional conduct is conduct which has endangered or is likely to endanger the health, welfare, or safety of the public and includes, but is not limited to, the following: ( )

- 01. Use of MMA.** Use of Methyl Methacrylate acid (MMA); ( )
- 02. Use of Skin Cutting Instruments.** Use of skin cutting instruments, including razor-type callus shavers, credo blades, microplane, or other rasps or graters designed to remove corns or calluses by cutting below the skin surface. The presence of such instruments creates a presumption of the instrument's use; ( )
- 03. Use of UV Sterilizers.** Use of ultraviolet (UV) sterilizers for disinfection. This does not prohibit the use of ultraviolet dryers or lamps used to dry or cure nail products; ( )
- 04. Use of Roll-on Wax.** Use of roll-on wax, except that single-use roll-on wax cartridges are acceptable when they are disposed of immediately after use; ( )
- 05. Double-Dipping.** Placing an item or instrument that has been used on a person into a wax pot or other container that holds wax, a compound, solution, or other cosmetic preparation that will be used for more than one (1) than patron. This prohibited practice is commonly referred to as double-dipping; ( )
- 06. Reuse of Single-Use or Porous Items.** Use of single-use or porous items on more than one (1) patron. The presence of used single-use or porous items, which have not been disposed of, creates a presumption of the item's use or intended use on more than one patron. ( )
- 07. Apprentices.** Failure to adequately supervise, instruct, or train an apprentice; ( )
- 08. Inspections and Investigations.** Interference with an inspection or investigation conducted by or on behalf of the Board; ( )
- 09. Disease Transmission Prevention.** Performing a service on a patron who has an open sore or a known contagious disease of a nature that may be transmitted by performing the procedure, unless the licensee takes medically-approved measures to prevent transmission of the disease; or ( )
- 10. Practice Outside Scope of Training.** Performing services or using machines or devices outside the licensee's area of training, expertise, competence, or scope of practice for the license held. ( )

**801. -- 849. (RESERVED)**

**850. INSPECTION OF ESTABLISHMENTS, SCHOOLS AND FACILITIES.**

All establishments, schools, and facilities shall be subject to inspection by the Board or its agents during business hours without notice to ensure the safe operation of each establishment, school, or facility and to ensure continued compliance with Chapter 58, Title 54, Idaho Code, and these rules. ( )

**01. Form.** The Board may adopt a form which identifies those general items that will be inspected and a level of compliance necessary for issuance or renewal of a license and for which a failure to meet that level is grounds for discipline. Violations of the Chapter 58, Title 54, Idaho Code, or these rules that are not listed on the form but that are found during inspection are also grounds for discipline. ( )

**02. Classification Card.** Following an inspection, each establishment, school, and facility, except for retail thermal styling equipment dealers, will receive classification as follows: 100%–90% = "A"; 89%–80% = "B"; 79% and below = "C." The "C" classification denotes an unacceptable level of compliance and a reinspection is required. ( )

**03. Reinspection.** A facility, school, or establishment not found to be at an acceptable level of compliance must make improvements within thirty (30) days. The Board may allow an establishment, school, or facility to continue to operate during that period. The Board may take action prior to any reinspection when the circumstances represent an immediate danger to the public health, safety, or welfare. ( )

**851. SAFETY AND DISINFECTION FOR ESTABLISHMENTS AND SCHOOLS.**

All establishments and schools must take every precaution to prevent the transfer of disease-causing pathogens between people and comply with Chapter 58, Title 54, Idaho Code. At a minimum the establishment or school must

meet the following requirements: ( )

**01. Premises.** Establishments and schools must be separated from living areas by substantial walls and/or closable doors. All establishments and schools must be maintained in an orderly manner and shall be heated, lighted, and ventilated so as to be safe and comfortable to the operators and patrons. Floors, walls, ceilings, furniture, and all other fixtures shall be kept clean and in good repair at all times. ( )

**02. Instrument Cleaning.** All instruments used by operators shall be thoroughly cleaned after each use and prior to disinfection. ( )

**03. Instrument Disinfection or Sterilization.** All instruments used by operators shall be disinfected or sterilized after cleaning and prior to use on each patron, with a disinfectant or sterilant as defined in these rules. All disinfectant must be mixed and changed according to the manufacturers' instructions. Disinfection methods such as immersion, sprays, and wipes may be used. Contact time listed on the disinfectant's label must be adhered to in all circumstances. Items or surfaces must remain completely immersed in disinfectant, or visibly wet if using sprays or wipes, for the full amount of contact time. ( )

**04. Single-Use and Porous Instruments.** Instruments that are intended for single use or that are porous shall be immediately disposed of in a waste container after each use on a patron or given to the patron to take home for personal use, provided that the instruments may not be brought back to the establishment for future use. ( )

**05. Towels.** Clean towels shall be used for each patron. Towels and linens that have been used must be placed in a container that is covered and has vented sides to reduce the growth of pathogens, and the container must be disinfected on a weekly basis with a disinfectant and as directed on the disinfectant manufacturer's label. Towels and linens may be laundered commercially or washed on-site. When done on-site, laundry must be dried until hot to the touch. A clean paper or cloth neckband shall be used to provide a barrier to infection which shall be maintained between each patron's neck and all multi-use capes. Paper towels and paper neckstrips shall be disposed of after one (1) use. ( )

**06. Storage of Equipment.** All towels, linens, and instruments, except for electrical instruments, shall be stored in clean, closed cabinets, drawers, or containers after they are cleaned and disinfected. All electrical instruments must be stored in a clean place, such as a hook, stand, or on a clean towel after they are cleaned and disinfected and may not be stored in cabinets, drawers, or containers that contain clean or disinfected items. All items that have been used must be kept in a closed, covered container with solid sides that is clearly identified as containing used items. Containers for used items must be disinfected on a daily basis. ( )

**07. Dispensers.** All solutions and compounds shall be clearly labeled, maintained, and dispensed in a manner to prevent contamination of the unused portion. All single-use applicators used to dispense a solution or compound shall be disposed of in a waste container after one (1) use. ( )

**08. Waxes and Waxing Services.** Paraffins, waxes and all other solutions or compounds shall be covered and maintained free of any foreign contaminants. Only disinfected or unused, single-use items may be placed into a container that holds wax or paraffins. Waxes and paraffins must be dispensed for use on a patron in the following manner: ( )

**a.** Wax may be removed from a multi-use wax pot for use on a patron by one of the following methods: ( )

**i.** Single-use spatula disposed of after a single dip/application; ( )

**ii.** Disinfected plastic spatulas with one disinfected spatula used for each dip into the wax pot; or ( )

**iii.** Placement of all wax needed for entire service in a single-use, disposable cup or a container that can be properly cleaned and disinfected, such as a stainless steel bowl. The cup, any remaining wax, and all single-use applicators must be immediately disposed of at the conclusion of the service. This is the only instance in which a single applicator may be used for an entire service. ( )

**b.** Paraffin wax must be portioned out for each patron in a bag or other container, or dispensed in a manner that prevents contamination of the unused supply. All portions used on a patron must be disposed of immediately following use. ( )

**09. Makeup Services.** All makeup and makeup services must follow the requirements in Section 852 of these rules. ( )

**10. Nail Services.** A licensee must comply with the following disinfection procedures between every patron: ( )

**a.** All pedicure bowls, basins or tubs must be cleaned and disinfected prior to each use as follows: ( )

**i.** Empty pedicure bowl. ( )

**ii.** Remove all removable parts, including screens, foot plates, impellers and fans. ( )

**iii.** Clean removable parts with soap or detergent and water, rinse, and immerse parts in disinfectant following manufacturer's directions for proper contact time. ( )

**iv.** Scrub bowl with soap or detergent and rinse with clean water. ( )

**v.** Replace removable cleaned and disinfected parts. ( )

**vi.** Fill bowl and add disinfectant to achieve proper concentration. ( )

**vii.** Allow disinfectant solution to sit, or run through system for bowls with circulating water for the manufacturer's recommended contact time. ( )

**viii.** Drain the tub, rinse and air dry or wipe dry with clean paper towel. ( )

**b.** Metal drill bits may be soaked in acetone to remove nail product. When removed from the acetone, they must be cleaned using soap, water, and a brush, and then rinsed prior to immersion in disinfectant. Drill bits must remain in disinfectant for the full contact time. ( )

**11. Water Supply and Hand Washing.** Water supplies shall be from an approved source. Sufficient basins with hot and cold running water, approved drainage systems, soap and single-use towels shall be conveniently located within the work area. Operators and students shall wash their hands with running water and soap prior to providing service to any patron. When hand washing is not practicable, hand sanitizer of at least seventy percent (70%) alcohol may be used. ( )

**12. Restroom Facilities.** Clean, adequate and convenient restroom facilities, located and accessible from within the building where the shop or school is located, shall be available for use by operators and patrons. A basin with hot and cold running water, approved drainage systems, soap and single-use towels shall be provided within said facilities. All operators and students must wash their hands with running water and soap and then dry their hands with a single-use towel after using the restroom. ( )

**13. Safety.** Clearly identifiable first-aid kit must be readily accessible on the premises. No animals are allowed in shops or schools except service dogs trained to do work or perform tasks for persons with disabilities. The definition of service animals and disabilities shall be as set forth in U.S. Department of Justice Regulations at 28 C.F.R. Section 36.104 effective August 11, 2016. ( )

**14. Licenses and Classification Cards.** All establishments and schools must be licensed prior to their operation and must be under the direct supervision of a licensed operator. A current establishment and/or school license, valid operator license(s), a copy of these safety and disinfection rules, and a valid classification card shall be conspicuously displayed in the work area of each establishment or school for the information of operators, Board agents, and the public. ( )

**852. SAFETY AND DISINFECTION FOR RETAIL COSMETICS DEALER FACILITIES AND MAKEOVER OR GLAMOUR PHOTOGRAPHY BUSINESSES.**

All retail cosmetic dealers and makeover or glamour photography businesses must take every precaution to prevent the transfer of disease-causing pathogens between people and must comply with Chapter 58, Title 54, Idaho Code. At a minimum the dealer or business must meet the following requirements: ( )

**01. Cake, Loose, or Liquid Makeup.** All makeup that comes in a cake, loose, or liquid form, must be transferred to a palette with a disinfected or single-use spatula for use with a single customer and in a manner to prevent any contamination. Any excess make-up must be disposed of immediately following use on or by a customer. ( )

**02. Makeup Pencils.** Make-up pencils that require a sharpener must be sharpened prior to each use. Sharpeners must be cleaned and disinfected in accordance with Subsections 851.02 and 851.03 of these rules. Eyeliner that does not require a sharpener must have a portion transferred to a palette with a disinfected or single-use spatula for use on a single customer. ( )

**03. Mascara.** Single-use applicators must be used in the application of mascara. ( )

**04. Brushes and Implements.** All implements and applicators, including brushes, that are used on customers or made available to be used by customers must be stored, cleaned, and disinfected or disposed of in accordance with Section 851 of these rules. ( )

**05. Displays.** All make-up should be covered when not in use. When make-up displays are accessible to the public, single-use applicators for all make-up must be readily available. ( )

**06. Water Supply and Restroom Facilities.** The facility or business must meet the requirements in Subsections 851.11 and 851.12 of these rules. ( )

**07. First-aid Kit.** The facility or business must have a clearly identifiable first-aid kit readily accessible on the premises. ( )

**08. Licenses and Classification Card.** All retail cosmetics dealers and glamour or makeover photography businesses must be licensed prior to their operation. A current license, a copy of these safety and disinfection rules, and a valid classification card shall be conspicuously displayed in the work area of each facility for the information of employees, Board agents, and the public. ( )

**853. SAFETY AND DISINFECTION FOR RETAIL THERMAL STYLING DEALER FACILITIES.**

All retail thermal styling equipment dealers must take every precaution to prevent the transfer of disease-causing pathogens between people and must comply with Chapter 58, Title 54, Idaho Code. At a minimum the dealer must meet the following requirements: ( )

**01. Cleaning, Disinfection, and Storage.** All implements and electrical equipment used on a customer must be cleaned, disinfected, and stored in accordance with Subsections 851.02, 851.03, 851.04, and 851.06 of these rules. ( )

**02. First-aid Kit.** The facility or business must have a clearly identifiable first-aid kit readily accessible on the premises. ( )

**03. Registration and Classification Card.** All retail thermal styling equipment dealers must be registered prior to their operation. A current registration, a copy of these safety and disinfection rules, and a valid classification card shall be conspicuously displayed in the work area of each facility for the information of employees, Board agents, and the public. ( )

**854. -- 999. (RESERVED)**

## IDAPA 26 – DEPARTMENT OF PARKS AND RECREATION

### 26.01.10 – RULES GOVERNING THE ADMINISTRATION OF TEMPORARY PERMITS ON LANDS OWNED BY THE IDAHO DEPARTMENT OF PARKS AND RECREATION

DOCKET NO. 26-0110-1701

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 67-4210 and 67-4223, Idaho Code.

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

There are no changes to the pending fee rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 145 through 147](#).

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Sections 67-4210 and 67-4233, Idaho Code.

The pending fee rule modifies the current rule to allow the department to charge processing fees comparable to associated costs and to be compensated at a reasonable rate based upon Fair Market Value of the site if it was held in a fee simple state. The rule change would increase Application and Modification fees from \$200 to \$300 and Assignment and Renewal fees from \$25 to \$300 per transaction as well as change the current permit compensation fee from \$50 per acre to the Fair Market Value per acre with a minimum permit fee of \$300.

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

The only negative fiscal impact is the cost of promulgating the rule changes. The positive fiscal impacts are the additional revenues generated to cover the cost of processing applications and modifications as well as assignments and renewals per transaction plus the additional revenue generated from charging Fair Market Value per acre for the property with an established minimum fee. The change should generate approximately an additional \$10,000/year.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending fee rule, contact Keith Hobbs, Operations Administrator, (208) 514-2450.

Dated this 23rd day of August, 2018.

Keith Hobbs, Operations Division Administrator  
Idaho Department of Parks and Recreation  
5657 Warm Springs Avenue  
P.O. Box 83720  
Boise, ID, 83720-0065  
(208) 514-2450

## **IDAPA 26 – DEPARTMENT OF PARKS AND RECREATION**

### **26.01.20 – RULES GOVERNING THE ADMINISTRATION OF PARK AND RECREATION AREAS AND FACILITIES**

**DOCKET NO. 26-0120-1701**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 67-4210, 67-4223, and 67-4249, Idaho Code.

**DESCRIPTIVE SUMMARY:** 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 July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 148 through 150](#).

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

There is no fiscal impact, as this rule change clarifies the current enforcement practice at IDPR.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Anna Canning, Management Services Administrator, (208) 514-2252.

Dated this 23rd day of August, 2018.

Anna Canning, Management Services Administrator  
Idaho Department of Parks and Recreation  
5657 Warm Springs Avenue  
P.O. Box 83720  
Boise, ID, 83720-0065  
(208) 514-2252

**IDAPA 26 – DEPARTMENT OF PARKS AND RECREATION**  
**26.01.23 – RULES GOVERNING FILMING WITHIN IDAHO STATE PARKS**  
**DOCKET NO. 26-0123-1701**  
**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2019 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 67-4210 and 67-4223, Idaho Code.

**DESCRIPTIVE SUMMARY:** 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 July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 151 through 153](#).

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

There is no fiscal impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Keith Hobbs, Operations Division Administrator, (208) 514-2450.

Dated this 23rd day of August, 2018.

Keith Hobbs, Operations Division Administrator  
Idaho Department of Parks and Recreation  
5657 Warm Springs Avenue  
P.O. Box 83720  
Boise, ID, 83720-0065  
(208) 514-2450

**IDAPA 27 – BOARD OF PHARMACY**  
**27.01.01 – GENERAL PROVISIONS**  
**DOCKET NO. 27-0101-1801**  
**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:** A public hearing concerning this rulemaking will be held as follows:

<b>PUBLIC HEARING</b> <b>Wednesday, October 24, 2018 – 1:00 p.m. (MDT)</b>
<b>Idaho State Capitol Building</b> <b>Room WW53</b> <b>700 W. Jefferson Street</b> <b>Boise, ID 83702</b>

Written comments received by October 15, 2018, will be included in the Board’s distributed meeting materials for consideration. Written comments received between October 15, 2018, and October 24, 2018, will be printed and distributed to Board members at the meeting. For those planning to attend the open, public meeting, written and verbal comments will be accepted by and/or presented before the Board.

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:

Over the past two years, the Board of Pharmacy has engaged in strategic efforts to promote regulatory reform and reduce obstacles to licensure. Last year, the Board of Pharmacy cut 55% of its rules by word count, 62% of restrictions, and eliminated six categories of licensure.

This year, the Board intends to continue with these efforts. In particular, the Board intends to eliminate IDAPA 27.01.06, Rules Governing DME, Manufacturing, and Distribution, as much of the chapter needlessly duplicates other state laws. The Board will carefully extract the few rules from the chapter that are needed to protect public health, and add them to other Board chapters as appropriate. To IDAPA 27.01.01, the Board intends to add a definition for “DME Outlet,” remove the definition for “MPJE,” and add distributing to the section of unprofessional conduct regarding misbranded or adulterated products. Lastly, the Board aims to make minor technical corrections.

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

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

**NEGOTIATED RULEMAKING:** 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 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 154-155](#).

**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 Alex Adams, Executive Director, at (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2018 as described above.

Dated this 30th day of August, 2018.

Alex J. Adams, Pharm D, MPH  
Executive Director  
Board of Pharmacy  
1199 W. Shoreline Ln., Ste. 303  
P. O. Box 83720  
Boise, ID 83720-0067  
Phone: (208) 334-2356  
Fax: (208) 334-3536

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 27-0101-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**010. DEFINITIONS AND ABBREVIATIONS (A – D).**

The definitions set forth in Sections 54-1705 and 37-2701, Idaho Code, are applicable to these rules. In addition, the following terms shall have the meanings set forth below: (7-1-18)

- 01. ACCME.** Accreditation Council for Continuing Medical Education. (7-1-18)
- 02. 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. (7-1-18)
- 03. ACPE.** Accreditation Council for Pharmacy Education. (7-1-18)
- 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. (7-1-18)
- 05. Biological Product.** A virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, protein (except any chemically synthesized polypeptide), or analogous product, or arsphenamine or derivative of arsphenamine (or any other trivalent organic arsenic compound), that is applicable to the prevention, treatment, or cure of a disease or condition of human beings and licensed under Section 351(k) of the Public Health Service Act, 42 U.S.C. Section 262(i). (7-1-18)
- 06. Biosimilar.** A biological product highly similar to a specific reference biological product that is licensed by the FDA pursuant to 42 U.S.C. Section 262(k) and published in the Purple Book. (7-1-18)
- 07. CDC.** United States Department of Health and Human Services, Centers for Disease Control and Prevention. (7-1-18)
- 08. Change of Ownership.** A change of majority ownership or controlling interest of a drug outlet licensed or registered by the Board. (7-1-18)
- 09. CLIA-Waived Test.** A test that is waived under the federal Clinical Laboratory Improvement Amendments (CLIA) of 1988. (7-1-18)
- 10. Clinical Guidelines.** Recommendations from a reputable organization that are evidence-based and intended to optimize patient care in specific clinical circumstances. (7-1-18)

11. **CME.** Continuing medical education. (7-1-18)
12. **Collaborative Pharmacy Practice.** A pharmacy practice whereby one (1) or more pharmacists or pharmacies 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. (7-1-18)
13. **Collaborative Pharmacy Practice Agreement.** A written agreement between one (1) or more pharmacists or pharmacies and one (1) or more prescribers that provides for collaborative pharmacy practice. (7-1-18)
14. **Community Pharmacy.** A community or other pharmacy that sells prescription drugs at retail and is open to the public for business. (7-1-18)
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. (7-1-18)
16. **CPE.** Continuing pharmacy education. (7-1-18)
17. **CPE Monitor.** An NABP service that allows pharmacists to electronically keep track of CPE credits from ACPE-accredited providers. (7-1-18)
18. **DEA.** United States Drug Enforcement Administration. (7-1-18)
19. **Distributor.** A supplier of drugs manufactured, produced, or prepared by others to persons other than the ultimate consumer. (7-1-18)
20. **DME.** Durable medical equipment. (7-1-18)
21. **DME Outlet.** A registered outlet that may hold for sale at retail DME and the following prescription drugs: pure oxygen for human application, nitrous oxide, sterile sodium chloride, and sterile water for injection. ( )
- ~~22.~~ **Drug Product Selection.** The act of selecting either a brand name drug product or its therapeutically equivalent generic. (7-1-18)
- ~~23.~~ **Drug Product Substitution.** Dispensing a drug product other than prescribed. (7-1-18)
- ~~24.~~ **DTM – Drug Therapy Management.** Selecting, initiating, or modifying drug treatment pursuant to a collaborative pharmacy practice agreement or statewide protocol agreement. (7-1-18)
- 011. DEFINITIONS AND ABBREVIATIONS (E – N).**  
The definitions set forth in Sections 54-1705 and 37-2701, Idaho Code, are applicable to these rules. In addition, the following terms shall have the meanings set forth below: (7-1-18)
01. **Emergency Drugs.** Drugs necessary 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. (7-1-18)
02. **Executive Director.** The Idaho State Board of Pharmacy executive director created by Sections 54-1713 and 54-1714, Idaho Code. (7-1-18)
03. **FDA.** United States Food and Drug Administration. (7-1-18)
04. **Flavoring Agent.** An additive in food or drugs when used in accordance with the principles of

- good pharmacy practices and in the minimum quantity necessary to produce its intended effect. (7-1-18)
- 05. 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. (7-1-18)
- 06. FPGEC.** Foreign Pharmacy Graduate Examination Committee. (7-1-18)
- 07. Hazardous Drug.** Any drug listed as such by the National Institute for Occupational Safety and Health or any drug identified by at least one (1) of the following criteria: (7-1-18)
- a. Carcinogenicity; (7-1-18)
  - b. Teratogenicity or developmental toxicity; (7-1-18)
  - c. Reproductive toxicity in humans; (7-1-18)
  - d. Organ toxicity at low doses in humans or animals; (7-1-18)
  - e. Genotoxicity; or (7-1-18)
  - f. New drugs that mimic existing hazardous drugs in structure or toxicity. (7-1-18)
- 08. HIPAA.** Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191). (7-1-18)
- 09. 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. (7-1-18)
- 10. Institutional Pharmacy.** A pharmacy located in an institutional facility. (7-1-18)
- 11. Interchangeable Biosimilar.** A licensed biosimilar product determined by the FDA to be therapeutically equivalent to the reference biological product and published in the Purple Book. (7-1-18)
- 12. Limited Service Outlet.** Limited service outlets include, but are not limited to, sterile product pharmacies, remote dispensing pharmacies, facilities operating narcotic treatment programs, durable medical equipment outlets, prescriber drug outlets, outsourcing facilities, nuclear pharmacies, cognitive service pharmacies, correctional facilities, offsite ADSs for non-emergency dispensing, reverse distributors, mobile pharmacies, and analytical or research laboratories. ~~(7-1-18)~~ ( )
- 13. Maintenance Drug.** A drug intended for the treatment of a health condition or disease that is persistent or otherwise expected to be long lasting in its effects. (7-1-18)
- 14. Medication Synchronization Program.** An opt-in program provided by a pharmacy for aligning the refill dates of a patient’s prescription drugs so that drugs that are refilled at the same frequency may be refilled concurrently. (7-1-18)
- ~~15.~~ ~~MPJE.~~ ~~Multistate Pharmacy Jurisprudence Exam.~~ ~~(7-1-18)~~
- ~~16.~~ NABP. National Association of Boards of Pharmacy. (7-1-18)
- ~~17.~~ NAPLEX. North American Pharmacists Licensure Examination. (7-1-18)
- ~~18.~~ NDC. National Drug Code. (7-1-18)

**(BREAK IN CONTINUITY OF SECTIONS)**

**020. PRACTICE OF PHARMACY: GENERAL APPROACH.**

To evaluate whether a specific act is within the scope of pharmacy practice in or into Idaho, a licensee or registrant of the Board must independently determine whether: (7-1-18)

- 01. Express Prohibition.** The act is expressly prohibited by: (7-1-18)
  - a.** The Idaho Pharmacy Act, Title 54, Chapter 17, Idaho Code; (7-1-18)
  - b.** The Uniform Controlled Substances Act, Title 37, Chapter 27, Idaho Code; (7-1-18)
  - c.** The rules of the Idaho State Board of Pharmacy; or (7-1-18)
  - d.** Any other applicable state or federal laws, rules or regulations. (7-1-18)

**02. Education ~~and~~, Training, ~~and~~ Experience.** The act is consistent with licensee or registrant's education, training, ~~or practice~~ ~~and~~ experience. (~~7-1-18~~)(    )

**03. Standard of Care.** Performance of the act is within the accepted standard of care that would be provided in a similar setting by a reasonable and prudent licensee or registrant with similar education, training and experience. (7-1-18)

**(BREAK IN CONTINUITY OF SECTIONS)**

**023. UNPROFESSIONAL CONDUCT.**

The following acts or practices by any licensee or registrant are declared to be specifically, but not by way of limitation, unprofessional conduct and conduct contrary to the public interest. (7-1-18)

**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. (7-1-18)

**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. (7-1-18)

**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. (7-1-18)

**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. (7-1-18)

**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. (7-1-18)

**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 except as provided in these rules.

(7-1-18)

**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. (7-1-18)

**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). (7-1-18)

**09. Failure to Counsel or Offer Counseling.** Failing to counsel or offer counseling, unless specifically exempted or refused. (7-1-18)

**10. Substandard, Misbranded, Adulterated, or Expired Products.** Manufacturing, compounding, delivering, distributing, dispensing, or permitting to be manufactured, compounded, delivered, distributed or dispensed substandard, misbranded, or adulterated drugs or preparations or those made using secret formulas. Failing to remove expired drugs from stock. ~~(7-1-18)~~( )

**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. (7-1-18)

**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. (7-1-18)

**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. (7-1-18)

**14. Failure to Follow Board Order.** Failure to follow an order of the Board. (7-1-18)

**15. Use of False Information.** Knowingly using false information in connection with the prescribing, delivering, administering, or dispensing of a controlled substance or other drug product is prohibited. (7-1-18)

**16. Standard of Care.** ~~Providing health care services~~ Acts or omissions within the practice of pharmacy which fail to meet the standard provided by other qualified licensees or registrants in the same or similar setting. ~~(7-1-18)~~( )

**17. Unnecessary Services or Products.** Directly promoting or inducing for the provisions of health care services or products that are unnecessary or not medically indicated. (7-1-18)

## IDAPA 27 – BOARD OF PHARMACY

### 27.01.02 – RULES GOVERNING LICENSURE AND REGISTRATION

#### DOCKET NO. 27-0102-1802 (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:** A public hearing concerning this rulemaking will be held as follows:

**PUBLIC HEARING**  
**Wednesday, October 24, 2018 – 1:00 p.m. (MDT)**

**Idaho State Capitol Building**  
**Room WW53**  
**700 W. Jefferson Street**  
**Boise, ID 83702**

Written comments received by October 15, 2018, will be included in the Board's distributed meeting materials for consideration. Written comments received between October 15, 2018, and October 24, 2018, will be printed and distributed to Board members at the meeting. For those planning to attend the open, public meeting, written and verbal comments will be accepted by and/or presented before the Board.

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:

With the proposed repeal of IDAPA 27.01.06, "Rules Governing Durable Medical Equipment (DME), Manufacturing, and Distribution," updates are needed in this chapter to retain critical rules from the chapter related to pharmaceutical manufacturer registration. The rules also eliminate the Multistate Pharmacy Jurisprudence Exam (MPJE) as a precondition to pharmacist licensure, a change that is consistent with nearly every other Idaho health profession. Additional technical corrections are made.

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

This fee is being imposed pursuant to Section 54-1720, Idaho Code. The fee for a nonresident pharmacist registration is being increased from \$250 to \$290. The Board eliminated the requirement for pharmacists to obtain a controlled substances registration as of July 1, 2018. This proposed rule adjusts the nonresident pharmacist registration to \$290. Nonresident pharmacists who previously held both the pharmacist registration and a separate controlled substance registration will still realize a net savings of \$20 per 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 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 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 156-157](#).

**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 Alex Adams, Executive Director, at (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2018 as described above.

Dated this 30th day of August 2018.

Alex J. Adams, Pharm D, MPH  
Executive Director  
Board of Pharmacy  
1199 W. Shoreline Ln., Ste. 303  
P. O. Box 83720  
Boise, ID 83720-0067  
Phone: (208) 334-2356  
Fax: (208) 334-3536

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 27-0102-1802**  
**(Only Those Sections With Amendments Are Shown.)**

**023. FEE SCHEDULE.**

**01. Licenses and Registrations -- Professionals.**

License/Registration	Initial Fee	Annual Renewal Fee
Pharmacist License	\$140	\$130
Nonresident <del>Pharmacist</del> PIC Registration	<del>\$2590</del>	<del>\$2590</del>
Pharmacist Intern	\$50	\$50
Technician	\$35	\$35
Practitioner Controlled Substance Registration	\$60	\$60

(7-1-18)( )

**02. Certificates of Registration and Licensure -- Facilities.**

License/Registration	Initial Fee	Annual Renewal Fee
Drug Outlet (unless otherwise listed)	\$100	\$100
Wholesale License	\$180	\$180
Wholesale Registration	\$150	\$150
Central Drug Outlet (Nonresident)	\$500	\$250
Mail Service Pharmacy	\$500	\$250

License/Registration	Initial Fee	Annual Renewal Fee
Durable Medical Equipment Outlet	\$50	\$50
Outsourcing Facility (Nonresident)	\$500	\$250
Manufacturer	\$150	\$150
Veterinary Drug Outlet	\$35	\$35

(7-1-18)

**03. Late Fees and Reinstatements.**

Category	Fee
Late payment processing fee	\$50
License or registration reinstatement fee	One-half (1/2) of the amount of the annual renewal

(7-1-18)

**04. Administrative Services.**

Category	Fee
Experiential hours certification	\$25
Duplicate pharmacist certificate of licensure	\$35

(7-1-18)

**024. -- 029. (RESERVED)**

**030. DETERMINATION OF NEED FOR PHARMACIST LICENSE, NONRESIDENT REGISTRATION, OR NEITHER.**

**01. Practice in Idaho.** All pharmacists practicing pharmacy in the state of Idaho must be licensed according to the Board's laws. (7-1-18)

**02. Nonresident Pharmacists.** All nonresident pharmacists practicing pharmacy into the state of Idaho must be licensed in their state of practice and must additionally be licensed or registered in Idaho as follows: (7-1-18)

**a. Independent Practice.** Pharmacists must be licensed if engaged in the independent practice of pharmacy across state lines and not practicing for an Idaho registered drug outlet. (7-1-18)

**b. Practice for an Idaho Registered Drug Outlet.** A nonresident pharmacist serving as the PIC for an Idaho registered nonresident drug outlet must be ~~licensed or~~ registered to practice into Idaho. All other nonresident pharmacists who are employed by, or affiliated with, and practicing for the Idaho registered nonresident drug outlet, but who are not the PIC, are exempt from license and registration requirements for practice into Idaho. (7-1-18) ( )

**03. Exemption from Separate Controlled Substance Registration.** All pharmacists who are practicing in or into Idaho are exempt from obtaining a separate controlled substance registration, but must maintain compliance with all requirements under Title 37, Chapter 27, Idaho Code. (7-1-18)

**031. PHARMACIST LICENSURE BY EXAMINATION.**

To be considered for licensure, a person must satisfy the requirements of Section 54-1722(1)(a) through (e), Idaho Code, and submit to the Board an application for licensure by examination. (7-1-18)

**01. Graduates of U.S. Pharmacy Schools.** An applicant must be a graduate of an ACPE-accredited school or college of pharmacy within the United States. (7-1-18)

**02. Graduates of Foreign Pharmacy Schools.** An applicant who is a graduate of a school or college of pharmacy located outside of the United States must submit certification by the FPGEC, and verification of completion of a minimum of seventeen hundred forty (1,740) experiential hours. 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. (7-1-18)

**03. Licensure Examinations.** Qualified applicants must pass the NAPLEX ~~and the MPJE~~ in accordance with NABP standards. A candidate who fails the NAPLEX three (3) times must complete at least thirty (30) hours of continuing education accredited by an ACPE-accredited provider prior to being eligible to sit for each subsequent reexamination. Candidates are limited to five (5) total NAPLEX attempts ~~to pass each exam.~~ (7-1-18)(    )

**032. 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. An applicant whose pharmacist license is currently restricted by a licensing entity in another state must appear before the Board to petition for licensure by reciprocity. (7-1-18)

**01. Transfer Application.** The applicant must submit a preliminary application for licensure transfer through NABP. (7-1-18)

~~02. MPJE. The applicant must pass the Idaho based MPJE within five (5) total attempts. (7-1-18)~~

~~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 intern hours for each year away from the practice of pharmacy. (7-1-18)

**(BREAK IN CONTINUITY OF SECTIONS)**

**034. PHARMACIST LICENSE: REINSTATEMENT.**

The Board may, at its discretion, consider reinstatement of a pharmacist license upon receipt of a completed application, background check, and payment of the reinstatement and other fees due or delinquent at the time reinstatement is requested. (7-1-18)

**01. Satisfactory Evidence.** Reinstatement applicants must provide satisfactory evidence of completion of a minimum of thirty (30) CPE hours within the twenty-four (24) months prior to reinstatement and compliance with any direct orders of the Board. (7-1-18)

**02. Additional Requirements.** A pharmacist reinstatement applicant may be required to appear before the Board. ~~If a pharmacist license has lapsed for more than twenty-four (24) months, the applicant must pass the MPJE prior to returning to practice.~~ 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 intern hours, completion of additional CPE hours, or other requirements determined necessary to acquire or demonstrate professional competency. (7-1-18)(    )

**035. NONRESIDENT PHARMACIST PIC REGISTRATION TO PRACTICE PHARMACY INTO IDAHO.**

To be registered ~~to practice pharmacy into Idaho~~ as a nonresident PIC, an applicant must submit an application on a Board form including, but not limited to: (7-1-18)(    )

**01. Individual License Information.** Current pharmacist licensure information in all other states, including each state of licensure and each license number; (7-1-18)

**02. Facility License Information.** The license or registration number of the facility for which the applicant will be practicing. (7-1-18)

**(BREAK IN CONTINUITY OF SECTIONS)**

**080. MANUFACTURER REGISTRATION.**

**01. Resident Manufacturers.** A manufacturer located in Idaho must be inspected and registered by the Board prior to engaging in drug manufacturing. ( )

**02. Nonresident Manufacturers.** Non-resident manufacturers must be registered as follows: ( )

**a.** Those that ship, mail, or deliver dispensed prescription drugs or devices to an Idaho resident must be registered by the Board as a mail service pharmacy. ~~(7-1-18)~~( )

**b.** Those engaged in wholesale distribution must be registered as a manufacturer and comply with the Idaho Wholesale Drug Distribution Act and rules, as applicable. ( )

**IDAPA 27 – BOARD OF PHARMACY**  
**27.01.03 – RULES GOVERNING PHARMACY PRACTICE**  
**DOCKET NO. 27-0103-1801**  
**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:** A public hearing concerning this rulemaking will be held as follows:

**PUBLIC HEARING**  
**Wednesday, October 24, 2018 – 1:00 p.m. (MDT)**

**Idaho State Capitol Building**  
**Room WW53**  
**700 W. Jefferson Street**  
**Boise, ID 83702**

Written comments received by October 15, 2018, will be included in the Board’s distributed meeting materials for consideration. Written comments received between October 15, 2018, and October 24, 2018, will be printed and distributed to Board members at the meeting. For those planning to attend the open, public meeting, written and verbal comments will be accepted by and/or presented before the Board.

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:

With the proposed repeal of IDAPA 27.01.06, “Rules Governing Durable Medical Equipment (DME), Manufacturing, and Distribution,” updates are needed in this chapter to retain critical rules from that chapter. This docket also makes changes in accordance with House Bills 339 and 351, which passed the 2018 Idaho Legislature unanimously. Lastly, this docket makes several technical corrections and other changes to better align with federal law and existing practice.

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

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

**NEGOTIATED RULEMAKING:** 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 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 158-159](#).

**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 Alex Adams, Executive Director, at (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2018 as described above.

Dated this 30th day of August 2018.

Alex J. Adams, Pharm D, MPH  
Executive Director  
Board of Pharmacy  
1199 W. Shoreline Ln., Ste. 303  
P. O. Box 83720  
Boise, ID 83720-0067  
Phone: (208) 334-2356  
Fax: (208) 334-3536

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 27-0103-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**~~200. PIC: RESPONSIBILITIES AND LIMITATIONS.~~**

~~**01. Drug Outlets that Must Designate a PIC.** The following drug outlets must have a designated PIC by the date of opening and must not thereafter allow a vacancy of a designated PIC to continue for more than thirty (30) sequential days: (7-1-18)~~

~~**a.** Any drug outlet that dispenses drugs to patients in Idaho; (7-1-18)~~

~~**b.** Any central drug outlet; and (7-1-18)~~

~~**c.** Any outsourcing facility. (7-1-18)~~

~~**02. PIC and Drug Outlet Responsibility.** The PIC is responsible for the management of every part of the drug outlet and its regulated operations. The PIC and the drug outlet each have corresponding and individual responsibility for compliance with applicable state and federal law and these rules. (7-1-18)~~

~~**03. PIC Oversight Limitations.** A person may neither be designated nor function as the PIC for more than two (2) drug outlets concurrently. (7-1-18)~~

**207. DRUG OUTLETS ~~THAT DISPENSE PRESCRIPTION DRUGS~~: MINIMUM FACILITY STANDARDS.**

A resident drug outlet that dispenses prescription drugs to patients in Idaho must meet the following minimum requirements: (7-1-18)(    )

**01. Security.** A drug outlet must be constructed and equipped with adequate security to protect its equipment, records and supply of drugs, devices and other restricted sale items from unauthorized access, acquisition or use. An alarm or other comparable monitoring system is required for any non-institutional drug outlet that stocks controlled substances and is new or remodeled after July 1, 2018. (7-1-18)

**02. Patient Privacy.** All protected health information must be stored and maintained in accordance with HIPAA. In addition, a community pharmacy that is new or remodeled after March 21, 2012 must provide and maintain a patient consultation area that affords the patient auditory and visual privacy and is compliant with the Americans with Disabilities Act. (7-1-18)

**03. Equipment and Storage.** A drug outlet must be properly equipped to ensure the safe, clean, and sanitary condition necessary and appropriate for proper operation, the safe preparation of prescriptions, and to safeguard product integrity. (7-1-18)(    )

**04. Staffing.** A drug outlet must be staffed sufficiently to allow for appropriate supervision, to otherwise operate safely and, if applicable, to remain open during the hours posted as open to the public for business. (7-1-18)

**05. Controlled Substances Storage.** ~~Controlled substances~~ **Drug outlets that dispense prescription drugs** must ~~be stored~~ **controlled substances** in a securely locked, substantially constructed cabinet or safe. However, a pharmacy may dispense substances listed in Schedules II, III, IV and V, in whole or in part, throughout the stock of non-controlled substances if doing so would be likely to obstruct the theft or diversion of the controlled substances. (7-1-18)(    )

**06. Controlled Substances Disposal.** Expired, excess or unwanted controlled substances that are owned by the drug outlet must be properly disposed of through the services of a DEA-registered reverse distributor or by another method permitted by federal law. (7-1-18)

**07. Authorized Access to the Restricted Drug Storage Area.** (7-1-18)

~~a.~~ Access to the restricted drug storage area ~~can occur only when a pharmacist or prescriber is on duty.~~ (7-1-18)

~~b.~~ ~~Access~~ must be limited to ~~pharmacists, technicians and pharmacist interns, or in the case of a prescriber drug outlet, to prescribers and appropriate support~~ **authorized** personnel ~~in accordance with the prescriber's practice act. A pharmacist or prescriber may, however, authorize an individual temporary access to the restricted drug storage area to perform a legitimate non-pharmacy function if the individual remains under the direct supervision of the pharmacist or prescriber.~~ (7-1-18)(    )

~~c.~~ ~~An institutional facility may also develop an emergency drug access protocol in which a non-pharmacist health professional may enter into the restricted drug storage area of an institutional facility that is otherwise closed, and pursuant to a valid prescription drug order, remove a sufficient quantity of non-controlled drugs necessary to meet the immediate needs of a patient.~~ (7-1-18)

**2021. DRUG OUTLETS THAT DISPENSE PRESCRIPTION DRUGS: MINIMUM PRESCRIPTION FILLING REQUIREMENTS.**

Unless exempted by these rules, each drug outlet that dispenses prescription drugs to patients in Idaho must meet the following minimum requirements: (7-1-18)

**01. Valid Prescription Drug Order.** Prescription drugs must only be dispensed pursuant to a valid prescription drug order as set forth in Subchapter D of these rules. (7-1-18)

**02. Prospective Drug Review.** Prospective drug review, as defined in Section 54-1705, Idaho Code, must be provided as set forth in Section 54-1739, Idaho Code. (7-1-18)

**03. Labeling.** Each drug must bear a complete and accurate label as set forth in Subchapter D of these rules. (7-1-18)

**04. Verification of Dispensing Accuracy.** Verification of dispensing accuracy must be performed to compare the drug stock selected to the drug prescribed. If not performed by a pharmacist or prescriber, an electronic verification system must be used that confirms the drug stock selected to fill the prescription is the same as indicated on the prescription label. A compounded drug may only be verified by a pharmacist or prescriber. (7-1-18)

**05. Patient Counseling.** Counseling, as defined in Section 54-1705, Idaho Code, must be provided as set forth in Section 54-1739, Idaho Code. (7-1-18)

**2032. OFFSITE PHARMACY SERVICES.**

A drug outlet may provide offsite pharmacy services at one (1) or more locations. When the services being performed are related to prescription fulfillment or processing, the drug outlet must comply with the following: (7-1-18)

**01. Policies and Procedures.** The originating drug outlet must have written policies and procedures outlining the offsite pharmacy services to be provided by the central drug outlet, or the offsite pharmacist or technician, and the responsibilities and accountabilities of each party. (7-1-18)

**02. Secure Electronic File.** The parties share a secure common electronic file or utilize other secure technology, including a private, encrypted connection that allows access by the central drug outlet or offsite pharmacist or technician to information necessary to perform offsite pharmacy services. (7-1-18)

**03. Exemption.** A single prescription drug order may be shared by an originating drug outlet and a central drug outlet, or offsite pharmacist or technician. The filling, processing and delivery of a prescription drug order by one pharmacy for another pursuant to this section will not be construed as the filling of a transferred prescription or as a wholesale distribution. (7-1-18)

**2043. DRUG OUTLETS THAT DISPENSE DRUGS TO PATIENTS WITHOUT AN ONSITE PHARMACIST OR PRESCRIBER.**

In addition to all other preceding rules of this subchapter, a drug outlet that dispenses drugs to patients in Idaho that does not have a pharmacist or prescriber onsite to perform or supervise pharmacy operations must comply with the following requirements: (7-1-18)

**01. Security and Access.** (7-1-18)

**a.** The drug outlet must maintain video surveillance with an adequate number of views of the full facility and retain a high quality recording for a minimum of ninety (90) days. (7-1-18)

**b.** Proper identification controls of individuals accessing the restricted drug storage area must be utilized and access must be limited, authorized, and regularly monitored. (7-1-18)

**02. Staffing Limitations.** The ratio of pharmacists to support personnel may not exceed one (1) pharmacist for every six (6) technicians and pharmacist interns in total across all practice sites. (7-1-18)

**03. Technology.** The video and audio communication system used to counsel and interact with each patient or patient's caregiver, must be clear, secure, and HIPAA-compliant. (7-1-18)

**04. Controlled Substances Inventories.** (7-1-18)

**a.** A perpetual inventory must be kept for all Schedule II controlled substances; and (7-1-18)

**b.** If a perpetual inventory is not kept for all Schedule III through V substances, the pharmacist or prescriber must inventory and audit at least three (3) random controlled substances quarterly. (7-1-18)

**05. Self-Inspection.** A pharmacist or prescriber must complete and retain a monthly in-person self-inspection of the drug outlet using a form designated by the Board. (7-1-18)

**06. Emergency Situations.** (7-1-18)

**a.** A pharmacist or prescriber must be capable of being on site at the drug outlet within twelve (12) hours if an emergency arises. (7-1-18)

**b.** The drug outlet must be, or remain, closed to the public if any component of the surveillance or video and audio communication system is malfunctioning, until system corrections or repairs are completed. (7-1-18)

**07. Exemption for Self-Service Systems.** A self-service ADS that is operating as a drug outlet is exempt from the video surveillance requirement and the self-inspection requirement of this rule. In addition, if counseling is provided by an onsite prescriber or pharmacist, a self-service ADS is exempt from the video and audio communication system requirements of this rule. (7-1-18)

**08. Exemption for Veterinarians.** Veterinarians practicing in accordance with their Idaho practice act

are exempt from this rule. (7-1-18)

**2054. DRUGS STORED OUTSIDE OF A DRUG OUTLET FOR RETRIEVAL BY A LICENSED HEALTH PROFESSIONAL.**

Drugs may be stored in an alternative designated area outside the drug outlet, including, but not limited to, floor stock, in an emergency cabinet, in an emergency kit, or as emergency outpatient drug delivery from an emergency room at a registered institutional facility, provided the following conditions are met: (7-1-18)

**01. Supervising Drug Outlet.** Drugs stored in such a manner must remain under the control of, and be routinely monitored by, the supervising drug outlet. (7-1-18)

**02. Policies and Procedures.** The supervising drug outlet must develop and implement policies and procedures regarding authorized access to drugs stored in the alternative designated area, documentation of drugs used, drug returns and wastage, and regular inventory procedures. (7-1-18)

**03. Secure Storage.** The area is appropriately equipped to ensure security and protection from diversion or tampering. (7-1-18)

**04. Controlled Substances.** Controlled substances may only be stored in an alternative designated area as permitted by, and in accordance with, federal law. (7-1-18)

**05. Stocking and Replenishing.** Stocking or replenishing drugs in an alternative designated area may be performed by a pharmacist or prescriber, or by appropriate support personnel using either an electronic verification system or a two (2) person checking system. (7-1-18)

**2065. – 299. (RESERVED)**

**SUBCHAPTER D – FILLING AND DISPENSING PRESCRIPTION DRUGS**  
**(Rules 300 through 399 - Filling and Dispensing Prescription Drugs)**

**300. PRESCRIPTION DRUG ORDER: VALIDITY.**

Prior to filling or dispensing a prescription drug order, a pharmacist must verify its validity. (7-1-18)

**01. Invalid Prescription Drug Orders.** A prescription drug order is invalid if not issued: (7-1-18)

**a.** In good faith; (7-1-18)

**b.** For a legitimate medical purpose; (7-1-18)

**c.** By a licensed prescriber; (7-1-18)

**d.** Within the course and scope of the prescriber’s professional practice and prescriptive authority; (7-1-18)

**e.** Pursuant to a valid prescriber-patient relationship, unless statutorily exempted; or (7-1-18)

**f.** In the form and including the elements specified in this Subchapter D. (7-1-18)

**02. Antedating or Postdating.** A prescription drug order is invalid if antedated or postdated. (7-1-18)

**03. Tampering.** A prescription drug order is invalid if, at the time of presentation, it shows evidence of alteration, erasure, or addition by any person other than the person who wrote it. (7-1-18)

**04. Prescriber Self-Use.** A prescription drug order written for a controlled substance is invalid if written for the prescriber’s own use. (7-1-18)

~~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. (7-1-18)~~

**065. Expiration.** A prescription drug order is invalid after its expiration date as follows: (7-1-18)

**a.** 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. (7-1-18)

**b.** 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. (7-1-18)

~~**e.** A prescription drug order for a non-controlled drug must not be filled or refilled more than fifteen (15) months after its date of issue, unless if extended in accordance with these rules. (7-1-18)~~

~~**076. Prescriber Change of Status** **Digital Image Prescriptions.** A prescription drug order is invalid after ninety (90) days from the date the pharmacist learns of a change in status that precludes a continued prescriber-patient relationship~~ A digital image of a prescription drug order is invalid if it is for a controlled substance or if the patient intends to pay cash for the drug in whole. (7-1-18)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**302. PRESCRIPTION DRUG ORDER: MINIMUM REQUIREMENTS.**

A prescription drug order must comply with applicable requirements of federal law and, except as differentiation is permitted for an institutional drug order, must include at least the following: (7-1-18)

**01. Patient's Name.** The patient's or authorized entity's name and: (7-1-18)

**a.** If for a controlled substance, the patient's full name and address; and (7-1-18)

**b.** If for an animal, the species. (7-1-18)

**02. Date.** The date issued. (7-1-18)

**03. Drug Information.** The drug name, strength, quantity and, if for a controlled substance, the dosage form. (7-1-18)

**04. Directions.** The directions for use. (7-1-18)

**05. Prescriber Information.** The name and, if for a controlled substance, the address and DEA registration number of the prescriber. (7-1-18)

**06. Signature.** ~~If paper, the pre printed, stamped or hand printed name and written~~ A signature sufficient to evidence a valid prescription of either the prescriber or, if statutorily allowed, a renewal of a previous prescription, the prescriber's agent's signature and, if electronic, when authorized by the prescriber's electronic signature. (7-1-18)(    )

**07. Institutional Drug Order Exemptions.** An institutional drug order may exempt the patient's address, the dosage form, quantity, prescriber's address, and prescriber's DEA registration number. (7-1-18)

**08. Exemptions for Non-Controlled Substances.** A prescriber may omit the required drug information and directions if the prescriber makes a clear indication that the pharmacist is to finalize the patient's drug therapy plan. (    )

**303. FILLING PRESCRIPTION DRUG ORDERS: PRACTICE LIMITATIONS.**

**01. Drug Product Selection.** Drug product selection is allowed only between therapeutic equivalent drugs. If a prescriber orders by any means that a brand name drug must be dispensed, then no drug product selection is permitted. (7-1-18)

**02. Partial Filling.** A prescription drug order may be partially filled within the limits of federal law. The total quantity dispensed in partial fillings must not exceed the total quantity prescribed. (7-1-18)

**03. Refill Authorization.** A prescription drug order may be refilled when permitted by state and federal law and only as specifically authorized by the prescriber, except ~~as follows:~~ (7-1-18)

~~a. A pharmacist acting in good faith and exercising reasonable care may dispense or refill a prescription drug that is not a controlled substance up to the total amount authorized by the prescriber including refills. (7-1-18)~~

~~b. that a~~ pharmacist may refill a prescription for a non-controlled drug one (1) time in a six (6)-month period when the prescriber is not available for authorization. In such cases, a pharmacist may dispense a refill up to the quantity on the most recent fill or a thirty (30)-day supply, whichever is less. (7-1-18)( )

**304. FILLING PRESCRIPTION DRUG ORDERS: ADAPTATION.**

Upon patient consent, a pharmacist acting in good faith and exercising reasonable care may adapt drugs as specified in this rule, provided that the drug is not for a controlled substance, compounded drug, or biological product, and provided that the prescriber has not indicated by any means necessary that adaptation is not permitted. (7-1-18)

**01. Change Quantity.** A pharmacist may change the quantity of medication prescribed if: (7-1-18)

a. The prescribed quantity or package size is not commercially available; ~~or~~ (7-1-18)( )

b. The change in quantity is related to a change in dosage form; (7-1-18)( )

~~c. The change is intended to dispense up to the total amount authorized by the prescriber including refills; or ( )~~

~~d. The change extends a maintenance drug for the limited quantity necessary to coordinate a patient's refills in a medication synchronization program. ( )~~

**02. Change Dosage Form.** A pharmacist may change the dosage form of the prescription if it is in the best interest of patient care, so long as the prescriber's directions are also modified to equate to an equivalent amount of drug dispensed as prescribed. (7-1-18)

**03. Complete Missing Information.** A pharmacist may complete missing information on a prescription if there is sufficient evidence to support the change. (7-1-18)

~~04. Medication Synchronization. A pharmacist may extend a maintenance drug for the limited quantity necessary to coordinate a patient's refills in a medication synchronization program. (7-1-18)~~

**054. Documentation.** A pharmacist who adapts a prescription in accordance with these rules must document the adaptation in the patient's record. (7-1-18)

**305. FILLING PRESCRIPTION DRUG ORDERS: DRUG PRODUCT SUBSTITUTION.**

Drug product substitutions are allowed only as follows: (7-1-18)

**01. Hospital.** Pursuant to a formulary or drug list prepared by the pharmacy and therapeutics committee of a hospital; (7-1-18)

**02. Skilled Nursing Institutional Facility.** At the direction of the quality assessment and assurance committee of an ~~skilled nursing~~ institutional facility; (7-1-18)( )

**03. Drug Shortage.** Upon a drug shortage, a pharmacist may exercise professional judgment, without contacting the prescriber, and may substitute an alternative dose of a prescribed drug, so long as the prescriber's directions are also modified, to equate to an equivalent amount of drug dispensed as prescribed; or (7-1-18)

**04. Biosimilars.** A pharmacist may substitute an interchangeable biosimilar product for a prescribed biological product if: (7-1-18)

**a.** The biosimilar has been determined by the FDA to be interchangeable and published in the Purple Book; (7-1-18)

**b.** The prescriber does not indicate by any means that the prescribed biological product must be dispensed; and (7-1-18)

**c.** The name of the drug and the manufacturer or the NDC number is documented in the patient medical record. (7-1-18)

**05. Prescriber-Authorized Substitution.** A prescriber may authorize a pharmacist to substitute a drug with another drug in the same therapeutic class provided the following conditions are met: ( )

**a.** The prescriber has clearly indicated that substitution is permissible by indicating "therapeutic substitution allowed" or a similar designation; ( )

**b.** The substitution is intended to ensure formulary compliance with the patient's health insurance plan, or, in the case of a patient without insurance, to lower the cost to the patient while maintaining safety; ( )

**c.** The patient opts-in to the substitution, and the pharmacist clearly informs the patient of the differences in the drug products and specifies that the patient may refuse the substitution; and ( )

**d.** If a substitution is made: ( )

**i.** The prescriber's directions are also modified to equate to an equivalent amount of drug dispensed as is prescribed; and ( )

**ii.** The pharmacist notifies the patient's original prescriber of the substitution within five (5) business days of dispensing the prescription. ( )

**e.** Prescriber-authorized substitution does not apply to biological products or narrow therapeutic index drugs. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**313. PRESCRIPTION DELIVERY: RESTRICTIONS.**

**01. Acceptable Delivery.** A drug outlet that dispenses drugs to patients in Idaho may deliver filled prescriptions ~~to the following~~ in accordance with federal law, as long as appropriate measures are taken to ensure product integrity: ~~and safety.~~ (7-1-18)( )

~~**a.** To the patient or the patient's residence, the institutional facility in which the patient is convalescing, the correctional facility in which a patient is housed;~~ (7-1-18)

~~**b.** To the patient's licensed or registered healthcare provider, as follows:~~ (7-1-18)

~~**i.** If the drug is not a controlled substance; or~~ (7-1-18)

~~**ii.** If the drug is a controlled substance that is intended for direct administration by the prescriber or~~

~~prescriber's delegate.~~

~~(7-1-18)~~

~~e. To another licensed drug outlet.~~

~~(7-1-18)~~

**02. Pick-up or Return by Authorized Personnel.** Filled prescriptions may be picked up for or returned from delivery by authorized personnel when the drug outlet is closed for business if the prescriptions are placed in a secured delivery area outside of the restricted drug storage area that is equipped with adequate security, including an alarm or comparable monitoring system, to prevent unauthorized entry, theft and diversion ~~under policies and procedures developed by the PIC.~~

~~(7-1-18)~~ ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**SUBCHAPTER E – DRUG OUTLET RECORDKEEPING AND REPORTING REQUIREMENTS**  
**(Rules 400 through 499 - Drug Outlet Recordkeeping and Reporting Requirements)**

**400. RECORDKEEPING: MAINTENANCE AND INVENTORY REQUIREMENTS.**

**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 and retained in a readily retrievable form and location for at least three (3) years from the date of the transaction.

(7-1-18)

**02. Prescription Retention.** A prescription drug order must be retained in a readily retrievable manner by each drug outlet and maintained as follows:

(7-1-18)

**a.** Schedule II Prescriptions. Paper prescription drug orders for Schedule II controlled substances must be maintained at the registered location in a separate prescription file.

(7-1-18)

**b.** Schedule III through V Prescriptions. 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.

(7-1-18)

**c.** Electronic Prescriptions. 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 filled.

(7-1-18)

**03. Inventory Records.** Each drug outlet must maintain a current, complete and accurate record of each controlled substance manufactured, imported, received, ordered, sold, delivered, exported, dispensed or otherwise disposed of by the registrant. Drug outlets must maintain inventories and records in accordance with federal law. An inventory must be conducted as follows:

(7-1-18)

**a.** Annual Inventory of Stocks of Controlled Substances. Each registrant must conduct an inventory of controlled substances on hand annually at each registered location no later than seven (7) days after the date of the most recent inventory in a form and manner that satisfies the inventory requirements of federal law. A separate controlled substances inventory must be taken and retained at each DEA-registered location.

(7-1-18)

~~**b.** Inventory on PIC Change. A complete controlled substance inventory must be conducted by the incoming PIC or his delegate on or by the first day of employment of the incoming PIC.~~

~~(7-1-18)~~

**eb.** 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. (7-1-18)

~~c.~~ **Drugs Stored Outside a Drug Outlet.** In addition to the annual inventory requirements, drugs stored outside a drug outlet in accordance with these rules must be regularly inventoried and inspected to ensure that they are properly stored, secured, and accounted for. (7-1-18)

~~d.~~ **Closing of Pharmacy.** A closing inventory must be conducted and retained. (7-1-18)

**04. 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. (7-1-18)

**05. Drug Distributor Records.** Wholesalers and other entities engaged in wholesale drug distribution must maintain inventories and records or transactions pertaining to the receipt and distribution or other disposition of drugs in accordance with federal law. 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; ( )

**c.** The dates of receipt and distribution or other disposition of the drugs; and ( )

**d.** Controlled substance distribution invoices, in the form and including the requirements of federal law. ( )

~~056.~~ **Central Records Storage.** Records may be retained at a central location in compliance with federal law. (7-1-18)

~~067.~~ **Electronic Records Storage.** Any record required to be kept under this section may be electronically stored and maintained if they remain legible and are in a readily retrievable format, and if federal law does not require them to be kept in a hard copy format. (7-1-18)

**(BREAK IN CONTINUITY OF SECTIONS)**

**402. 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. (7-1-18)

**021. Theft or Loss of Controlled Substances.** 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. (7-1-18)

~~032.~~ **Individual Information Changes.** Changes in employment or changes to information provided on or with the initial or renewal application must be reported to the Board within ten (10) days of the change. (7-1-18)

**043. Reporting Adulteration or Misappropriation.** A licensee or registrant must report to the Board any adulteration or misappropriation of a controlled drug in accordance with Section 37-117A, Idaho Code. (7-1-18)

**04. Drug Distributor Monthly Reports.** An authorized distributor must report specified data on drugs distributed at least monthly to the Board in a form and manner prescribed by the Board. ( )

**IDAPA 27 – BOARD OF PHARMACY**  
**27.01.03 – RULES GOVERNING PHARMACY PRACTICE**  
**DOCKET NO. 27-0103-1802**  
**NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is September 28, 2018.

**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 37-2702 and 54-1717, Idaho Code.

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

On June 25, 2018, The U.S. Food and Drug Administration (FDA) approved Epidiolex (cannabidiol – CBD) oral solution for the treatment of seizures associated with two rare and severe forms of epilepsy. On September 27, 2018, the U.S. Drug Enforcement Administration (DEA) made a scheduling determination that removes this specific drug product from Schedule I of the Controlled Substances Act and places it in Schedule V. This temporary rule ensures conformity between federal law and Idaho law. As a result, Epidiolex can be prescribed and dispensed to patients in accordance with the other provisions of the Controlled Substances Act.

**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:

Per Section 37-2702, Idaho Code, if any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the board, the board shall similarly control the substance under this act by promulgating a temporary rule or proposing a statutory amendment, or both, within thirty (30) days from publication in the federal register of a final order designating a substance as a controlled substance or rescheduling or deleting a substance, unless within that thirty (30) day period, the board objects to inclusion, rescheduling, or deletion.

**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 Alex Adams, Executive Director, at (208) 334-2356.

Dated this 27th day of September, 2018.

Alex J. Adams, Pharm D, MPH  
Executive Director  
Board of Pharmacy  
1199 W. Shoreline Ln., Ste. 303  
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Phone: (208) 334-2356  
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**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 27-0103-1802**  
**(Only Those Sections With Amendments Are Shown.)**

**316. CONTROLLED SUBSTANCES: TEMPORARY SCHEDULING.**

Cannabidiol in a drug product approved by the FDA, specifically derived from cannabis and containing no more than one tenth percent (0.1%) tetrahydrocannabinols, is removed from Schedule I, under Article II, Title 37, Chapter 27, Idaho Code, and placed in Schedule V, under Article II, Title 37, Chapter 27, Idaho Code. (9-28-18)T

**3167. – 399. (RESERVED).**

**IDAPA 27 – BOARD OF PHARMACY**

**27.01.04 – RULES GOVERNING PHARMACIST PRESCRIPTIVE AUTHORITY**

**DOCKET NO. 27-0104-1802**

**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:** A public hearing concerning this rulemaking will be held as follows:

**PUBLIC HEARING**  
**Wednesday, October 24, 2018 – 1:00 p.m. (MDT)**

**Idaho State Capitol Building**  
**Room WW53**  
**700 W. Jefferson Street**  
**Boise, ID 83702**

Written comments received by October 15, 2018, will be included in the Board’s distributed meeting materials for consideration. Written comments received between October 15, 2018, and October 24, 2018, will be printed and distributed to Board members at the meeting. For those planning to attend the open, public meeting, written and verbal comments will be accepted by and/or presented before the Board.

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 docket further implements House Bill 191, which passed the Idaho Legislature in 2017. In addition, during the 2018 rules review, members of the legislature suggested an edit to one of the rules as drafted, and this change was made via temporary rule and published in the June 2018 Administrative Bulletin. This docket would make the temporary rule permanent.

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

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

**NEGOTIATED RULEMAKING:** 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 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, pages 160-161](#).

**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 Alex Adams, Executive Director, at 208-334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2018, as described above.

Dated this 30th day of August 2018.

Alex J. Adams, Pharm D, MPH  
Executive Director  
Board of Pharmacy  
1199 W. Shoreline Ln., Ste. 303  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 27-0104-1802**  
**(Only Those Sections With Amendments Are Shown.)**

**021. PHARMACIST PRESCRIBING FOR MINOR CONDITIONS.**

A pharmacist may prescribe any drug approved by the FDA, unless otherwise specified, that is indicated for the following conditions: ~~(7-1-18)~~( )

- 01. Lice; (7-1-18)
- 02. Cold Sores; (7-1-18)
- 03. Motion Sickness Prevention; ~~and~~ ~~(7-1-18)~~( )
- 04. Uncomplicated Urinary Tract Infections; ~~(7-1-18)~~( )
- 05. Allergic Rhinitis. Prescribing is limited to intranasal drugs only; ( )
- 06. Mild Acne. Prescribing is limited to topical drugs only; and ( )
- 07. Mild Cough. Only benzonatate may be prescribed for cough suppression. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**024. PHARMACIST PRESCRIBING FOR CLINICAL GAPS IN CARE.**

A pharmacist may prescribe any drug approved by the FDA for the purposes of closing a gap in clinical guidelines as follows: (7-1-18)

- 01. **Statins.** Statins, for patients who have ~~a current prescription for a drug for~~ been diagnosed with diabetes; and ~~(7-1-18)~~( )
- 02. **Short-Acting Beta Agonists.** Short-acting beta agonists (SABA), for patients with asthma who have had a prior prescription for a SABA, and who have a current prescription for a long-term asthma control medication. (7-1-18)

**(BREAK IN CONTINUITY OF SECTIONS)**

**026. PHARMACIST PRESCRIBING TO SUPPLEMENT AN INFUSION ORDER.**

A pharmacist may prescribe any of the following FDA approved drugs or devices to supplement a valid prescription drug order or institutional drug order for drugs intended to be administered to a patient via infusion; (7-1-18)

- 01. **Flush.** Heparin, in concentrations of one hundred (100) units per milliliter or less, and saline; (7-1-18)
- 02. **Devices.** Infusion pumps and other rate control devices; (7-1-18)
- 03. **Supplies.** Tubing, filters, catheters, intravenous (IV) start kits, central line dressing kits, and injection caps; ~~and~~ ~~(7-1-18)~~( )
- 04. **Local Anesthetics for IV Port Access;** ~~(7-1-18)~~( )
- 05. **Catheter Occlusion. Agents for catheter occlusion; and** ( )
- 06. **Emergency Kit Drugs. Methylprednisolone, hydrocortisone, diphenhydramine, epinephrine, and normal saline.** ( )

**IDAPA 27 – BOARD OF PHARMACY**  
**27.01.05 – RULES GOVERNING DRUG COMPOUNDING**  
**DOCKET NO. 27-0105-1801**  
**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:** A public hearing concerning this rulemaking will be held as follows:

**PUBLIC HEARING**  
**Wednesday, October 24, 2018 – 1:00 p.m. (MDT)**

**Idaho State Capitol Building**  
**Room WW53**  
**700 W. Jefferson Street**  
**Boise, ID 83702**

Written comments received by October 15, 2018, will be included in the Board's distributed meeting materials for consideration. Written comments received between October 15, 2018, and October 24, 2018, will be printed and distributed to Board members at the meeting. For those planning to attend the open, public meeting, written and verbal comments will be accepted by and/or presented before the Board.

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 docket makes several minor edits to the rules governing drug compounding to better align with federal law and current practice.

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

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

**NEGOTIATED RULEMAKING:** 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 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, pages 162-163](#).

**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 Alex Adams, Executive Director, at 208-334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2018, as described above.

Dated this 30th day of August 2018.

Alex J. Adams, Pharm D, MPH  
Executive Director  
Board of Pharmacy  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 27-0105-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**101. STERILE PRODUCT PREPARATION.**

**01. Application.** In addition to all other applicable rules in this chapter, including the rules governing Compounding Drug Products, these rules apply to all persons, including any business entity, engaged in the practice of sterile compounding and sterile prepackaging in or into Idaho. (7-1-18)

**02. Dosage Forms Requiring Sterility.** The sterility of compounded biologics, diagnostics, drugs, nutrients, and radiopharmaceuticals must be maintained or the compounded drug product must be sterilized when prepared in the following dosage forms: (7-1-18)

- a. Aqueous bronchial and nasal inhalations, except sprays and irrigations intended to treat bronchial nasal mucosa only; (7-1-18)(    )
- b. Baths and soaks for live organs and tissues; (7-1-18)
- c. Injections (for example, colloidal dispersions, emulsions, solutions, suspensions); (7-1-18)
- d. Irrigations for wounds and body cavities; (7-1-18)
- e. Ophthalmic drops and ointments; and (7-1-18)
- f. Tissue implants. (7-1-18)

**03. Compounder Responsibilities.** Compounders and sterile prepackagers are responsible for ensuring that sterile products are accurately identified, measured, diluted, and mixed and are correctly purified, sterilized, packaged, sealed, labeled, stored, dispensed, and distributed, as well as prepared in a manner that maintains sterility and minimizes the introduction of particulate matter; (7-1-18)

- a. Unless following manufacturer's guidelines or another reliable literature source, opened or partially used packages of ingredients for subsequent use must be properly stored as follows; (7-1-18)
  - i. Opened or entered (such as needle-punctured) single-dose containers, such as bags, bottles, syringes, and vials of sterile products and compounded sterile products shall be used within one (1) hour if opened in non-sterile conditions, and any remaining contents must be discarded; (7-1-18)
  - ii. Single-dose vials needle-punctured in a sterile environment may be used up to six (6) hours after initial needle puncture; (7-1-18)
  - iii. Opened single-dose ampules shall not be stored for any time period; and (7-1-18)

iv. Multiple-dose containers (for example, vials) that are formulated for removal of portions on multiple occasions because they contain antimicrobial preservatives, may be used for up to twenty-eight (28) days after initial opening or entering, unless otherwise specified by the manufacturer; (7-1-18)

b. Water-containing compounded sterile products that are non-sterile during any phase of the compounding procedure must be sterilized within six (6) hours after completing the preparation in order to minimize the generation of bacterial endotoxins; (7-1-18)

c. Food, drinks, and materials exposed in patient care and treatment areas shall not enter ante-areas, buffer areas, or segregated areas where components and ingredients of sterile products are prepared. (7-1-18)

**04. Environmental Controls.** Except when prepared for immediate administration, the environment for the preparation of sterile products in a drug outlet must be in an isolated area, designed to avoid unnecessary traffic and airflow disturbances, and equipped to accommodate aseptic techniques and conditions. (7-1-18)

a. Hoods and aseptic environmental control devices must be certified for operational efficiency as often as recommended by the manufacturer or at least every six (6) months or if relocated. (7-1-18)

b. Filters must be inspected and replaced in accordance with the manufacturer's recommendations. (7-1-18)

**05. Sterile Product Preparation Equipment.** A drug outlet in which sterile products are prepared must be equipped with at least the following: (7-1-18)

a. Protective apparel including gowns, masks, and sterile (or the ability to sterilize) non-vinyl gloves, unless the PIC can provide aseptic isolator manufacturer's written documentation that any component of garbing is not required; (7-1-18)

b. A sink ~~with hot and cold water in close proximity to the hood;~~ (7-1-18)( )

c. A refrigerator for proper storage of additives and finished sterile products prior to delivery when necessary; and (7-1-18)

d. An appropriate laminar airflow hood or other aseptic environmental control device such as a laminar flow biological safety cabinet. (7-1-18)

**06. Documentation Requirements.** The following documentation must also be maintained by a drug outlet in which sterile products are prepared: (7-1-18)

a. Justification of beyond use dates assigned, pursuant to direct testing or extrapolation from reliable literature sources; (7-1-18)

b. Training records, evidencing that personnel are trained on a routine basis and are adequately skilled, educated, and instructed; (7-1-18)

c. Audits appropriate for the risk of contamination for the particular sterile product including: (7-1-18)

i. Visual inspection to ensure the absence of particulate matter in solutions, the absence of leakage from bags and vials, and the accuracy of labeling with each dispensing; (7-1-18)

ii. Periodic hand hygiene and garbing competency; (7-1-18)

iii. Media-fill test procedures (or equivalent), aseptic technique, and practice related competency evaluation at least annually by each compounder or sterile prepackager; (7-1-18)

iv. Environmental sampling testing at least upon registration of a new drug outlet, following the servicing or re-certification of facilities and equipment, or in response to identified problems with end products, staff techniques or patient-related infections, or every six (6) months, including: (7-1-18)

- (1) Total particle counts; (7-1-18)
- (2) Viable air sampling; (7-1-18)
- (3) ~~Gloved fingertip sampling;~~ ~~(7-1-18)~~
- ~~(4)~~ Surface sampling; (7-1-18)

v. Gloved fingertip sampling testing at least annually for personnel who compound low- and medium-risk level compounded sterile preparations and every six (6) months for personnel who compound high-risk level compounded sterile preparations. ( )

vi. Sterility testing of high risk batches of more than twenty-five (25) identical packages (ampules, bags, vials, etc.) before dispensing or distributing; (7-1-18)

- d. Temperature, logged daily; (7-1-18)
- e. Beyond use date and accuracy testing, when appropriate; and (7-1-18)

f. Measuring, mixing, sterilizing, and purification equipment inspection, monitoring, cleaning, and maintenance to ensure accuracy and effectiveness for their intended use. (7-1-18)

**07. Policies and Procedures.** Policies and procedures appropriate to the practice setting must be adopted by a drug outlet preparing sterile pharmaceutical products and must include a continuous quality improvement program for monitoring personnel qualifications and training in sterile technique, including: (7-1-18)

- a. Antiseptic hand cleansing; (7-1-18)
- b. Disinfection of non-sterile compounding surfaces; (7-1-18)
- c. Selecting and appropriately donning protective garb; (7-1-18)
- d. Maintaining or achieving sterility of sterile products while maintaining the labeled strength of active ingredients; (7-1-18)
- e. Manipulating sterile products aseptically, including mixing, diluting, purifying, and sterilizing in the proper sequence; (7-1-18)
- f. Choosing the sterilization method, pursuant to the risk of a contamination of particular compounded sterile product; and (7-1-18)
- g. Inspecting for quality standards before dispensing or distributing. (7-1-18)

## **IDAPA 27 – BOARD OF PHARMACY**

### **27.01.06 – RULES GOVERNING DME, MANUFACTURING, AND DISTRIBUTION**

#### **DOCKET NO. 27-0106-1801 (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:** A public hearing concerning this rulemaking will be held as follows:

**PUBLIC HEARING**  
**Wednesday, October 24, 2018 – 1:00 p.m. (MDT)**

**Idaho State Capitol Building**  
**Room WW53**  
**700 W. Jefferson Street**  
**Boise, ID 83702**

Written comments received by October 15, 2018, will be included in the Board's distributed meeting materials for consideration. Written comments received between October 15, 2018, and October 24, 2018, will be printed and distributed to Board members at the meeting. For those planning to attend the open, public meeting, written and verbal comments will be accepted by and/or presented before the Board.

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 Board of Pharmacy intends to eliminate this chapter as described more fully in Rule Docket No. 27-0101-1801.

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

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

**NEGOTIATED RULEMAKING:** 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 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, pages 164-165](#).

**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 Alex Adams, Executive Director, at 208-334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2018 as described above.

Dated this 30th day of August 2018.

Alex J. Adams, Pharm D, MPH  
Executive Director  
Board of Pharmacy  
1199 W. Shoreline Ln., Ste. 303  
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Boise, ID 83720-0067  
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**IDAPA 27.01.06 IS BEING REPEALED IN ITS ENTIRETY**

## IDAPA 28 – DEPARTMENT OF COMMERCE

### 28.02.03 – RULES OF THE IDAHO REGIONAL TRAVEL AND CONVENTION GRANT PROGRAM

DOCKET NO. 28-0203-1802

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 67-4702, 67-4715, and 67-4717, 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 17, 2018.

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 Department of Commerce adopted a temporary rule on March 2, 2018, to define and clarify allowable costs of the Idaho Regional Travel and Convention Grant Program so that the program would continue to operate without interruption. This proposed rule implements the temporary rule without change and provides for other minor rule edits for housekeeping purposes.

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

There is no fee or charge imposed or increased.

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

There is zero fiscal impact. Administrative costs remain at 10% of the grant award, capped at \$25,000. There is no proposed change to the 10% or the cap of \$25,000.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(3), Idaho Code, negotiated rulemaking was facilitated by involving current grant recipients in formulation of the policy through telephone interviews, surveys, one on one meetings, and public meetings of the Idaho Travel Council. The Idaho Travel Council was presented with the results of the data collected and Commerce staff proposed a revision to the rule. The temporary rule was endorsed by the Idaho Travel Council and adopted by the Department Director on March 2, 2018.

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

There are no documents incorporated by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Matt Borud at (208) 334-2470. 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 24, 2018 at 5:00 p.m. Mountain Time.

Dated this 21st day of August, 2018.

Bobbi-Jo Meuleman, Director  
Idaho Department of Commerce  
700 W State St, 2nd Floor  
PO Box 83720, Boise, ID 83720-0093  
Phone: (208) 334-2470  
Fax: (208) 334-2631

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 28-0203-1802  
(Only Those Sections With Amendments Are Shown.)

**011. PROGRAM INTENT.**

The intent of the ITC's Regional Grant Program is to distribute grant funds to non-profit, incorporated organizations which have in place a viable travel or convention promotion program, or both, in their area of operation. Preference is given to programs ~~of Destination Marketing Organizations (DMOs)~~ with a primary focus of promoting overnight visitation in ~~their area~~ Idaho. Funds may be used for tourism marketing which has a positive economic impact to the state of Idaho. Such marketing includes, but is not limited to, the promotion of accommodations, recreational areas, events, conferences, food and beverage, tourism services, culture, attractions, and transportation. The Idaho Travel Council and the Department will guide the tourism marketing goals and strategies for the state of Idaho.

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

**(BREAK IN CONTINUITY OF SECTIONS)**

**013. DISTRIBUTION OF FUNDS.**

The Idaho Regional Travel and Convention Grant is a cost reimbursementable grant.

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

**01. Documentation of Funds Expended.** The Department will allocate reimburse funds to the grantee upon submission and review of complete documentation of funds expended.

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

**02. Documentation of Reimbursable Expenses.** Documentation for reimbursable expenses will be determined by the Department and the ITC as outlined in the guidelines.

(3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**015. POTENTIAL CONFLICT OF INTEREST.**

A ~~grant recipient's~~ affiliation with a profit-making organization could imply a conflict of interest and must be disclosed. Such conflict could render the grant application ineligible.

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

**(BREAK IN CONTINUITY OF SECTIONS)**

**017. ELIGIBLE PROJECTS.**

Eligible projects under the Regional Travel and Convention Grant Program must be consistent with the legislative declaration of policy in Title 67, Chapter 47, Idaho Code, and the program intent. Programs that are eligible for consideration must fall under the basic definition of travel or convention promotion.

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

**018. ~~INELIGIBLE PROJECTS~~ ADMINISTRATIVE EXPENSES.**

**01. Program Purpose.** It is not the purpose of this grant program to fund the day-to-day, administrative expenses of organizations that have a travel or convention promotion element. Projects that have alternative funding sources (for example, regular Chamber of Commerce budgets) or that have been funded previously with the agency's own funds may be deemed ineligible.

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

~~**01. Organizational Administrative Expense.** Rent, phone, supplies, wages and salaries, other overhead and administrative expenses are not reimbursable; however, the actual cost of staff wages and benefits (Other Personnel Expenses (OPE)) may be used as cash match with documentation.~~

~~(3-29-10)~~

~~02. **Salary or Personnel Administrative Expense.** Expenses related to grant writing are not eligible. The following administrative and overhead costs are allowable: (3-29-10)( )~~

~~a. **Wages and Benefits.** Wages and benefits of one (1) designated grant administrator for time directly related to the task of grant administration. Other employee wages and benefits incurred in the execution of the grant program may be used as cash match with documentation. ( )~~

~~b. **Overhead.** Reasonable, apportioned overhead costs of the grantee organization required to execute the grant program shall be approved by the Idaho Travel Council. The Department shall recommend preferred apportionment methods. ( )~~

~~c. **Grant Writing.** No expenses related to grant writing, or grant application are eligible. ( )~~

~~03. **Alternative Funding Sources.** Projects that have alternative funding sources (for example, regular Chamber of Commerce budgets) or that have been funded previously with the agency's own funds may be deemed ineligible. (3-29-10)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**022. GRANT ADMINISTRATION GUIDELINES.**

**01. Noncompliance with Guidelines.** Noncompliance with administrative guidelines may lead to grant termination or omission from future grant awards, or both. (3-29-10)

**02. Usage of Funds.** Applicant must agree that funds will be used in accordance with ITC grant contract and guidelines, including, but not limited to: (3-29-10)( )

- a. Submitting narrative progress reports according to contract schedule; (3-29-10)
- b. Using appropriate forms with accompanying documentation; (3-29-10)
- c. Abiding by subcontract procedures in the guidelines; and (3-29-10)
- d. Providing complete audit documentation when applicable. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**201. MATCHING FUNDS.**

Match must be documented in the application. (3-29-10)

**01. Match Required.** The Idaho Regional Travel and Convention Grant Program requires match from all organizations applying for funding as a way to increase the regional or local commitment to the plan, and to assist in generating more dollars for tourism promotion. (3-29-10)

**02. Match Percentage.** All plans must provide cash match of twelve and one-half percent (12.5%) of the amount awarded. All match must be outlined in the scope of work within the grant application. Audits are exempt from match requirements. (3-29-10)

**03. Match Definition.** Match is defined in the guidelines, but is considered documented cash contributions, wages and benefits or income used to fund a project. (3-29-10)

**04. Expenditures.** Expenditures claimed for projects funded previously by the grantee, such as

brochures and publications, will not be allowed as match. (3-29-10)

**05. Marketing.** Marketing dollars spent by a for-profit enterprise within their marketing program may not be claimed as cash match by a grantee, not to exclude approved co-op programs. (3-29-10)

~~**06. Audits.** Funds awarded for audits are exempt from match requirements. (3-29-10)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**222. GRANT AWARD.**

The ITC is responsible for the selection of applications to be awarded ITC Grants. Once the ITC has selected ~~plans applications~~ to be funded, the Department will notify all applicants, ~~by letter~~, of their funding status ~~in writing.~~ (3-29-10)( )

**01. Term of Contract.** All contracts will be in effect for a period of no more than fourteen (14) months unless otherwise stipulated in the contract. (3-29-10)

**02. Special Conditions.** If applicable, special conditions of funding will be outlined. (3-29-10)

**03. Effective Date.** The grant will take effect upon the date of award. Grant monies cannot be expended until that date. (3-29-10)

**04. Reimbursement.** No expenditures can be reimbursed until the contract is signed by the Director of the Department or his designee. (3-29-10)

**223. AUDIT REQUIREMENT.**

Grantees who receive one hundred thousand dollars (\$100,000) or more in grant funds ~~must will~~ have an audit. The audit ~~must will~~ be performed by a Certified Public Accountant and submitted to the Department within sixty (60) days following the close of the grant cycle. The Council may also require an audit for grants less than one hundred thousand dollars (\$100,000). ~~Estimated audit costs must be included in the grant application. Audits are exempt from match requirements.~~ (3-29-10)( )

**IDAPA 29 – IDAHO POTATO COMMISSION**  
**29.01.03 – RULES GOVERNING NOMINATIONS FOR APPOINTMENT AS A**  
**COMMISSIONER TO THE IDAHO POTATO COMMISSION**  
**DOCKET NO. 29-0103-1802 (NEW CHAPTER)**  
**NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is August 29, 2018.

**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 22-1205 and 22-1207, Idaho Code.

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

Our March commissioner nomination meetings resulted in discrepancies we need to solve by clarifying our nominating procedures in administrative rules. To prevent future discrepancies we propose to add a chapter clarifying our nominating procedures. We intend to submit this rule as a proposed rule after the next legislative session.

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

Our current nominating process for selecting Commissioners has never been outlined by administrative rules and our nomination meetings in March 2018 revealed deep flaws in the process. We need to clarify our nominating processes through administrative rulemaking to better serve the Idaho potato industry.

Adopting this temporary rule will confer a benefit on the industry by providing a sound method for electing the best-qualified Commissioners to serve the Idaho potato industry. The rule is temporary because the nomination process in part hinges on updating our statutes. Modernizing statutory definitions to reflect the current Idaho potato industry and redrawing more proportional grower districts on the Commission will also confer a substantial benefit on the industry. A temporary rule is the first crucial step we need to take in order to confer the benefit of fair nomination practices, more equitable district representation, and definitions that match the realities of our industry today.

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

This rulemaking will have no fiscal impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Patrick Kole, VP of Legal and Government Affairs, at (208) 514-4208.

Dated this 31st day of August, 2018.

Patrick Kole, VP Legal and Government Affairs  
Idaho Potato Commission  
661 S. Rivershore Ln. Ste. 230  
PO Box 1670  
Eagle, ID 83616  
Phone: (208) 514-4208  
Fax: (208) 334-2274

**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 29-0103-1802**  
**(New Chapter)**

**IDAPA 29**  
**TITLE 01**  
**CHAPTER 03**

**29.01.03 – RULES GOVERNING NOMINATIONS FOR APPOINTMENT AS**  
**A COMMISSIONER TO THE IDAHO POTATO COMMISSION**

**000. LEGAL AUTHORITY.**

These rules are adopted under the legal authority of the Idaho Potato Commission Law, Chapter 12, Title 22, Idaho Code. (8-29-18)T

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is IDAPA 29.01.03, “Rules Governing Nominations for Appointment as a Commissioner to the Idaho Potato Commission.” (8-29-18)T

**02. Scope.** These rules govern the way nominations are made by eligible growers, shipper and processors for selection by the Governor to a position of Commissioner of the Idaho Potato Commission. (8-29-18)T

**03. Citation.** The official citation of these rules is IDAPA 29.01.02.000, et seq. For example, this rule is cited as IDAPA 29.01.03.001.03. In documents submitted to the Commission or issued by the Commission, these rules may be cited as Idaho Potato Commission “Rules Governing Nominations for Appointment as a Commissioner to the Idaho Potato Commission,” IDAPA 29.01.03. (8-29-18)T

**002. WRITTEN INTERPRETATIONS – AGENCY GUIDELINES.**

For rulemakings conducted before July 1, 1993, written interpretations to these rules in the form of explanatory comments accompanying the order of proposed rulemaking and review of comments submitted in the order adopting these rules are maintained in the files of the Secretary of the Idaho Potato Commission and are available from the office of the Commission Secretary. For rulemakings conducted after July 1, 1993, written interpretations to these rules in the form of explanatory comments accompanying the notice of proposed rulemaking that originally proposed the rules and review of comments submitted in the rulemaking decision adopting these rules maintained in the files of the Secretary of the Idaho Potato Commission and are available from the office of the Commission Secretary. The Commission Secretary may be contacted in writing at the Idaho Potato Commission, P.O. Box 1670, Eagle, Idaho 83616, or may be reached by telephone at (208) 334-2350. (8-29-18)T

**003. ADMINISTRATIVE APPEALS.**

Administrative appeals are governed under the Commission’s Rules of Procedure, IDAPA 29.01.01.000, et. seq. (8-29-18)T

**004. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference into these rules. (8-29-18)T

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

The principal office of the Commission is in Eagle, Idaho. This office is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The Commission’s telephone number is (208) 334-2350. The Commission’s FAX number is (208) 334-2274. The Commission’s mailing address: Idaho Potato Commission, Post Office Box 1670, Eagle,

Idaho 83616. The street address of the Commission is: 661 S. Rivershore Lane, Suite 230, Eagle, Idaho 83616. All documents filed in all proceedings must be filed with the Commission at one (1) of these addresses. (8-29-18)T

**006. PUBLIC RECORDS ACT COMPLIANCE.**

Except as provided by Sections 052 and 233 of IDAPA 29.01.01, “Rules of Procedure of the Idaho Potato Commission,” and Title 74, Chapter 1, Idaho Code, all materials filed with the Commission pursuant to these rules and all materials issued by the Commission pursuant to these rules are public documents subject to inspection, examination and copying. (8-29-18)T

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

**010. DEFINITIONS.**

The definitions set forth in Section 22-1204, Idaho Code, shall apply to this chapter. (8-29-18)T

**011. COMMODITY COMMISSION — NOMINATIONS — ELECTIONS — VACANCIES.**

**01. Notice.** On or prior to January 21 of each year, the Commission will mail notice to all affected growers, shippers and processors with a call for nominations for the position of Commissioner of the Commission. The notice shall give the final date for filing nominations, which shall be on or before February 21. The notice shall also advise that nominating petitions must be signed by three (3) persons qualified to vote for such candidates for a grower position. The designated shipper or processor voting representative to the Commission for Commissioner nominations may nominate up to three (3) qualified persons. (8-29-18)T

**02. Ballots.** On or before March 1, the Commission shall mail ballots to all affected growers, shippers and processors. The mailing list of those eligible to receive a ballot and vote will be compiled from those paying assessments on potatoes to the Commission. Grower ballots shall only be mailed to growers within a district where a nomination is required. Ballots shall be required to be returned to the Commission by March 31. The mail ballot shall be conducted in a manner so that it shall be a secret ballot. Each candidate shall have the opportunity to include a statement explaining their candidacy in a format established by the Commission. (8-29-18)T

**03. Grower Commissioner.** Grower Commissioner nominees must be nominated from the districts established in Section 22-1202, Idaho Code. Three (3) nominees will be submitted to the Governor for consideration. (8-29-18)T

**04. Shipper Commissioner.** Shipper Commissioner nominees may be nominated from any district. Three (3) nominees will be submitted to the Governor for consideration. (8-29-18)T

**05. Processor Commissioner.** Processor Commissioner nominees may be nominated from any district. Three (3) nominees will be submitted to the Governor for consideration. (8-29-18)T

**06. Nominee Voting.** Should there only be three (3) nominees for a position, voting shall not be necessary. Should there be more than three (3) nominees, and if prior to appointment by the governor a candidate withdraws or becomes disqualified for appointment, the Commission shall submit replacement nominees to the Governor in the order the votes were tallied. (8-29-18)T

**07. Vacancy.** In the event of a vacancy on the Commission, a special nomination proceeding shall be held as near as possible with the timelines set forth above. (8-29-18)T

**012. AFTER ANY VOTE — NOMINEES PROVIDED RESULTS — DISPUTES.**

**01. Results.** Upon completion of any nomination vote, the Commission shall tally the results of the vote and provide the results to the nominees. (8-29-18)T

**02. Disputes.** If a nominee disputes the results of a vote, that nominee, within ten (10) days of the announced results, shall provide in writing a statement of why he believes the vote is disputed and request a recount. (8-29-18)T

**03. Finalization.** Once the vote is tallied and distributed, all disputes are resolved, and all matters in a vote are finalized, the individual ballots may be destroyed. (8-29-18)T

**013. QUALIFICATIONS.**

**01. Membership Qualifications.** Commission members shall be citizens and residents of Idaho over the age of eighteen (18) years. (8-29-18)T

**02. Grower Qualifications.** Grower members must meet the qualifications set forth in Section 010 and Subsection 011.03 of these rules, and not be delinquent in payment of their assessments. The qualifications of grower members of the commission as herein set forth must continue during their term of office. (8-29-18)T

**03. Shipper Qualifications.** Shipper members must meet the qualifications set forth in Section 010 of these rules, and not be delinquent in payment of their assessments. The qualifications of shipper members of the commission as herein set forth must continue during their term of office. (8-29-18)T

**04. Processor Qualifications.** Processor members must meet the qualifications set forth in Section 010 of these rules and shall not be delinquent in payment of their assessments above. The qualifications of processor members of the commission as herein set forth must continue during their term of office. (8-29-18)T

**05. Voting.** Each grower, shipper, or processor may only vote on the one ballot for which they are eligible to cast a vote and may only vote one time for each position to be filled on behalf of himself, partner(s), corporation, association, and/or any other business unit. A grower, shipper, or processor is entitled to only one vote no matter how many farms, packing facilities, processing plants, entities, or any other type of business organization he has an ownership interest in. (8-29-18)T

**06. Term.** A designation by a person as a grower, shipper or processor shall continue for the succeeding three years, unless there has been a sufficient change in circumstance, as determined by the commission, to warrant a change in designation. (8-29-18)T

**014. -- 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. 31-1101-1801

#### 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 17, 2018.

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 Utility Safety and Accident Reporting Rules adopt by reference several 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 2012 Edition of the National Electric Safety Code (“NESC”). The proposed rule would adopt the 2017 Edition of the NESC.

There have been several minor updates and revisions to the NESC, including amendments to the grounding rules, guy insulator rules, ice loading rule, work safety standards, and other non-substantive editorial corrections. Adopting the current NESC will help protect telephone company workers and utility workers as well as the general public.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted because this proposed rule adopts updated national safety codes and is necessary for the safety of telephone company and utility employees and the public during the installation, operation, or maintenance of telephone lines or electric utility systems, as well as the general 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:

Adoption of the current NESC will promote the safety of telephone company and utility employees, customers, and the general public. Additionally, incorporation by reference will mitigate the need to publish hundreds of pages of safety code.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Edward Jewell, Deputy Attorney General, at (208) 334-0314.

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 24, 2018.

Dated this 30th day of August, 2018.

Diane M. Hanian, Commission Secretary  
Idaho Public Utilities Commission  
Telephone: (208) 334-0338  
Facsimile: (208) 334-3762

472 W. Washington  
Boise, ID 83702-5918  
PO Box 83720  
Boise, ID 83720-0074

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 31-1101-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**101. NATIONAL ELECTRICAL SAFETY CODE (NESC) (RULE 101).**

The Commission adopts by reference the American National Standards Institute (ANSI) C2-201~~2~~<sup>7</sup> National Electrical Safety Code (NESC), 201~~2~~<sup>7</sup> Edition. The National Electrical Safety Code, 201~~2~~<sup>7</sup> 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. ~~(3-29-12)~~(      )

**IDAPA 31 – IDAHO PUBLIC UTILITIES COMMISSION**  
**31.71.03 – RAILROAD SAFETY AND ACCIDENT REPORTING RULES**  
**DOCKET NO. 31-7103-1801**  
**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 17, 2018.

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:

Amends Section 102 regarding sanitary cups and sanitary drinking water by allowing commercially bottled water to be provided as drinking water for employees.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted because this proposed rule is simple in nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Edward Jewell, Deputy Attorney General, at (208) 334-0314.

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 24, 2018.

Dated this 30th day of August, 2018.

Diane M. Hanian, Commission Secretary  
Idaho Public Utilities Commission  
Telephone: (208) 334-0338  
Facsimile: (208) 334-3762

472 W. Washington  
Boise, ID 83702-5918  
PO Box 83720  
Boise, ID 83720-0074

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 31-7103-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**102. SANITARY CUPS AND SANITARY DRINKING WATER (RULE 102).**

**01. Water.** An adequate supply of cool, clean, sanitary water, satisfactory for drinking purposes, shall be made available to all employees. Drinking water shall be obtained only from sources approved by the State

Department of Health, ~~or~~ an approved water line, or commercially bottled water. ~~(7-1-93)~~( )

**02. Water Containers.** When necessary, this water shall be provided in suitable, clean, sterilized and sanitary containers conveniently placed for the use of employees, but not in toilet rooms. Each container shall be equipped with an approved type of fountain, approved faucet, or other approved dispenser. (7-1-93)

**03. Cleansed and Sterilized.** All containers used to furnish drinking water shall be thoroughly cleansed and sterilized as often as necessary to assure a clean and sanitary water supply. (7-1-93)

**04. Common Drinking Cup Prohibited.** The common drinking cup for public use is prohibited; either single service containers or drinking fountains with sanitary angle head, shall be used in lieu thereof. (7-1-93)

**IDAPA 35 – STATE TAX COMMISSION**  
**35.01.01 – INCOME TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0101-1804**  
**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 17, 2018.

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:

**Income Tax Rule 171** – Rule 171 is being amended consistent with 2018 HB514. This change deletes the reference to a partnership interest as nonqualifying property for the Idaho capital gains deduction.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because 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 Cynthia Adrian, (208) 334-7670. For general questions, contact Kimberlee Stratton, (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 24, 2018.

Dated this 3rd day of October, 2018.

Cynthia Adrian, Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd Plaza IV  
P.O. Box 36  
Boise, ID 83722-0410  
Phone: (208) 334-7670  
Fax: (208) 334-7844

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0101-1804  
(Only Those Sections With Amendments Are Shown.)

**171. IDAHO CAPITAL GAINS DEDUCTION -- QUALIFIED PROPERTY (RULE 171).**  
Section 63-3022H, Idaho Code

**01. Tangible Personal Property.** Tangible personal property qualifies for the Idaho capital gains deduction if it was used in Idaho for at least twelve (12) months by a revenue-producing enterprise as defined by Section 63-3022H(4), Idaho Code, and Rule 172 of these rules. (3-7-11)

**02. Real Property.** Idaho real property qualifies for the Idaho capital gains deduction if it was held by the taxpayer for twelve (12) months. See Subsection 171.05 of this rule for examples of nonqualifying property. (3-25-16)

**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. Nonqualifying Property.** Nonqualifying property includes: (4-4-13)

**a.** Real or tangible personal property not having an Idaho situs. (4-4-13)

**b.** Tangible personal property not used by a revenue-producing enterprise. (4-4-13)

**c.** Intangible property. Some examples of intangible property include, but are not limited to: (4-4-13)

**i.** Stocks and bonds; (4-4-13)

**ii.** Interests in a partnership (except for interests identified in Section 63-3022H(3)(f), Idaho Code, LLC, or S corporation. ~~(4-4-13)~~ ( )

**06. 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. (4-4-13)

**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)

**07. Holding Periods of S Corporation and Partnership Property. (7-1-98)**

**a.** 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. (2-27-12)**

i. Distributions. For purposes of this rule, the holding period of property received in a distribution from a partnership or from an S corporation other than in liquidation of stock includes the time the entity held the property. (3-25-16)

**08. Sale of a Partnership Interest. For taxable years beginning on or after January 1, 2018, when 26 CFR 1.170A-13(c)(3) is used to determine the fair market value of the partnership's qualified real property, the language of that federal regulation is to be treated as if it sets forth an appraisal method for determining the value of the qualified real property due to the sale of the partnership interest rather than a donation of property. ( )**

## IDAPA 35 – STATE TAX COMMISSION

### 35.01.02 – IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-1802

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 67-5220(1)&(2), 63-105(2), and Section 63-3624(a), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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 003** – This rule provides guidance on where a taxpayer can find information about the administrative appeals process available to them. Currently the rule contains only one statutory reference. The proposed rulemaking will add references to additional areas within Idaho Code and Administrative Rules. Specifically, Sections 63-3626, 63-3621, 63-3633, and 63-3634, Idaho Code, a reference to Section 121 of these rules, and IDAPA 35.02.01, “The Tax Commission Administration and Enforcement Rules.”

**Rule 107** – This rule discusses specific topics relating to motor vehicles including gifts, military personnel, and exemptions. The proposed rulemaking is to update the rule to reflect changes in tax exemption claim form ST-133. Gift transfers were removed from the form ST-133 and a new form was created for gift transfers, (form ST-133GT). The form name will be updated in Subsection 107.02.d. of this rule. Under Sections 007 and 008, the name of the form to be used for sales to family members and sales to American Indians will be updated and statutory references to Sections 63-3621 and 63-3622K, Idaho Code will be added.

**Rule 110** – This rule provides guidance for financial institutions about their responsibility to pay over the tax when they are collecting sales tax for the sale of tangible personal property that they are financing, and when that sales tax should be reported. Section 110 does not provide guidance about how the financial institutions should report the tax. The proposed rulemaking adds guidance that directs financial institutions to obtain a permit if they are collecting sales tax so they can properly report the tax they collected.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin, **Vol. 18-6, pages 108–109**. Rules 011 and 043 were listed in the Notice of Intent for this docket, however, the Commission will not move forward with any changes to these rules at this time.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Leah Parsons, (208) 334-7531.

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 24, 2018.

Dated this 3rd day of October, 2018.

Leah Parsons, Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd., Plaza IV  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0102-1802  
(Only Those Sections With Amendments Are Shown.)**

**003. ADMINISTRATIVE APPEALS (RULE 003).**

This chapter *does* allow administrative relief ~~of the provisions outlined herein under~~ as provided in Sections 63-3626, 63-3631, 63-3633, 63-3634, and 63-3049, Idaho Code. ~~(7-1-93)~~( )

**02. Cross Reference.** ( )

**a. See Rule 121 of these rules, Notice of Deficiency Administrative Review Appeals and Judicial Review.** ( )

**b. See IDAPA 35.02.01. "Tax Commission Administration and Enforcement Rules."** ( )

**(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).**

Sections 49-117, 49-121, 49-122, 63-3606B, 63-3621, 63-3622K, 63-3622R, ~~&~~ and 67-7101, Idaho Code

**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 Form ST-133GT, Use Tax Exemption Certificate -- Gift 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, the recipient can submit either: ~~(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. Purchases Brought into Idaho by 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 or vessels 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. (3-29-12)

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. (3-29-12)

**04. New Residents.** A new resident of Idaho does not owe tax on the use of household goods, personal effects, vehicles, vessels, and aircraft if they are personally owned and acquired while residing in another state and used primarily outside Idaho. If an 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~~ it was purchased primarily for use outside Idaho. New residents entering Idaho with a vehicle titled or registered in a state that does not impose a general sales and use tax will be required to complete and sign Form ST-102, Use Tax Exemption Certificate - New Resident or Nonresident Military, and submit it to the ~~Idaho Transportation Department~~ or county assessor when applying for a title transfer or registration certificate. (4-11-15)( )

a. If the vehicle, vessel, or aircraft 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. A personally owned vehicle, vessel, or aircraft is one that is owned by, and titled or registered to, an individual or individuals. (4-11-15)

**05. Military Personnel.** (4-11-15)

a. Active duty military personnel and their spouses do not owe use tax on the use of household goods, personal effects, vehicles, vessels, and aircraft if they are personally owned and acquired prior to receipt of orders to transfer to Idaho or three (3) months prior to moving to Idaho, whichever time period is shorter. If a vehicle owner obtained a registration or title from another state or nation of residence prior to receipt of orders to transfer to Idaho or three (3) months prior to moving to Idaho, whichever time period is shorter, this is proof that the vehicle was primarily for use outside Idaho. (4-11-15)

b. 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. A military person whose home of record is Idaho is considered to be a resident of this state. (4-11-15)( )

**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~~ the 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 six hundred dollars (\$600) tax due Idaho. The county assessor will collect three hundred dollars (\$300) tax. (4-11-15)(    )

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~~ country cannot be used to 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 Form ST-133, Sales Tax Exemption Certificate ~~-- Transfer Affidavit~~ Family or American Indian Sales. A 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 motor 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 motor vehicle. (7-1-93)(    )

c. Example: An Oregon resident buys a motor vehicle and titles it in Oregon without paying sales or use tax. Later, he sells the motor 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 motor vehicle. The son is required to pay Idaho use tax on the ten thousand dollar (\$10,000) purchase price of the motor 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 ~~R~~reservation. ( )

a. ~~The Form ST-133, Sales Tax Exemption Certificate -- Transfer Affidavit~~ **Family or American Indian Sales.** ~~A 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 and provide the name of the tribe, the Tribal Identification Number, and the name of the R~~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. ~~See Rule 091 of these rules.~~ (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 ~~Form ST-133CATS, 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~~ **Sales to Nonresidents.** (5-3-03)( )

a. Sales of motor vehicles, trailers, vessels, all-terrain vehicles (ATVs), utility type vehicles (UTVs), specialty off-highway vehicles (**SOHVs**), off-highway motorcycles, and snowmobiles to nonresidents for use out of this state, even though delivery is made within this state are exempt from tax when: (3-25-16)( )

i. The motor vehicles, vessels, ATVs, UTVs, ~~specialty off-highway vehicles~~ **SOHVs**, 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 (3-25-16)( )

ii. The motor vehicles, vessels, ATVs, UTVs, ~~specialty off-highway vehicles~~ **SOHVs**, 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 ninety (90) days in any twelve-month period. (3-28-18)( )

b. To claim the exemption, ~~the each~~ buyer must provide the seller ~~with~~ a completed and signed **Form ST-104NR, Sales Tax Exemption Certificate -- Nonresident Vehicle/Vessel, Form ST104-MV** ~~The seller must keep a copy for their records and send a copy of the completed form to the Tax Commission.~~ (5-3-03)( )

c. This exemption does not apply to sales of truck campers or to the sales of canoes, kayaks, paddleboards, inflatable boats, or similar watercraft regardless of length when sold without a motor. (3-29-17)

d. For purposes of Subsection 107.10 of this rule, ATV, UTV, and ~~specialty off-highway vehicle~~ **SOHV** have the same meaning given to them in Section 67-7101, Idaho Code. (3-25-16)( )

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, paddleboards, inflatable boats, or similar watercraft unless such canoe, kayak, paddleboard, inflatable boat, or similar watercraft is sold together with attached motor. (3-29-17)

f. For the purposes of Subsection 107.10 of this rule a trailer must meet the definition of a park model recreational vehicle, a trailer or utility trailer found in Sections 49-117, 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 or park model recreational vehicles defined in Sections 49-117, and 49-121(6), Idaho Code. (3-28-18)

**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 or vessels it is not a nonresident. The purchase or use of a ~~motor~~ vehicle or vessel 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 motor 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~~ buyer must complete and sign the Form ST-104IC, Sales Tax Exemption Certificate -- Interstate Commerce Vehicles/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 the Form ST-133CATS, Sales Tax Exemption Certificate -- Capital Asset Transfer Affidavit Form ~~and ST-133CATS to~~ submit the completed form to the ~~Idaho Transportation Department or~~ county assessor when applying for title transfer. (2-18-02)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**110. RETURNS FILED BY COUNTY ASSESSORS AND FINANCIAL INSTITUTIONS (RULE 110).**  
Sections ~~63-3623 &~~ and 63-3638(9), Idaho Code

**01. Filing Returns.** Upon collection of sales tax on applications for certificate of title to a motor vehicle, trailer, or other titled property, or initial application for registration processed by the county assessor, the assessor shall, no less than monthly, complete and submit to the Commission, Form ST-852, Idaho Sales Tax Return-County Assessors. The assessor may, at his discretion, submit the form more frequently. But at no time shall the amount of tax collected during any month be submitted later than the twentieth day of the month following the month in which the tax was collected. (4-6-05)

**02. Reimbursement.** The assessor and the Idaho Transportation Department will be reimbursed at the rate of one dollar (\$1) for each application for certificate of title or initial registration of a motor vehicle, trailer, or other titled property; each Form ST-108, Transport Trailer, Office Trailer, and Untitled Boat Certificate; and each Form ST-108TR, Occasional Sale Exemption Claim -- Office Trailer and Transport Trailer, processed by the assessor except those upon which any sales or use tax due has been previously collected by a retailer or paid by the purchaser. (3-25-16)

**03. Financial Institutions.** Financial institutions collecting tax on sales of tangible personal property that they are financing, whether sold by the financial institution or another person, must posses an Idaho seller's permit and file returns to remit the tax as prescribed in Rule 105, of these rules. ~~to the Commission no later than the twentieth day of the month following the month in which the tax was collected from the purchaser of the tangible personal property~~ If the tax collected is not from a sale made by the financial institution, it can be reported as an adjustment on the return. Failure to remit the tax on a timely basis will result in the addition of penalties and interest as provided by Sections 63-3632 and 63-3634, Idaho Code. (4-6-05)( )

**04. Cross Reference.**

**a. Permits.** See Rule 070 of these rules. ( )

**b. Time and Imposition of Tax. Returns, Payments and Partial Payments.** See Rule 105 of these rules. ( )

## IDAPA 35 – STATE TAX COMMISSION

### 35.01.02 – IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

#### DOCKET NO. 35-0102-1803

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 67-5220(1)&(2), 63-105(2), and Section 63-3624(a), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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 018** – The legislature amended the Idaho Sales Tax Act to provide a presumption that under certain conditions out-of-state retailers making sales to customers located in this state are retailers engaged in business in this state. These rules must be updated to reflect these changes. We are adding to the list of entities that are retailers, “out-of-state sellers that must overcome the presumption defined by Section 63-3611, Idaho code. We are also adding the statutory reference to the beginning of the rule.

**Rule 041** – In 2014, the legislature added Subsection 63-3621(o), Idaho Code, extending exemption to the use of food or beverages donated to individuals or nonprofit organizations. The Tax Commission missed removing Subsection 041.12.c. of this rule when that change was made. The change moves Subsection 041.12.c from the examples of items subject to tax to Subsection 041.11d as an example of an item that is not subject to tax.

**Rule 077** – The legislature amended the exemption for Research and Development at the INL by adding a new section. Section 070 of these rules must be revised to include the new language. We will add the new language to the rule and provide the statutory reference at the top.

**Rule 106** – The Commission would like to look at making a change to the current NADA standard, “Clean Retail Value.” Currently, the rule states that in the absence of a bill of sale, we are to use the value established as the “clean retail price.” We would like to propose that an alternate NADA value be used. The value assessed should not be a penalty to an individual in the absence of a bill of sale, rather we want to collect the correct amount for the vehicle based upon its make, model, year, options, mileage, and condition. The proposed changes will also separate private party vehicles sales from retailers who are not dealers making vehicle sales. The private party section will be Subsection 106.05 of this rule, and will break the existing sections into the following subcategories to provide clarity about how these are reviewed and subsequently valued by the tax commission: bill of sale, low bill of sale, no bill of sale, trade in, barter/exchange. This rule is also being updated to reflect changes that have been made to exemption claim forms during 2018.

**Rule 117** – A taxpayer has three years to request a refund of sales tax related to bad debt or that it has paid in error. A refund request submitted with the appropriate documentation stops the statute of limitations for the requester. The Tax Commission would like to clarify the language in the list of items that need to be provided with a refund request to ensure it is crystal clear exactly what should be submitted with a refund request at the time it is made. We will also add language that clarifies that the taxpayer must first “satisfy” any outstanding liability to request a refund.

**Rule 128** – This rule provides description and guidance on the proper execution of approved exemption claim forms. This rule is being updated to reflect changes that have been made to exemption claim forms during 2018.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 175–176](#). Rule 029 was listed in the Notice of Intent for this docket, however, changes have been postponed. The Commission will not move forward with any changes to this rule at this time.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Leah Parsons, (208) 334-7531. 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 24, 2018.

Dated this 3rd day of October, 2018.

Leah Parsons, Tax Policy Specialist  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0102-1803**  
**(Only Those Sections With Amendments Are Shown.)**

**018. RETAILER DEFINED (RULE 018).**

[Sections 63-3610 and 63-3611, Idaho Code](#)

**01. Retailer.** The term retailer includes a person doing a regularly organized retail business in tangible personal property and defined services and selling to the user or consumer, not for resale. Retailer includes commission salesmen, sales at auctions, [out-of-state sellers that must overcome the presumption defined in Section, 63-3611, Idaho Code](#), assignees for the benefit of creditors, receivers and any salesmen, representatives, peddlers, or canvassers as agents of the dealers, distributors, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors or employers, the Tax Commission may so regard them and may regard the dealers, distributors, supervisors or employers as retailers. (7-1-93)(    )

**02. Retailers Selling Incidental Tangible Personal Property.** A person may be a retailer within the meaning of the act although the sale of tangible personal property is incidental to his general business. For example, a plumbing contractor may sell some plumbing supplies as a sideline and thereby become a retailer within the meaning of this act. (7-1-93)

**03. Farmers.** Farmers who ordinarily sell their grain, livestock and other horticultural products for resale or processing are not subject to tax. However, when they sell to ultimate consumers or users, they must obtain a seller's permit and report sales tax on their taxable sales. (7-1-93)

**04. An Agent as a Retailer.** Where there is a written agreement between a principal and his agent, dealer or other third party, and such agreement stipulates that the agent, dealer or other third party will be responsible for collection, reporting and payment of sales tax generated by sales, the Tax Commission will treat the position of

the agent, dealer or third party as that of a retailer and impose on him the burden of collecting, accounting for, and paying the sales tax to the State Tax Commission. (7-1-93)

**a.** However, if for example, a milk route salesman, without such an agreement, makes regular deliveries, collects for the products, and sales tax is included in the total proceeds collected and remitted to the principal for proper crediting, accounting, discounts, etc., then it shall be the responsibility of the principal to relay the sales tax with proper reporting forms as prescribed by law. (7-1-93)

**b.** In some instances, such as the above, and the example of a newspaper delivery boy, the sales are actually made on behalf of the dairy and the newspaper company respectively. In the absence of any such written agreement, the Tax Commission will look to the principal as being responsible for the reporting and payment of the sales tax. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**041. FOOD, MEALS, OR DRINKS (RULE 041).**  
Sections 63-3612(2)(b), 63-3621(p), and 63-3622J, Idaho Code

**01. In General.** This rule covers the imposition of tax on sales of food, meals, or drinks by commercial establishments, college campuses, conventions, nonprofit organizations, private clubs, and similar organizations. (7-1-93)

**02. Commercial Establishments.** Sales tax is imposed on the amount paid for food, meals, or drinks furnished by any restaurant, cafeteria, eating house, hotel, drugstore, diner, club, or any other place or organization regardless of whether meals are regularly served to the public. (7-1-93)

**03. Clubs and Organizations.** Private clubs, country clubs, athletic clubs, fraternal, and other similar organizations are retailers of tangible personal property sold by them, even if they make sales only to members. Such organizations must obtain an Idaho seller's permit and report and pay retail sales tax on all sales. Taxability of membership dues depends upon the nature of the club. See Rule 030 of these rules. Special rules apply to religious organizations. See Rule 086 of these rules. (3-15-02)

**a.** When an organization holds a function in its own quarters, maintains its own kitchen facilities, and sells tickets which include items such as meals, dancing, drinks, entertainment, speakers, and registration fees (convention), the charges may be separated and tax collected on meals, drinks, and admission fees when the ticket is sold. For example, an organization holds a dinner dance in its own building. It charges twenty dollars (\$20) for dinner and dancing and twelve dollars (\$12) for registration and speakers. Since the two (2) amounts are stated separately, tax is only imposed on twenty dollars (\$20). The amount of the tax must also be stated separately. Sales of meals and the use of recreational facilities are taxable. Registration fees, speaker fees, and similar charges are not taxable. (4-2-08)

**b.** The organization holding the function or convention must obtain a seller's permit and remit tax to the state. When the charges are not separated, the total price of the ticket is taxable. (7-1-93)

**c.** When an organization holds a function in facilities operated by a restaurant or motel and sells tickets for meals, drinks, and other services, no sales tax applies to these sales if the organization pays the restaurant or hotel sales tax on the meals and drinks furnished and all other services performed. The hotel, restaurant, or caterer will remit the tax to the state. (7-1-93)

**04. Colleges, Universities, and Schools.** A cafeteria operated by a state university, junior college district, public school district, or any other public body is treated the same as a cafeteria operated by a private enterprise. Purchases of food for resale are not taxable; meals sold are taxable. (7-1-93)

**a.** If a meal is paid for by cash or a meal ticket is sold to the student, tax is computed on the total sales price of the meal. If meals are sold as part of a room and board fee, the amount paid for board must be separated from

the amount paid for the room. Tax is calculated and collected on that part of the total fee allocated to the purchase of meals. (7-1-93)

**b.** Sales of meals by public or private schools under the Federal School Lunch Program are exempted by Section 63-3622J, Idaho Code. (7-1-93)

**05. Fraternities, Sororities, and Cooperative Living Group.** Fraternities and sororities generally purchase and prepare food for their own consumption. The food is prepared and served in a cooperative manner by members of the fraternity or by employees hired by the group for this purpose. Purchases made by the fraternity or sorority are for consumptive use and subject to sales tax. There is no sale of meals to fraternity or sorority members and no sales tax imposed on any allocated charge for them whether stated separately or included as part of a lump sum charge for board and room. (7-1-93)

**a.** If a concessionaire is retained by the fraternity or sorority to furnish meals, the concessionaire is a retailer engaged in the business of selling meals; food purchases are for resale and meals supplied by the concessionaire to members of the fraternity or sorority are subject to sales tax. (7-1-93)

**b.** If the fraternity or sorority regularly furnishes meals for a consideration to nonmembers, these meals become subject to tax and the fraternity or sorority must obtain an Idaho seller's permit. (7-1-93)

**c.** Cooperative living groups are normally managed in much the same manner as fraternities and sororities. Food is purchased and meals are prepared and served by members of the group or their employees. The same conditions outlined above for fraternities and sororities apply to cooperative living groups. (4-11-06)

**06. Boarding Houses.** Sales of meals furnished by boarding houses are subject to tax, when they are charged separately. This applies whether or not the meals are served exclusively to regular boarders. Where no separate charge or specific amount is paid for meals furnished, but is included in the regular board and room charges, the boarding house or other place is not considered to be selling meals, but is the consumer of the items used in preparing such meals. (7-1-93)

**07. Honor System Snack Sales.** Honor system snack sales are those items of individually sized prepackaged snack foods, such as candy, gum, chips, cookies or crackers, which customers may purchase by depositing the purchase price into a collection receptacle. Displays containing these snacks are generally placed in work or office areas and are unattended. Customers are on their honor to pay the posted price for the article removed from the display. Purchases from these snack displays are subject to sales tax. (7-1-93)

**a.** Sales tax applies to the total sales. The posted price must include a statement that sales tax is included. (4-2-08)

**b.** The formula for computing the taxable amount is:  $TS / (100\% + TR)$  where TS is total sales and TR is the tax rate. (4-2-08)

**08. Church Organizations.** Special rules apply to religious organizations. See Rule 086 of these rules. (4-11-06)

**09. Senior Citizens.** Meals sold under programs that provide nutritional meals for the aging under Title III of the Older Americans Act, Public Law 109-365, are exempted from the sales tax by Section 63-3622J, Idaho Code. Organizations selling such meals must obtain an Idaho seller's permit and collect sales tax when selling meals to ~~purchase~~ buyers who are not senior citizens. (3-29-17)(    )

**10. Food or Beverage Tastings.** If a participant must pay to participate in a food or beverage tasting, the charge to participate in the tasting is subject to sales tax. The provider of the samples does not owe a sales or use tax on its purchase or use of the product. (3-20-14)

**11. Nontaxable Purchases by Establishments Selling Meals or Beverages.** Persons who serve food, meals, or drinks for a consideration may purchase tangible personal property without paying tax if the property is for resale to their customers, is included in the fee charged to the customer, and is directly consumed by the customer in

such a way that it cannot be reused. A resale certificate must be provided to the vendor when the establishment purchases such items for resale. See Rule 128 of these rules. Examples of items which are purchased for resale and directly consumed by customers include: (3-15-02)

**a.** Disposable containers, such as milkshake containers, paper or styrofoam cups and plates, to-go containers and sacks, pizza cartons, and chicken buckets. (7-1-93)

**b.** Disposable supplies included in the price of the meal or drink, such as drinking straws, stir sticks, paper napkins, paper placemats, and toothpicks. (7-1-93)

**c.** Candies, popcorn, drinks, or food, when included in the consideration paid for other food, meals, or drinks. (7-1-93)

**d.** Complimentary candies, popcorn, drinks, or food, when patrons are not required to purchase other food, meals, or drinks in order to receive the complimentary goods. ( )

**12. Taxable Purchases by Establishments Selling Meals or Beverages.** Tangible personal property which is not included in the fee charged to the customer and not directly consumed by the customer is subject to the tax when purchased by the restaurant, bar, food server, or similar establishment. Tangible personal property which is not directly consumed by the customer includes property that is nondisposable in nature or property that is depreciated in the books and records of the restaurant, bar, or similar establishment. Examples of taxable purchases include: (7-1-93)

**a.** Waxed paper, stretch wrap, foils, paper towels, garbage can liners, or other paper products consumed by the retailer, as well as linens, silverware, glassware, tablecloths, towels, and nondisposable napkins, furniture, fixtures, cookware, and menus. (7-1-93)

**b.** Any tangible personal property available to the general public, such as restroom supplies and matches. (7-1-93)

**c.** ~~Complimentary candies, popcorn, drinks, or food, when patrons are not required to purchase other food, meals, or drinks in order to receive the complimentary goods.~~ (7-1-93)

**13. Free Giveaways to Employees.** It is common practice for a retailer to give away prepared food and beverage, including full meals, to its employees free of charge. Giveaways of this nature normally trigger a use tax liability for the retailer calculated on the value of the items given away. However, if the retailer is in the business of selling prepared food and beverage, giveaways of prepared food and beverage to its employees are not taxable. Retailers that would qualify include restaurants and grocery stores with a deli or similar section that sells prepared food. (3-25-16)

**a.** For purposes of this subsection, prepared food means food intended for human consumption that: (3-25-16)

i. Is heated when given away; or (3-25-16)

ii. Consists of two (2) or more ingredients combined by the retailer and given away as a single item; or (3-25-16)

iii. Is customarily served with utensils. (3-25-16)

**b.** For purposes of this subsection, prepared beverage means any beverage intended for human consumption. (3-25-16)

**(BREAK IN CONTINUITY OF SECTIONS)**

**077. EXEMPTION FOR RESEARCH AND DEVELOPMENT AT INL (RULE 077).**

Section 63-3622BB, Idaho Code

**01. ~~In-General~~ Exclusive Financing Exemption Under Section 63-3622BB(1), Idaho Code.** The purchase of certain tangible personal property used in connection with certain activities at the Idaho National Laboratory (INL) is exempt from sales and use tax. To qualify for this exemption, the property must be tangible personal property primarily or directly used or consumed in research, development, experimental and testing activities, exclusively financed by the United States Government. (7-1-99)(      )

**~~02~~a.** Qualifying Activity. Research, development, experimental, and testing activity means any activity of an original investigation, for the advancement of scientific knowledge in a field of laboratory science, engineering or technology and does not have an actual commercial application. (7-1-93)

**~~03~~b.** Real Property. The exemption does not apply to real property or to tangible personal property which will become improvements or fixtures to real property. See Rules 012 and 067 of these rules. (7-1-99)

**~~04~~c.** Incidental Use of Property. This exemption does not extend to the incidental use of any tangible personal property which fails to meet the test of primary or direct use or consumption. (7-1-97)

**~~a~~i.** Areas of support which are considered incidental include: communications equipment; office equipment and supplies; janitorial equipment and supplies; training equipment and supplies; dosimetry or radiation monitoring equipment which lacks the capability of giving an immediate indication and would not result in an immediate evacuation of personnel or shutdown of equipment; subscriptions or technical manuals which provide technology not primarily used or directly connected to the research activity; and hot and cold laundry operations. (7-1-93)

**~~b~~ii.** Materials of common support which are considered incidental include: clothing for weather protection or of a reusable nature; hand tools which are not subject to contamination at the time of initial use; protective coverings which are protection from other than radiation or are of a reusable nature; and all safety equipment and supplies which do not protect from direct radiation exposure. (7-1-93)

**~~05~~d.** Property Directly Used or Consumed. Tangible personal property primarily or directly used or consumed in a research and development activity to perform quality assurance on research equipment is tax exempt. Items of a general support nature, such as coveralls, are taxable. (7-1-93)

**~~06~~e.** Parts for Equipment. The use of tangible personal property which becomes a component part of research equipment being calibrated within a calibration lab is tax exempt; whereas, the use of parts and equipment in calibrating or for the repair of other maintenance equipment is taxable. (7-1-97)

**~~07~~f.** Radioactive Waste. The initial containment or storage of radioactive waste is an exempt use. Any further processing or transporting of such waste not relating to a research and development activity is a taxable use. (7-1-97)

**~~08~~g.** Motor Vehicles. The purchase of any motor vehicle licensed or required to be licensed by the laws of this state is taxable. (7-1-97)

**~~09~~h.** Agreements with Contractors. The State Tax Commission may enter into agreements with contractors engaged in research at the INL prescribing methods by which the contractor or contractors may accrue use tax based on the accounting procedures required by the U.S. Department of Energy. (7-1-99)

**02. Percentage of Tangible Personal Property Exemption Under Section 63- 3622BB(2), Idaho Code.** If a facility is used by the United States or one of its management and operating contractors for research and development activities at the INL and also is used by a person or persons in addition to the United States or one of its management and operating contractors, there is exempted from the taxes imposed by this chapter a percentage of each sale or use of tangible personal property used or consumed at or for the benefit of the facility in the amount that the research and development activities of the United States or its management and operating contractors bear to the total use of the facility by all persons. The Tax Commission shall calculate, review, and verify the allocation provided

for in this section. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**106. MOTOR VEHICLES SALES, RENTALS, AND LEASES (RULE 106).**

Sections 63-3612, 63-3613, 63-3619, 63-3621, 63-3622K, and 63-3622R, Idaho Code

**01. In General.** The sale, lease, rental, or purchase of a motor vehicle is subject to sales and use tax. Retailers, lessors, and dealers are required to collect the tax. (7-1-93)

**02. Forms.** The forms required for sales and use tax collection and reporting include the following, with modifications that may be required from time to time: (7-1-93)

**a.** The title application form required by the Idaho Transportation Department. (7-1-93)

**b.** Form ST-104IC, Sales Tax Exemption Certificate – Interstate Commerce Vehicles. This form is used by qualifying interstate carriers claiming exemption under Section 63-3622R, Idaho Code. ( )

**c.** Form ST-104-~~NR~~, Sales Tax Exemption Certificate - Vehicle/Vessel-. This form is used by persons nonresidents claiming exemption under Section 63-3622R, Idaho Code. (7-1-93)( )

**d.** Form ST-133, Sales Tax Exemption Certificate-~~Transfer Affidavit~~ Family or American Indian Sales, used for gifts of motor vehicles, sales between family members, and sales to enrolled members of an Indian tribe within the boundaries of an Indian reservation. (7-1-93)( )

**e.** Other forms that may be required by the Tax Commission or the Idaho Transportation Department. (7-1-93)

**03. Vehicles Purchased from Idaho Dealers.** When a dealer of new or used motor vehicles sells any motor vehicle for delivery in Idaho, he must collect sales or use tax at the rate in effect on the date the motor vehicle is delivered to the buyer, unless an exemption applies. He must also prepare a title application form and include the dealer's Idaho seller's permit number, gross sales price, trade-in allowance, net sales price, and total tax collected. A title application form which is completed by the dealer and displays Idaho sales tax collected is evidence that the buyer paid sales tax to the dealer. (7-1-93)

**04. Vehicles Purchased from Out-of-State Dealers.** Title applications for vehicles purchased from out-of-state dealers must be made according to Idaho Transportation Department instructions. Any trade-in allowance must be shown on the original bill of sale, voucher, or other receipt from the out-of-state dealer. If sales tax was correctly paid to a dealer in another state, a credit is allowed against sales or use tax payable to Idaho. See Rule 107 of these rules. (4-2-08)

**05. Vehicles Purchased from ~~Nondealers~~ Private Parties.** (7-1-93)( )

**a.** Bill of Sale. Title applications for vehicles purchased from nondealers, who are not required to have an Idaho seller's permit, must be made according to Idaho Transportation Department instructions. The buyer must present a bill of sale or receipt as proof of the gross sales price. Canceled checks will not be accepted in lieu of a bill of sale. ( )

**b.** Low Bill of Sale. A recent sales price is presumptive evidence of a vehicles value. For a bill of sale that shows a price below the value established as the "average trade-in price", tax is collected on the value established in the most recent National Automobile Dealers Association (NADA) Official Used Car Guide for the same make, model, options, year, mileage, and condition, unless the buyer provides information to support the recent sales price of the vehicle. ( )

**c.** No Bill of Sale. In the absence of a bill of sale or documentation supporting the value of the

vehicle, sales tax is collected on the value established as the “~~clean retail average trade-in~~ price” in the most recent ~~National Automobile Dealers Association (NADA) Official Used Car Guide, published by the National Automobile Dealers Used Car Guide Company~~ for the same make, model, options, year, mileage, and condition. ( )

d. ~~Where there is a sale by a nondealer, a Trade In.~~ A trade-in allowance is not allowed on a private party sale. See Rule 044 of these rules. The county assessor ~~or Idaho Transportation Department~~ must collect sales tax on the gross sales price and remit the tax to the Tax Commission. ( )

e. Barter/Exchange. ~~BA barter~~ s or exchange of ~~motor~~ vehicles or other property is taxed ~~are taxable~~ on the full value of ~~each the~~ vehicles or other property ~~which is the object of barter~~ involved in the exchange. In the absence of documentation supporting the value of the vehicle(s), Sales tax ~~shall be collected~~ is due on the value established as the “~~clean retail average trade-in~~ price” ~~stated for similar makes and models with comparable options~~ in the most recent NADA Official Used Car Guide for the same make, model, options, year, mileage, and condition. (7-1-93)( )

**06. Vehicles Purchased from Retailers.** ( )

ba. A retailer required to have an Idaho seller’s permit must collect the sales tax when selling a motor vehicle, even though he is not licensed as a motor vehicle dealer. The retailer must give the buyer the title to the motor vehicle, properly completing title transfer information on the title, including the retailer’s seller’s permit number as proof that Idaho sales tax was collected. The retailer must also give the buyer a bill of sale stating: the date of sale; the name and address of the seller; the complete vehicle description including the ~~VIN~~, vehicle identification number (VIN), which must agree with the VIN on the title; the person to whom the vehicle was sold; the amount for which the vehicle was sold; and the amount of sales tax charged. (7-1-93)( )

eb. A retailer is not relieved of the responsibility for collecting the tax unless he can provide satisfactory evidence to the Tax Commission that the buyer paid tax to the county assessor ~~or Idaho Transportation Department~~. If a retailer fails to collect the tax from the buyer, the county assessor ~~or Idaho Transportation Department~~ must collect the tax. (7-1-93)( )

**067. Vehicles Rented or Leased.** (7-1-93)

a. A lease-purchase and lease with option to purchase have separate definitions and tax applications. See Rule 024 of these rules. A lease-purchase is subject to sales or use tax on the full purchase price at the time the vehicle is delivered to the lessee. A true lease and a lease with an option to purchase are subject to sales tax on each lease payment and on the buy-out or residual value when a lessee exercises his option to buy. The information in Section 106 deals with rentals, true leases, and leases with an option to buy. (4-2-08)

b. The lessor of a motor vehicle is a retailer and must collect sales tax from the lessee on any rental or lease payment on the date it is required to be made, at the tax rate in effect on that date. The lessor must also collect tax on any lessee’s exercise of an option to buy based on the full purchase price or residual, at the tax rate in effect on the date title is transferred to the lessee. (7-1-93)

c. The lessor may not rely on the county assessor or the ~~Idaho Transportation Department~~ to collect sales or use tax if the purchase option is exercised. (7-1-93)( )

d. The lessor must collect sales tax on each lease payment received from the renter or lessee and remit the tax to the state. The sales tax is applicable whether the vehicle is leased or rented on an hourly, daily, weekly, monthly, mileage, or any other basis. (7-1-93)

e. If the lessor is responsible for maintaining the vehicle and this is stated in the lease or rental agreement, tax does not apply to his purchase of necessary repair parts. (7-1-93)

f. Out-of-state lessors must obtain a seller’s permit and comply with this rule. If the county assessor ~~or Idaho Transportation Department~~ cannot verify that the lessor is properly registered to collect the tax, title and registration will be denied. (7-1-93)( )

g. When a vehicle is traded in as part payment for the rental or lease of another vehicle, a deduction is allowed before computing the sales tax. The methods of applying the trade-in value to the lease are found in Rule 044 of these rules. (4-2-08)

~~078.~~ **Cross-References.** (7-1-93)

a. See Rule 024 of these rules. Rentals or leases of tangible personal property. (4-2-08)

b. See Rule 044 of these rules. Trade-ins, trade-downs, and barter. (4-2-08)

c. See Rule 099 of these rules. Occasional sales. (4-2-08)

d. See Rule 091 of these rules. Sales to ~~Indian~~ American Indians. ~~(4-2-08)~~( )

e. See Rule 101 of these rules. Motor vehicles and trailers used in interstate commerce. (4-2-08)

f. See Rule 107 of these rules. ~~Motor~~ Vehicles and Vessels - Gifts, Military, personnel, and exemptions Nonresident, New Resident, Tax Paid to Another State, Sales to Family Members, Sales to American Indians. ~~(4-2-08)~~( )

g. See Rule 108 of these rules. Motor vehicles manufacturer's, rental company's and dealer's purchase or use of motor vehicles. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**117. REFUND CLAIMS (RULE 117).**

Sections 63-3612, 63-3613, 63-3619, 63-3626, 63-3629(c), 63-3631, 63-3045, 63-3045B, 63-3049 and 63-4408, Idaho Code

**01. In General.** Application for refund of sales or use taxes paid in excess of those properly imposed by the Sales Tax Act, shall be in accordance with the provisions of this rule. (7-1-93)

**02. Payment of Sales Tax by a ~~Purchaser~~ Buyer to a Vendor.** When a ~~purchaser~~ buyer has paid sales tax to a vendor, and later determines that the sales tax was paid in error, the ~~purchaser~~ buyer shall request the refund from the vendor to whom the excess tax was paid. If the ~~purchaser~~ buyer can provide evidence that the vendor has refused to refund the tax, he may then file a claim for refund directly with the Tax Commission. ~~(7-1-93)~~( )

**03. Payment of Sales or Use Tax Directly to the State.** When a person holding a seller's permit or use tax account number has paid tax to the state, and later determines that the sales or use tax was paid in error, he may file a claim for refund directly with the Tax Commission. (7-1-93)

**04. Bad Debts.** Claims for refunds arising from bad debts must be filed with the Tax Commission in the manner prescribed by this Rule 117 and Rule 063 of these rules. ~~(5-3-03)~~( )

**05. Mathematical Errors.** When the filer of sales or use tax returns determines that a mathematical error has been made on a previously filed return resulting in overpayment of the proper amount of sales or use taxes, he may file a claim for refund directly with the Tax Commission. (7-1-93)

**06. Refund Claims ~~Form~~.** Form TCR; (Sales Tax Refund Claim;) may be used to file for a refund from the Commission. Although this a form is available for this purpose, it is not required. A refund claim, however, must be in writing. ~~The claim must include the full name and address of the claimant and his seller's permit number or use tax account number if the claimant has such a number. The claim must state the amount of the refund; include a detailed statement of the reason the claimant believes a refund is due, including a description of the tangible personal property, if any, to which the tax relates; and the date on which the claimed excess taxes were paid. If the claimant is the retailer, the claim for refund must include a statement, under oath, that the amount of tax plus interest refunded to~~

~~the retailer have been or will be refunded by the retailer to the purchaser.~~ and include the following information: (4-2-08)( )

- a. Full name, address, and phone number of the claimant: ( )
- b. Claimant's seller's permit number or use tax account number if claimant has such a number: ( )
- c. The amount of the refund claimed: ( )
- d. A detailed statement of the reason the claimant believes refund is due: ( )
- e. An itemized description of the specific goods or services to which the tax relates: ( )
- f. The date on which the claimed excess taxes were paid: ( )
- g. If the claimant is the retailer, a statement under oath that the amount of tax plus interest has been or will be refunded to the buyer; and. ( )
- h. If the claim is for bad debt, detailed individual account information for each customer and each item purchased for which a refund is claimed. ( )
- i. A refund claim must be filed within three years from the time the payment was made to the State Tax Commission. If a refund claim does not include the required information listed in Paragraphs 017.11.a. through h., as applicable, then the claim does not satisfy the requirement to file a written claim to stop the period of limitations provided in 63-3626(b)(1), Idaho Code, from running. A refund claim that does not include the required information will be denied and processed as set out in Subsection 017.11 of this rule. ( )

07. **Outstanding Liabilities.** No claim for refund will be approved or issued ~~if~~ unless the claimant ~~has~~ first satisfies outstanding liabilities for ~~other~~ taxes administered by the Tax Commission. (5-3-03)( )

08. **Payment Under Protest.** It is not necessary for a taxpayer to pay taxes under protest in order to subsequently be able to claim a refund of such taxes. (7-1-93)

09. **Statute of Limitations.** A claim for refund will not be allowed if it is filed more than three (3) years from the time the payment of the tax was made. The time the payment was made is the date upon which the sales or use tax return relating to the payment was filed with the State Tax Commission. (5-3-03)

10. **Taxes Paid in Response to a Notice of Deficiency Determination.** A claim for refund may not be filed relating to any sales or use taxes which have been asserted by a notice of deficiency determination. A taxpayer contending that taxes have been erroneously or illegally collected by the State Tax Commission in conformance with a notice of deficiency determination must seek a refund by using the appeal procedures outlined in Rule 121 of these rules. (5-3-03)

11. **Denial of a Refund Claim.** All claims for refund or credit will be reviewed by the State Tax Commission's staff. If the staff concludes that all or part of the claim should not be allowed, notice of denial of the claim shall be given to the claimant ~~by return receipt requested delivery~~ by first class mail or by other commercial delivery service providing proof of delivery, whichever is the most cost efficient. The notice shall include a statement of the reasons for the denial. The notice of denial shall be the equivalent of a notice of deficiency determination. If the taxpayer wishes to seek a redetermination of the denial notice, he must file a petition for redetermination in the manner prescribed in Rule 121 of these rules. A petition for redetermination must be filed no later than sixty-three (63) days from the date upon which the notice of denial is mailed to or served on the claimant. (5-3-03)( )

12. **Interest on Refunds.** See Rule 122 of these rules. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

128. CERTIFICATES FOR RESALE AND OTHER EXEMPTION CLAIMS (RULE 128).  
Sections 63-3622, & 63-3622HH, Idaho Code

01. **In General.** This rule applies to proper documentation for exempt purchases of tangible personal property for resale and all other exemption claims for taxable transactions enumerated in Section 63-3612, Idaho Code. All forms approved by this rule may be reproduced. (3-6-00)

02. **Burden of Proof.** All sales made within Idaho are presumed to be subject to sales tax unless the seller obtains from the  *purchaser buyer*  a properly executed resale or exemption certificate. If the seller does not have an exemption certificate on file it will have the burden of proving that a sale is not subject to tax. The seller may overcome the presumption by establishing the facts giving rise to the exemption. If the seller obtains a valid certificate from the  *purchaser buyer* , the seller need not collect sales or use taxes unless the sale of the tangible personal property or the transaction in question is taxable to the  *purchaser buyer*  as a matter of law in the particular instance claimed on the certificate. (3-4-10)( )

03. **Description and Proper Execution of Approved Forms.** In order to be valid, all forms must be legible and include a date, the  *purchaser buyer* 's name, signature,  *title* , and address. If the  *purchaser buyer*  has a federally issued Employer Identification Number (EIN), the  *purchaser buyer*  must also include that EIN on the form. If the  *purchaser buyer*  does not have an EIN, the form must contain the  *purchaser buyer* 's driver's license number and the state of issue. The seller's name and address must be completed on the form when requested. The  *purchaser buyer*  must comply with any additional requirements provided in these rules. (4-4-13)( )

04. **Form ST-101, Sales Tax Resale or Exemption Certificate -- Buying for Resale.** To claim a resale exemption, Form ST-101,  ~~*Sales Tax Resale and Exemption Certificate or a Uniform Sales and Use Tax Certificate -- Multi-jurisdiction*~~ , must be completed,  ~~*except that multi-state taxpayers may use the Uniform Sales and Use Tax Certificate -- Multi-jurisdiction*~~ . The resale certificates approved by this rule may only be taken from a  *purchaser buyer*  described in Subsection 128.04.b. The reason for,  ~~*and the nature of*~~ , the claimed exemption must be included on the form as well as the primary nature of business and the type of products sold, leased or rented by the  *purchaser buyer* . An Idaho registered retailer must include its **Idaho** seller's permit number. A  *purchaser buyer*  need not identify every type of product it sells but must indicate the general character of the property it sells, rents or leases. (4-4-13)( )

*ja.*  Information on the resale certificate. The resale certificate shall bear the name and address of the  *purchaser buyer* , the name and address of the seller, shall be signed and dated by the  *purchaser buyer*  or his agent, shall indicate the  ~~*number of the Idaho seller's*~~  permit **number** issued to the  *purchaser buyer* , or that the  *purchaser buyer*  is an out-of-state retailer, and shall indicate the general character of the tangible personal property sold by the  *purchaser buyer*  in the regular course of business. By executing the resale certificate, the buyer is certifying that the specific property  *being purchased*  is being purchased for resale. (3-4-10)( )

*i.*   ~~*Example. A grocery store that in addition to groceries sells miscellaneous items such as cosmetics, magazines, and school supplies. The store would provide its resale number and describe the primary nature of its business as selling groceries. It could buy cosmetics, magazines, and school supplies for resale and it does not need to list those items on the resale certificate. It only needs to indicate the general character of the property it sells as groceries.*~~  (3-4-10)

*ii.*   ~~*Example. A lawn and garden store occasionally sells barbecue grills as promotional items. Even though it describes lawn and garden items as the types of products it sells, it can buy the grills for resale.*~~  (4-4-13)

*iii.*   ~~*Example. A grocery store describes the primary nature of its business as selling groceries. It then buys an automobile for resale. The grocery store should provide the automobile seller a resale certificate for this transaction and identify its primary nature of its business as grocery and indicate it is specifically buying the automobile for resale.*~~  (3-4-10)

*b.*   ~~*Retailers of food products who have been granted records reduction authority by the State Tax Commission may accept Sales Tax Exemption Claim Form Grocer, Form ST-111, from a purchaser if the retailer has a properly executed certificate (Form ST-101) on file from the purchaser. Form ST-111 must include the seller's*~~

~~permit number (if applicable), the signature of the individual claiming the exemption, and, the total purchase price and general nature of the nontaxable products sold. (3-28-18)~~

~~e. Sales Tax Exemption Claim for Cash Purchases by Governmental Agencies, Form ST-104G, may be completed only by federal, Idaho State, and local government agencies making cash purchases and must be furnished to the vendor at the time of sale. Each transaction requires a newly executed form signed by the agency's purchasing agent and the employee/purchaser. Blank forms will be furnished to government agencies by the State Tax Commission upon request. The form cannot be used for lodging and meals bought by a traveling government employee nor for any other reasons enumerated on the form. (3-6-00)~~

~~d. Sales Tax Exemption on Lodging Accommodations Claimed by Employees Using A Qualifying Credit Card Payment, Form ST-104-HM, applies when a credit card company will directly bill to and be paid by a federal, Idaho State, or Idaho local government agency or other organization granted an exemption under Section 63-3622O, Idaho Code. It does not apply to credit card payments that are paid by the employee who is later reimbursed by the employer. Each lodging transaction requires a newly executed form signed by the employee/purchaser. (3-25-16)~~

~~e. The Diplomatic Tax Exemption Program of the United States Government grants immunity from state taxes to diplomats from certain foreign countries. A federal tax exemption card issued by the U.S. Department of State bears a photograph of the holder, a federal tax exemption number, and specific instructions as to the extent of the exemption granted to the diplomat. Additional information is provided in Rule 098 of these rules. (3-6-00)~~

~~f. Sales Tax Exemption Certificate—Vehicle/Vessel, Form ST-104-MV, must be completed by a purchaser claiming an exemption from tax under Section 63-3622R, Idaho Code, when purchasing a qualifying motor vehicle or trailer. (3-25-16)~~

~~g. Sales Tax Exemption Certificate—Transfer Affidavit, Form ST-133, must be completed when claiming an exemption from tax when selling a motor vehicle to a relative under the exemption provided by Section 63-3622K, Idaho Code, when selling a motor vehicle, boat or RV to a member of an American Indian Tribe within the boundaries of an American Indian reservation, or when making a gift of a motor vehicle, boat or RV. (3-25-16)~~

~~h. Occasional Sale Exemption Claim—Office Trailer and Transport Trailer, Form ST-108TR, is required by any person claiming the occasional sale exemption on the purchase of a transport trailer or an office trailer. The seller must complete the seller's statement section in order for the buyer to claim the occasional sale exemption. (3-25-16)~~

~~i. Sales Tax Exemption Certificate—Capital Asset Transfer Affidavit, Form ST-133CATS, is required under the provisions of Section 63-3622K, Idaho Code, when claiming an exemption from tax on the sale of certain vehicles which are included in the bulk sale of a business' assets when the new owner will continue to operate the business in a like manner; for qualifying transfers of certain capital assets through sale, lease or rental; and, for the transfer of vehicles to and from a business or between qualifying businesses when there is no change other than owners' equity. (3-6-00)~~

**04b.** Qualified Buyers ~~for Purposes of Resale~~. The resale exemption may be claimed by the following purchaser ~~buyer~~ when buying goods for resale: (3-6-00)(    )

**a.i.** A retailer or wholesaler doing business in Idaho who holds a current and valid Idaho seller's permit number. (4-4-13)

**b.ii.** A wholesaler who makes no retail sales and who is not required to hold an Idaho seller's permit number. (3-6-00)

**e.iii.** An out-of-state retailer who makes not more than two (2) sales in Idaho in any twelve (12) month period and is not required to hold an Idaho seller's permit number. (3-6-00)

**06c.** Seller's Responsibility—~~Purchases for Resale~~. A seller is not liable for the collection of sales tax

on items sold to a customer from whom the seller has obtained a properly executed Sales Tax Resale and Exemption Certificate, Form ST-101, if the customer intends to resell the items in the regular course of business. The seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented unless the sale fits into the narrow classification of sales that can be considered to be taxable as a matter of law in the particular instance claimed on the resale certificate. If the particular item being purchased for resale does not commonly match the description of the general character of the tangible personal property as identified on the resale certificate, then it is presumed that the sale is taxable as a matter of law; however, if the seller questions the ~~purchaser~~ buyer and the ~~purchaser~~ buyer provides a new certificate specifically identifying the property in question as being purchased for resale, then the seller can accept the certificate and is relieved of any further responsibility. (3-4-10)( )

d. Example. A grocery store that in addition to groceries sells miscellaneous items such as cosmetics, magazines, and school supplies. The store would provide its Idaho seller's permit number and describe the primary nature of its business as selling groceries. It could buy cosmetics, magazines, and school supplies for resale and it does not need to list those items on the resale certificate. It only needs to indicate the general character of the property it sells as groceries. ( )

e. Example. A lawn and garden store occasionally sells barbecue grills as promotional items. Even though it describes lawn and garden items as the types of products it sells, it can buy the grills for resale. ( )

f. Example. A grocery store describes the primary nature of its business as selling groceries. It then buys an automobile for resale. The grocery store should provide the automobile seller a resale certificate for this transaction and identify its primary nature of its business as grocery and indicate it is specifically buying the automobile for resale. ( )

g. Example: A restaurant operator completes a Form ST-101 for his supplier. He indicates the general character of the products he sells as food and beverages. The restaurant operator purchases buys sugar and flour from the supplier. The supplier is not liable for the collection of the sales tax as the character of the goods is that which the restaurant operator will resell in the regular course of business. The resale claim made by the restaurant operator is available as a matter of law. (3-6-00)( )

h. Example: The same restaurant operator later purchases buys dish towels and dish washing soap. The supplier must collect the tax. The general character of the goods are not those sold by a restaurant in the normal course of business. The exemption claimed by the restaurant is not available as a matter of law. However, if the restaurant operator identifies cleaning supplies as one of the types of items it resells, either on the original certificate or on a new certificate, then the supplier need not collect the tax. (3-4-10)( )

i. Example: An appliance store buys appliances and some furniture for resale from a supplier. The appliance store has a resale certificate on file with the supplier. The supplier also sells warehouse equipment as part of its business. The appliance store buys a forklift from the supplier. The supplier should charge tax. However, if the furniture store provides a new certificate indicating it will sell the forklift, the supplier has no duty or obligation to collect the tax. Without the new certificate, an objectively reasonable person would not assume a furniture store sells forklifts. Additionally, the furniture store is only buying one (1) forklift and this fact indicates to the supplier that it is not buying the forklift for resale. (3-4-10)

05. Form ST-101, Sales Tax Resale and Exemption Certificate -- Claiming Exemptions. A Form ST-101 must be completed to claim the sales tax exemptions for the following categories. The buyer must identify the exempt category and specific area within the category for the exemption being claimed. If claiming to be production exempt, the taxpayer must identify the type of business and list the product produced. When claiming a contractor exemption, the invoice, purchase order or job number will be identified along with the city and state of the job location, project owner name, and the reason the project is exempt. ( )

- a. Form ST-101 Exemption Categories: ( )
- i. Production Exemptions: ( )
- ii. Exempt Buyers: ( )

- iii. Contractor Exemptions; and ( )
- iv. Other Exempt Goods and Buyers ( )

b. Information on the exemption certificate. An exemption certificate shall show the buyer's name and address, business name and address, and be signed and dated by the buyer. The buyer shall also provide on the certificate the specific exemption being claimed and, if the production exemption is being claimed, a list of the products the buyer produces. If the buyer is claiming the contractor exemption, the buyer must identify the invoice, purchase order, or job number to which the claim applies, the city and state where the job is located, and the name of the project owner. If the buyer is claiming an exemption as an American Indian, then the buyer must provide a valid Tribal I.D. number. By signing the exemption certificate, the buyer is certifying that the purchase qualifies for an exemption from tax. ( )

~~07c.~~ Seller's Responsibility—Purchases Claimed Exempt from Sales Tax for Reasons Other Than Resale. A seller is not liable for the collection of sales tax on items sold to a customer from whom a properly executed Sales Tax Resale and Exemption Certificate, Form ST-101, has been received if the nature of the exemption claimed is available to the purchaser buyer as a matter of law or the nature of the goods purchased qualify for the particular exemption claimed on the certificate. (3-4-10)( )

~~i.~~ A retailer must collect tax on the sale of any goods that are specifically excluded from an exemption as a matter of law. For example, a purchaser buyer claiming the production exemption provided by Section 63-3622D, Idaho Code, may not claim an exemption on the sale of items that are specifically excluded from the exemption as a matter of law, such as: maintenance and janitorial equipment and supplies, office equipment and supplies, selling and distribution equipment and supplies, property used in transportation activities, equipment or other property used to make repairs, tangible personal property that becomes a fixture, improvement, or component of real property, licensed motor vehicles, aircraft; and recreation-related vehicles as described in Section 63-3622HH, Idaho Code. (3-6-00)( )

- ~~i.~~ Maintenance and janitorial equipment and supplies; (3-6-00)
- ~~ii.~~ Office equipment and supplies; (3-6-00)
- ~~iii.~~ Selling and distribution equipment and supplies; (3-6-00)
- ~~iv.~~ Property used in transportation activities; (3-6-00)
- ~~v.~~ Equipment or other property used to make repairs; (3-6-00)
- ~~vi.~~ Tangible personal property which becomes a component of any real property or any improvement or fixture thereto; (3-6-00)
- ~~vii.~~ Licensed motor vehicles; (3-6-00)
- ~~viii.~~ Aircraft; and (3-6-00)
- ~~ix.~~ Recreational-related vehicles as described in Section 63-3622HH, Idaho Code. (3-28-18)

~~b.~~ Example: A farmer completes an ST-101 claiming a production exemption on the purchase of toothpaste and a case of motor oil. The retailer must collect the sales tax on the sale of the toothpaste, but is not liable for the collection of the sales tax on the sale of the motor oil. The retailer cannot rely on the exemption certificate when selling the toothpaste because, as a matter of law, the sale of personal hygiene products is excluded from the production exemption. But the retailer can rely on the exemption certificate when selling goods, such as the motor oil, which the farmer could put to either a nontaxable use (e.g., oil for a tractor), or a taxable use (e.g., oil for a licensed pickup truck). (3-25-16)

~~ei.~~ A retailer cannot rely on an exemption certificate obtained from a purchaser buyer when the law does not provide an exemption from the tax for the purchaser buyer, such as a nonprofit organization not specifically

exempted by the sales tax law or a governmental agency of another state.

~~(3-6-00)~~( )

**#iii.** Nor can a retailer rely on an exemption certificate when the limited language of the law pertaining to the exemption claimed excludes all but certain goods from the exemption. For example, certain contractors can execute an ST-101 to purchase construction materials for specific jobs in non-taxing states claiming an exemption from tax under Section 63-3622B, Idaho Code, and Rule 012 of these rules. The retailer must collect tax on any goods that are not to be incorporated into the real property, such as parts for construction equipment and tools. (3-6-00)

**08d.** **Purchaser Buyer's Responsibility.** A **purchaser buyer** has the responsibility to properly complete a certificate and ensure that tax is charged on all taxable purchases. If the **purchaser buyer** properly provides a certificate and normally makes exempt purchases, he nevertheless must ensure that tax is paid when a taxable purchase is made. If the seller does not charge the tax on a taxable purchase the **purchaser buyer** must either notify the seller to correct the billing and then pay the sales tax to the seller, or accrue and remit use tax on the transaction. If the **purchaser buyer** intentionally or repeatedly makes purchases, claiming they are exempt, when in fact they are not exempt, and the **purchaser buyer** fails to remit use tax, a penalty can be imposed in addition to the use tax. The penalty amount that may be asserted against the **purchaser buyer** is five percent (5%) of the sales price or two hundred dollars (\$200), whichever is greater. The penalty will be asserted by the Commission as a Notice of Deficiency but the **purchaser buyer** may have the penalty abated when he can establish that there were reasonable grounds for believing that the purchase was properly exempt from tax. In addition, if the **purchaser buyer** gives a resale or exemption certificate with the intention of evading payment of the tax, the **purchaser buyer** may be charged with a criminal misdemeanor and could be punished by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for not more than one (1) year, or by both a fine and imprisonment. ~~(3-4-10)~~( )

**#e.** Example: A garden supply store sells, among other things, soil and wood chips in large quantities. It buys a loader to use in its business to load items into customers' trucks. When buying the loader, the garden supply store gives a resale certificate to the seller indicating it intends to resell the loader. However, upon purchase the loader is capitalized on the books of the garden supply store. The Commission could impose a penalty equal to five percent (5%) of the purchase price of the loader against the garden supply store. This penalty is in addition to the use tax that is due. The individual who executed the certificate, or authorized the execution, on behalf of the garden supply store, if done with intent to evade payment of the **use** tax, could be criminally charged with a misdemeanor. ~~(3-4-10)~~( )

**#f.** Example: A restaurant buys food for resale from a supplier. It can properly give a resale certificate to the supplier. Since it buys food on a continuing basis the supplier keeps a certificate on file. If the restaurant buys cleaning supplies for its own consumption, the supplier should charge sales tax. If it fails to charge tax, the restaurant should notify the supplier to correct the billing and collect the sales tax. If the restaurant fails to pay sales or use tax on more than one purchase, then, under Section 63-3624, Idaho Code, the Commission can assert a use tax and a penalty equal to five percent (5%) of the purchase price or two hundred dollars (\$200), whichever is greater, against the restaurant. ~~(3-4-10)~~( )

**g.** Example: A farmer completes an ST-101 claiming a production exemption on the purchase of toothpaste and a case of motor oil. The retailer must collect the sales tax on the sale of the toothpaste, but is not liable for the collection of the sales tax on the sale of the motor oil. The retailer cannot rely on the exemption certificate when selling the toothpaste because, as a matter of law, the sale of personal hygiene products is excluded from the production exemption. But the retailer can rely on the exemption certificate when selling goods, such as the motor oil, which the farmer could put to either a nontaxable use (e.g., oil for a tractor), or a taxable use (e.g., oil for a licensed pickup truck). ( )

**06. Tax Exemption Statements.** In lieu of Form ST-101, retailers, when selling property that the buyer claims is entitled to the exemptions listed below, may stamp or imprint on the face of their sales invoices, or buyers may stamp or imprint on the face of their purchase orders a statement containing the language prescribed in this rule. ( )

**a.** A tax exemption statement must be signed by the buyer and the name, address, and nature of business of the buyer is shown on the invoice. The signature on the statement must be in addition to any other signature required on the invoice. If no Form ST-101 is on file with the vendor, then each exempt sale must be documented as described in this subsection. Any person who signs this certification with the intention of evading payment of tax is guilty of a misdemeanor. ( )

~~**e.b.** Production or Logging Exemption. *In lieu of Form ST 101, retailers, A tax exemption statement can be used when selling property that the purchaser buyer claims is entitled to the production exemption, or the logging exemption. The statement can be made by either;* ( )~~

~~**i.** may having the seller stamp or imprint the following statement on the face of their sales invoices;~~  
or ( )

~~**ii.** purchasers may having the seller stamp or imprint the following statement on the face of their purchase orders, a certificate containing the following language: (3-4-10)( )~~

I certify that the property which I have here purchased will be used by me directly and primarily in the process of producing tangible personal property by mining, logging, manufacturing, processing, fabricating, or farming, or as a repair part for equipment used primarily as described above.

~~*This tax exemption statement qualifies if this statement is signed by the purchaser and the name, address, and nature of business of the purchaser is shown on the invoice.*~~

~~*Any person who signs this certification with the intention of evading payment of tax is guilty of a misdemeanor.*~~

\_\_\_\_\_  
NATURE OF BUSINESS

\_\_\_\_\_  
BUYER'S SIGNATURE

~~*The signature on this certificate must be in addition to any other signature required on the invoice. If no Form ST 101 is on file with the vendor, then each exempt sale must be documented as described in this Subsection.*~~  
(3-4-10)( )

~~**f.** Information on the exemption certificate. *An exemption certificate shall show the purchaser's name and address, business name and address, and be signed and dated by the purchaser. The purchaser shall also provide on the certificate the specific exemption being claimed and, if the production exemption is being claimed, a list of the products the purchaser produces. If the purchaser is claiming the contractor exemption, the purchaser must identify the invoice, purchase order, or job number to which the claim applies, the city and state where the job is located, and the name of the project owner. If the purchaser is claiming an exemption as an American Indian, then the purchaser must provide a valid Tribal I.D. number. By signing the exemption certificate, the purchaser is certifying that the purchase qualifies for an exemption from tax.* (4-4-13)~~

~~**c.** Matter Used to Produce Heat by Burning. A tax exemption statement can be used when selling materials that the buyer claims will be used to produce heat by burning as defined in Rule 088 of these rules and for which no bulk delivery will be made. The statement can be made by either; ( )~~

~~**i.** having the seller stamp or imprint the following statement on the face of their sales invoices, or ( )~~

~~**ii.** having the buyer stamp or imprint on the face of their purchase order, a statement that contains the following language: ( )~~

~~I certify that the matter I have purchased will be used in a furnace or similar device for the purpose of water heating, cooking, or raising or maintaining the temperature in an enclosed space, dwelling, or building.~~

\_\_\_\_\_  
BUYER'S SIGNATURE ( )

**07. Form ST-102, Use Tax Exemption Certificate -- New Resident or Nonresident Military.** To claim exemption for vehicles, vessels, and aircraft that were personally owned and acquired while residing in another state and used primarily outside Idaho new residents and nonresident military individuals must complete Form ST-102. ( )

**08. Form ST-104G, Sales Tax Exemption Claim for Cash Purchases by Governmental Agencies.** Form ST-104G, may be completed only by federal or, Idaho state, and local government agencies making cash purchases and must be furnished to the vendor at the time of sale. Each transaction requires a newly executed form signed by the agency's purchasing agent and the employee/buyer. Blank forms will be furnished to government agencies by the State Tax Commission upon request. The form cannot be used for lodging and meals bought by a traveling government employee nor for any other reasons enumerated on the form. ( )

**09. Form ST-104HM, Sales Tax Exemption Certificate -- Lodging Accommodations.** Form ST-104-HM is used to claim exemption for lodging accommodations paid for using a credit card company who will directly bill to and be paid by federal or, Idaho state, and local government agencies or other qualifying organizations granted exemption under Section 63-3622O, Idaho Code. This form should not be used for credit card payments that are paid by the employee who is later reimbursed by the employer. Each lodging transaction requires a newly executed form signed by the employee/buyer. ( )

**10. Form ST-104IC, Sales Tax Exemption Certificate -- Interstate Commerce Vehicles.** Form ST-104IC must be completed by a buyer claiming an exemption from tax under Section 63-3622R, Idaho Code, when purchasing a qualifying motor vehicle, trailer or glider kit. ( )

**11. Form ST-104MV, Sales Tax Exemption Certificate -- Vehicle/Vessel.** Form ST-104-MV, must be completed by a buyer claiming an exemption from tax under Section 63-3622R, Idaho Code, when purchasing a qualifying motor vehicle, vessel, or trailer. This has been replaced with Forms, ST-104IC and ST-104NR. ( )

**12. Form ST-104NR, Sales Tax Exemption Certificate -- Vehicle/Vessel.** Form ST-104NR, must be completed by each buyer claiming an exemption from tax under Section 63-3622R, Idaho Code, when a nonresident buyer is purchasing a qualifying vehicle, vessel, or trailer. ( )

**13. Form ST-108TR, Occasional Sale Exemption Claim -- Office Trailer and Transport Trailer.** Form ST-108TR, is required by any person claiming the occasional sale exemption on the purchase of a transport trailer or an office trailer. The seller must complete the seller's statement section in order for the buyer to claim the occasional sale exemption. ( )

**14. Form ST-111, Sales Tax Exemption Claim Form -- Grocer.** Retailers of food products who have been granted record reduction authority by the State Tax Commission may accept the Form ST-111, from a buyer if the retailer has a properly executed Form ST-101 on file from the buyer. Form ST-111 must include the buyer's Idaho seller's permit number (if applicable), the signature of the individual claiming the exemption, and, the total purchase price and general nature of the nontaxable products sold. ( )

**15. Form ST-133, Sales Tax Exemption Certificate -- Family or American Indian Sales.** ( )

**a. Family Sale.** Form ST-133, must be completed when claiming an exemption from tax when selling a motor vehicle to a relative under the exemption provided by Section 63-3622K, Idaho Code. ( )

**b. American Indian Sales.** Form ST-133 must be completed when claiming an exemption from tax when selling a vehicle, vessel, or RV to a member of an American Indian tribe within the boundaries of an American Indian reservation. ( )

**16. Form ST-133CATS, Sales Tax Exemption Certificate -- Capital Asset Transfer Affidavit.** Form ST-133CATS is required under the provisions of Section 63-3622K, Idaho Code, when claiming an exemption from tax on the sale of certain vehicles included in the bulk sale of a business' assets when the new owner will continue to operate the business in a like manner; for qualifying transfers of certain capital assets through sale, lease or rental; and, for the transfer of vehicles to and from a business or between qualifying businesses when there is no

change other than owners' equity. ( )

**17. Form ST-133GT, Use Tax Exemption Certificate -- Gift Transfer Affidavit.** Form ST-133GT must be completed to claim an exemption from tax when a vehicle, vessel, camper, trailer, or recreational vehicle is being transferred or received as a gift. ( )

**18. The Diplomatic Tax Exemption Program.** This United States government program grants immunity from state taxes to diplomats from certain foreign countries. A federal tax exemption card issued by the U.S. Department of State bears a photograph of the holder, a federal tax exemption number, and specific instructions as to the extent of the exemption granted to the diplomat. Additional information is provided in Rule 098 of these rules. ( )

**19. Timely Acceptance of Certificates.** A seller may accept a certificate from a ~~purchaser~~ buyer prior to the time of sale, at the time of sale, or at any reasonable time after the sale to establish the exemption claim, with the exception of Forms ST-104-HM and ST-104G which must be provided at the time of sale. ~~However, The sale is presumed to be taxable~~ if no approved certificate is obtained from the ~~purchaser~~ buyer in the manner provided or permitted by this rule, ~~the sale is presumed to be taxable.~~ (3-6-00)( )

**a.** Certificates obtained by a seller at a time subsequent to, but not within a reasonable time after, the time of sale will be considered by the State Tax Commission in conjunction with all other evidence available to determine whether or not the seller has established that a sales tax transaction is exempt from tax. (3-4-10)

**b.** Example: A retailer sells goods to a customer without charging the sales tax but does not obtain an ST-101 from the customer. Instead, the customer writes his Idaho seller's permit number on the invoice when he signs for the goods. The retailer is later audited by the State Tax Commission and fails in an attempt to obtain a certificate from his customer. The retailer argues that the Idaho seller's permit number written on the invoice is evidence that the customer purchased the goods for resale. However the number by itself does not establish that the customer bought the goods for resale. The retailer is liable for the tax on the sale. (3-4-10)( )

**c.** Example: A retailer sells a truck load of hay to a customer, does not charge sales tax on the transaction, and fails to obtain an ST-101. The retailer is later audited by the State Tax Commission and is unable to obtain an ST-101 from the customer. The retailer argues that hay is a farm supply and this alone should establish that the sale is exempt. However, the customer may be in a business which does not qualify for the farming production exemption, such as racing or showing horses. Or, the customer may be using the hay for a nonbusiness purpose, such as raising animals for his own consumption. The retailer is liable for the tax on the sale. (3-4-10)

**d.** When a Notice of Deficiency Determination has been issued to a seller by the State Tax Commission and the seller petitions for redetermination as provided by Rule 121 of these rules, he may submit certificates obtained from his customers as evidence of exemption claims, but only if the certificates are presented to the State Tax Commission within ninety (90) days of the date of the Notice of Deficiency Determination. (3-6-00)

## IDAPA 35 – STATE TAX COMMISSION

### 35.01.03 – PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-1801

#### NOTICE OF CORRECTION: CORRECTION TO NOTICE OF PROPOSED RULEMAKING

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Office of the Administrative Rules Coordinator and this agency are providing notice of a correction to the notice of proposed rulemaking previously published in the Idaho Administrative Bulletin under this docket number. The action is authorized pursuant to Sections 67-5202(2), 67-5221(1), and 63-105(a), Idaho Code.

**CORRECTION SUMMARY:** The following is a nontechnical explanation of the nature of the error:

A transcription error occurred during the publication of the “Notice of Rulemaking – Proposed Rule” under Docket No. **35-0103-1801** that published in the September 5, 2018 Idaho Administrative Bulletin. A descriptive summary of the proposed changes to each amended rule section was included in the notice of proposed rulemaking with the exception of Rule 709 which was inadvertently omitted. The proposed change summary for Rule 702 was incorrectly included in the notice for Docket No. 35-0103-1801 instead of Section (Rule) 709. Section (Rule) 702 is being promulgated under Docket No. 35-0103-1802.

The text of the proposed amendments to Rule 709 was printed in the September 5, 2018 Idaho Administrative Bulletin and was properly vetted during the negotiated rulemaking process and was noticed in the newspaper legal notice that published throughout the state. Only the descriptive summary of the notice that was incorrect.

The following is the descriptive summary for the change to Rule 709:

**Rule 709:** This rule will explain that the primary guidance in determining partial ownership relative to the property tax reduction program is the specific language found in the transfer deed.

The amended text of Rule 709 was published in the September 5, 2018 Idaho Administrative Bulletin, **Vol. 18-9, pages 361 and 362.**

**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 17, 2018.

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.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Alan Dornfest at (208) 334-7742.

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 24, 2018.

Dated this 13th day of September, 2018.

Alan Dornfest  
Tax Policy Supervisor  
State Tax Commission/Property Tax  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7742

## **IDAPA 35 – STATE TAX COMMISSION**

### **35.02.01 – TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES**

**DOCKET NO. 35-0201-1801**

#### **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 17, 2018.

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 for calendar year 2018 and the Revenue Ruling where the federal rate for the calculation can be found.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because 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) 334-7670.

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 24, 2018.

Dated this 3rd day of October, 2018.

Cynthia Adrian, Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd Plaza IV  
P.O. Box 36  
Boise, ID 83722-0410  
Phone: (208) 334-7670  
Fax: (208) 334-7844

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0201-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**310. INTEREST RATES (RULE 310).**  
 Sections 63-3045 and 63-3073, Idaho Code

**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
Calendar Year 2012	4% simple interest	Revenue Ruling 2011-20
Calendar Year 2013	3% simple interest	Revenue Ruling 2012-24

PERIOD	RATE OF INTEREST	INTERNAL REVENUE SERVICE REVENUE RULING
Calendar Year 2014	4% simple interest	Revenue Ruling 2013-18
Calendar Year 2015	4% simple interest	Revenue Ruling 2014-22
Calendar Year 2016	4% simple interest	Revenue Ruling 2015-19
Calendar Year 2017	3% simple interest	Revenue Ruling 2016-20
Calendar Year 2018	4% simple interest	Revenue Ruling 2017-17
<u>Calendar Year 2019</u>	<u>5% simple interest</u>	<u>Revenue Ruling 2018-23</u>

~~(3-28-18)~~( )

**IDAPA 38 – DEPARTMENT OF ADMINISTRATION**

**38.05.01 – RULES OF THE DIVISION OF PURCHASING**

**DOCKET NO. 38-0501-1801**

**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 67-9205, 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 17, 2018.

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 rules address the format for preservation of purchasing records within the purchasing authority; add a solicitation method allowing for competitive negotiations, when justified by the agency and authorized by the administrator; clarify the use of electronic communications during the solicitation process; identify additional examples of potentially exempt acquisitions; add a provision concerning information technology purchased through a reseller; and also include minor modifications for consistency within the rules, and to further clarify, consolidate and/or modernize existing language.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin, [Vol. 18-6, page 120](#).

**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 Sarah Hilderbrand at (208) 332-1612 or at [sarah.hilderbrand@adm.idaho.gov](mailto:sarah.hilderbrand@adm.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 24, 2018.

Dated this 31st day of August, 2018.

Sarah Hilderbrand, Administrator  
Division of Purchasing  
Department of Administration  
304 N. 8th Street, Room 403  
P. O. Box 83720  
Boise, ID 83720-0075  
Phone: (208) 332-1612  
Fax: (208) 327-7320

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 38-0501-1801  
(Only Those Sections With Amendments Are Shown.)

**011. DEFINITIONS.**

Unless defined otherwise in these rules, the definitions set forth in Section 67-9203, Idaho Code, shall apply to this chapter. (3-29-17)

**01. Administrator.** The administrator of the division of purchasing. (3-29-17)

**02. Alternate.** Property or services that are not at least a functional equal in features, performance or use of the brand, model or specification designated as the standard. (3-15-02)

**03. Brand Name or Equal Specification.** A specification that uses a brand name to describe the standard of quality, performance or other characteristics being solicited and that invites the submission of equivalent products. (3-29-17)

**04. Brand Name Specification.** A specification calling for one (1) or more products by manufacturers' names or catalogue numbers. (3-29-17)

**05. Buyer.** An employee of the division of purchasing designated as a buyer, contract-administrator, purchasing agent, contracting officer, or similar designation by the administrator, including, where appropriate, the administrator and other management personnel. The term also includes authorized employee(s) of a purchasing authority. (3-29-17)

**06. Competitive Negotiation.** Procedure by which the buyer negotiates with one (1) or more responsive offerors in accordance with the provisions of an invitation to negotiate. ( )

**067. Concession Services.** The granting by the purchasing authority of a right, franchise, authority, property interest or option to a contractor, regardless of whether an expenditure of state or other funds occurs. (3-29-17)

**078. Consultant Services.** Work, rendered by either individuals or firms who possess specialized knowledge, experience, and expertise to investigate assigned problems or projects and to provide counsel, review, design, development, analysis or advice in formulating or implementing programs or services or improvements in programs or services, including but not limited to such areas as management, personnel, finance, accounting and planning. The consultant's services, opinions or recommendations will be performed according to the consultant's methods without being subject to the control of the agency except as to the result of the work. (3-29-17)

**08. ~~Contract.~~** ~~Any state written agreement, including a solicitation or specification documents and the accepted portions of the solicitation, for the acquisition of property. Generally, the term is used to describe term contracts, definite or indefinite quantity or delivery contracts or other acquisition agreements whose subject matter involves multiple payments and deliveries. A contract includes purchase orders issued by the purchasing authority.~~ (3-29-17)

**09. Contract Administration.** Actions taken related to changes to contracts, including amendments, renewals and extensions; as well as receipt, review and retaining of the contract and contract-related documents; and exercise of remedies. (3-29-17)

**10. Contract Management.** Actions taken to ensure that both the agency and contractor comply with the requirements of the contract. Includes some functions related to solicitation development and contract development and close-out; also includes, but is not limited to regular monitoring of the contractor's day-to-day performance, evaluation of deliverables, invoice review, payment approval, progress tracking, regular status meetings, and management of state-owned property and other resources used in contract performance management.

- (3-29-17)
11. **Director.** The chief officer of the department of administration. (3-15-02)
12. **Division.** The division of purchasing of the department of administration as established by Section 67-9204, Idaho Code. Whenever a purchase is made by the division on behalf of another agency, the division shall be deemed to be acting as the agent for such agency. (3-15-02)
13. **Document.** When used in these rules, may include electronic documents. (3-15-02)
14. **Equal.** Property that meets or exceeds the quality, performance and use of the brand, model or specifications in the invitation to bid, request for proposals or request for quotation. ~~(3-15-02)~~ ( )
15. **Formal Sealed Procedure.** Procedure by which the buyer solicits competitive sealed bids or competitive sealed proposals by means of an invitation to bid or request for proposals. (3-15-02)
16. **Informal Solicitation.** Procedure by which the buyer solicits informal competitive quotes by means of a request for quote. (3-29-17)
17. **Invitation to Bid.** All documents, whether attached or incorporated by reference, utilized for soliciting formal sealed bids. (3-29-17)
- ~~18.~~ **Invitation to Negotiate.** All documents, whether attached or incorporated by reference, utilized for soliciting proposals for a competitive negotiation. ( )
- ~~19.~~ **Offeror.** A vendor who has submitted a response to a request for proposals or invitation to negotiate for property to be acquired by the state. ~~(3-29-17)~~ ( )
- ~~20.~~ **Open Contract.** A contract awarded by the state of Idaho through the division of purchasing to one (1) or more vendors who have agreed to allow all agencies to purchase specified property under the terms and conditions set forth in the contract. (3-29-17)
- ~~21.~~ **Professional Services.** Work rendered by an independent contractor whose occupation is the rendering of such services and who has a professional knowledge of some department of learning or science used by its practical application to the affairs of others or in the practice of an art founded on it, including but not limited to accounting and auditing, legal, medical, nursing, education, actuarial, veterinarian, information technology and research. The knowledge is founded upon prolonged and specialized intellectual training that enables a particular service to be rendered. The word “professional” implies professed attainments in special knowledge as distinguished from mere skills. (3-29-17)
- ~~22.~~ **Proposal.** A written response including pricing information to a request for proposals that describes the solution or means of providing the property requested and which proposal is considered an offer to perform a contract in full response to the request for proposals. Price may be an evaluation criterion for proposals, but will not necessarily be the predominant basis for contract award. When used in conjunction with an invitation to negotiate, a proposed may or may not initially include pricing information, as provided in the solicitation. ~~(3-15-02)~~ ( )
- ~~23.~~ **Public Agency.** Has the meaning set forth in Section 67-2327, Idaho Code. (3-15-02)
- ~~24.~~ **Purchase.** The act of acquiring or procuring property for state use or the result of an acquisition action. (3-15-02)
- ~~25.~~ **Purchase Order.** Notification to the contractor to provide the stated property under the terms and conditions set forth in the purchase order. It may include the form of the state’s acceptance of a vendor’s quote, proposal or bid. See also definition of contract. (3-29-17)
- ~~26.~~ **Purchasing Authority.** The division or an agency exercising authority based on a delegation of

authority by the administrator to an individual or an agency; or as otherwise provided under these rules to engage in the conduct of purchasing. (3-29-17)

**267. Quote.** An offer to supply property in response to a request for quote and generally used for informal solicitation procedures. (3-29-17)

**278. Request for Proposals.** Includes all documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals as a component of the formal sealed procedure and is generally utilized in the acquisition of services or other complex purchases. (3-29-17)

**289. Request for Quote.** The document, form or method generally used for purchases solicited in accordance with informal solicitation procedures. (3-29-17)

**290. Requisition.** A standard state or agency specific form that serves as a purchasing request and that requests that the purchasing authority acquire the property. (3-29-17)

**301. Sealed.** Includes invitations to bid and requests for proposals electronically sealed and submitted in accordance with requirements or standards set by the division and bids and proposals manually sealed and submitted. (3-29-17)

**312. Sealed Procedure Limit.** That dollar amount, as established by these rules, above which the formal sealed procedure will be used. The amount may be lowered by the administrator to maintain full disclosure or competitive purchasing or otherwise achieve overall state efficiency and economy. (3-29-17)

**323. Small Purchase.** An acquisition that costs less than the sealed procedure limit. (3-15-02)

**334. Solicitation.** An invitation to bid, a request for proposals, request for quote or other document or communication issued by the purchasing authority for the purpose of soliciting bids, proposals, or quotes to perform a contract. (3-29-17)

**345. Specifications.** The explicit property to be acquired by the state. Specifications include the scope of work and the performance and physical characteristics of property. (3-29-17)

**356. State.** The state of Idaho including each agency unless the context implies other states of the United States. (3-29-17)

**367. Telecommunications.** All present and future forms of hardware, software or services used or required for transmitting voice, data, video or images. (3-29-17)

**378. Written.** When used in these rules, may include an electronic writing. (3-15-02)

**012. PRESERVATION OF RECORDS.**  
Records of a purchasing authority, which are created or held pursuant to these rules, may be kept in such format as prescribed by the purchasing authority responsible for record retention; and otherwise in accordance with record preservation and retention policies established by the agency designated by the legislature for such purpose. ( )

**013. FORM OF COMMUNICATION.**  
Any written communication authorized or required by these rules may be provided electronically, or in another format as designated by the administrator. ( )

**0124. -- 020. (RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**042. EXCEPTIONS TO COMPETITION.**

Purchases meeting the following criteria need not be purchased by competitive solicitation, unless otherwise directed by the administrator: (3-29-17)

**01. Emergency Purchases.** Emergency purchases as authorized by Section 67-9221, Idaho Code, and Section 043 of these rules. (3-29-17)

**02. Sole Source Purchases.** Sole source purchases made through direct solicitation with documented source selection, in accordance with Section 67-9221, Idaho Code, and Section 045. (3-15-02)

**03. Reverse Auctions.** Purchases through reverse public auctions as authorized by Section 67-9221, Idaho Code. (3-15-02)

**04. Federal Government Acquisitions.** Acquisitions from the United States of America or any agency thereof. (3-15-02)

**05. Contracts with Other Public Agencies.** Contracts with other public agencies as defined in Section 67-2327, Idaho Code, and authorized by Section 67-2332, Idaho Code. ( )

**056. Rehabilitation Agency Acquisitions.** Acquisitions of property that is provided by non-profit corporations and public agencies operating rehabilitation facilities serving the handicapped and disadvantaged and that is offered for sale at fair market price as determined by the administrator in accordance with these rules. (3-15-02)

**067. Correctional Industries.** Purchases of property marketed directly by Correctional Industries in accordance with Section 20-245, Idaho Code. (3-29-17)

**078. Purchases from General Services Administration Federal Supply Contractors.** Acquisitions of property may be made from General Services Administration federal supply contractors without the use of competitive bid upon written approval of the administrator. The administrator shall determine whether such property meets the requesting agency's requirements and whether the price of acquisition is advantageous to the state. The administrator shall commemorate the determination in a written statement that shall be incorporated in the applicable file. If the administrator determines that the acquisition of property from General Services Administration contractors is not advantageous to the state, the acquisition shall be in accordance with competitive solicitation procedures and requirements. (3-29-17)

**089. Existing Open Contracts.** Except as provided in these rules, property available under these contracts shall be purchased under such contracts in accordance with the provisions or requirements for use thereof. (3-29-17)

**109. Exempt Purchases.** By written policy the administrator may exempt from the formal sealed procedure or the requirement for competitive solicitation that property for which bidding is impractical, disadvantageous or unreasonable under the circumstances. (3-29-17)

**a.** Examples include, but are not limited to: (3-15-02)

**i.** Special market conditions; (3-15-02)

**ii.** Property requiring special contracting procedures due to uniqueness; (3-15-02)

**iii.** Legal advertising, publication or placement of advertisements by state agency personnel directly with media sources; (3-29-17)

**iv.** Property for which competitive solicitation procedures are impractical; ~~or~~ (3-29-17)( )

**v.** Used property; ~~i~~ (3-29-17)( )

**vi.** Ongoing maintenance, upgrades, support or additional licenses for software or other information

technology solutions, including a change in the manner of solution delivery; which software or solution was originally acquired in compliance with the purchasing laws in effect at the time of acquisition; or ( )

vii. Acquisition of property for direct resale. ( )

b. Such policy shall describe the property exempted, the duration of the exemption, and any other requirements or circumstances appropriate to the situation. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**051. CONTENT OF SOLICITATIONS ISSUED UNDER A FORMAL SEALED PROCEDURE.**

The following shall be included in an invitation to bid or a request for proposals: (3-29-17)

**01. Submission Information.** Information regarding the applicable ~~opening~~ closing date, time and location. (3-15-02)( )

**02. Specifications.** Specifications developed in accordance with Section 111 of these rules. (3-29-17)

**03. Contract Terms.** Terms and conditions applicable to the contract, subject to the provisions of Section 112 of these rules. (3-29-17)

**04. Evaluation Criteria.** Any evaluation criteria to be used in determining property acceptability. (3-15-02)

**05. Trade-In Property.** If trade-in property is to be included, a description of the property and location where it may be inspected. (3-15-02)

**06. Incorporation by Reference.** A brief description of any documents incorporated by reference that specifies where such documents can be obtained. (3-15-02)

**07. Pre-Proposal or Pre-Bid Conference.** The date, time and location of the conference must be included in the solicitation. (3-29-17)

**(BREAK IN CONTINUITY OF SECTIONS)**

**074. MISTAKES.**

The following procedures are established relative to claims of a mistake. (3-15-02)

**01. Mistakes in Submission.** If a mistake is attributable to an error in judgment, the submission may not be corrected. Correction or withdrawal by reason of an inadvertent, nonjudgmental mistake is permissible, but at the discretion of the administrator and to the extent it is not contrary to the interest of the state or the fair treatment of other submitting vendors. (3-29-17)

**02. Mistakes Discovered Before Opening.** Mistakes discovered by a vendor prior to closing may be corrected by the submitting vendor by submitting a timely modification or withdrawing the original submission and submitting a corrected submission to the purchasing authority before the closing. Vendors who discover a mistake after closing but prior to opening may withdraw the submission by written notification to the purchasing authority and signed by an individual authorized to bind the vendor if such notification is received by the purchasing authority prior to opening. (4-6-15)

**03. Mistakes Discovered After Opening But Before Award.** This subsection sets forth procedures to be applied in three (3) situations described below in which mistakes are discovered after opening but before award. (3-15-02)

**a.** Minor Informalities. Minor informalities are matters of form rather than substance evident from the bid or proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other submitting vendors, that is, the effect of the mistake on price, quantity, quality, delivery or contractual conditions is not significant. The buyer may waive such informalities. Examples include the failure of a submitting vendor to: (3-15-02)

i. Return the required number of signed submissions. (3-15-02)

ii. Sign in ink or provide an electronic signature, but only if it is clear from the submission that the submitting vendor intended to be bound by its terms. ( )

iii. Acknowledge the receipt of an amendment, but only if: (3-29-17)

(1) It is clear from the submission that the submitting vendor received the amendment and intended to be bound by its terms; or (3-29-17)

(2) The amendment involved had a negligible effect on price, quantity, quality or delivery. (3-29-17)

**b.** Mistakes Where Intended Submission is Evident. If the mistake and the intended submission are clearly evident on the face of the document, the submission shall be corrected to the intended submission and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the document are typographical errors, errors in extending unit prices (unit prices will always govern in event of conflict with extension), transposition errors and arithmetical errors. (3-15-02)

**c.** Mistakes Where Intended Submission is not Evident. A vendor may be permitted to withdraw a low bid if: (3-15-02)

i. A mistake is clearly evident on the face of the submission document but the intended submission is not similarly evident; or (3-15-02)

ii. The vendor submits timely proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made. (3-15-02)

**04. Mistakes Discovered After Award.** Mistakes shall not be corrected after award of the contract. (3-15-02)

**05. Written Approval or Denial Required.** In the event of a mistake discovered after the opening date, the administrator shall approve or deny, in writing, a request to correct or withdraw a submission. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**083. PROPOSAL DISCUSSION WITH INDIVIDUAL OFFERORS.**

**01. Classifying Proposals.** For the purpose of conducting proposal discussions under this rule, proposals shall be initially classified as: (3-15-02)

**a.** Acceptable; (3-15-02)

**b.** Potentially acceptable, that is reasonably susceptible of being made acceptable; or (3-15-02)

**c.** Unacceptable. (3-15-02)

**02. "Offerors" Defined.** For the purposes of this rule, the term "offerors" includes only those vendors submitting proposals that are acceptable or potentially acceptable. The term shall not include vendors that submitted

unacceptable proposals. (3-29-17)

**03.** Classification of Proposals. For the purposes of this rule, the purchasing authority may establish criteria within the solicitation to classify proposals. ( )

**034.** **Purposes of Discussions.** Discussions are held to facilitate and encourage an adequate number of potential offerors to offer their best proposals, by amending their original offers, if needed. (3-15-02)

**045.** **Conduct of Discussions.** The solicitation document must provide for the possibility of discussions. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. The buyer should establish procedures and schedules for conducting discussions. If during discussions there is a need for clarification or change of the request for proposals, it shall be amended to incorporate such clarification or change. Auction techniques (revealing one offeror's price to another) and disclosure of any information derived from competing proposals are prohibited. Any oral clarification or change of a proposal shall be reduced to writing by the offeror. (3-15-02)

**056.** **Best and Final Offer.** The buyer shall establish a common time and date for submission of best and final offers. Best and final offers shall be submitted only once unless the buyer makes a written determination before each subsequent round of best and final offers demonstrating another round is in the purchasing authority's interest, and additional discussions will be conducted or the requirements will be changed. Otherwise, no discussion of, or changes in, the best and final offers shall be allowed prior to award. Offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer. (3-29-17)

**067.** **Application to Other Solicitation Types.** The provisions of this Section 083 may be utilized in other types of solicitations, in addition to requests for proposals, so long as the solicitation document provides for the possibility of discussions and includes a reference to this section. (3-29-17)

**084. NEGOTIATIONS.**

In accordance with Section 67-9205(12), Idaho Code, the administrator may negotiate acquisitions as follows: (3-15-02)

**01. Use of Negotiations.** Negotiations may be used under ~~this~~ these rules when the administrator determines in writing that negotiations may be in the best interest of the state including but not limited to the following circumstances: (3-29-17)( )

**a.** Negotiations undertaken pursuant to a solicitation for competitive negotiation, in accordance with the provisions of Section 094 of these rules. ( )

**b.** A competitive solicitation has been unsuccessful because, without limiting other possible reasons, all offers are unreasonable, noncompetitive or all offers exceed available funds and the available time and circumstances do not permit the delay required for resolicitation; (3-15-02)

**c.** There has been inadequate competition; (3-29-17)

**d.** During the evaluation process it is determined that more than one (1) vendor has submitted an acceptable proposal or bid and negotiations could secure advantageous terms or a reduced cost for the state; or (3-29-17)

**e.** During the evaluation process it is determined that all responsive offers exceed available funds and negotiations could modify the requirements of the solicitation to reduce the cost to available funds and avoid the extended time and expenditure of resources for a resolicitation. (3-29-17)

**02. Examples.** Examples of situations in which negotiations may be appropriate include but are not limited to: (3-29-17)

**a.** Ensuring that the offering vendor has a clear understanding of the scope of work required and the

requirements that must be met; (3-15-02)

b. Ensuring that the offering vendor will make available the required personnel and facilities to satisfactorily perform the contract; or (3-15-02)

c. Agreeing to any clarifications regarding specifications or contract terms. (3-29-17)

**03. Conditions of Use.** Negotiations, as permitted by Subsection Paragraph 084.01.ed. of this rule, are subject to the following: ~~(3-29-17)~~( )

a. The solicitation must specifically allow for the possibility of negotiation and describe, with as much specificity as possible, how negotiations may be conducted; (3-15-02)

b. Submissions shall be evaluated and ranked based on the evaluation criteria in the solicitation; (3-15-02)

c. Only those vendors whose proposals or bids are determined to be acceptable, in accordance with criteria for negotiations set forth in the solicitation, shall be candidates for negotiations; (3-15-02)

d. Negotiations shall be conducted first with the vendor that is the apparent low responsive and responsible bidder, unless concurrent negotiations are permissible, in accordance with the terms of the solicitation; ~~(3-15-02)~~( )

e. If one (1) or more responsive offers does not exceed available funds, negotiations shall be against the requirements of and criteria contained in the solicitation and shall not materially alter those criteria or the specifications; (3-29-17)

f. Auction techniques (revealing one vendor's price to another) and disclosure of information derived from competing proposals is prohibited; (3-15-02)

g. Any clarifications or changes resulting from negotiations shall be documented in writing;(3-15-02)

h. If the parties to negotiations are unable to agree, the administrator shall formally terminate negotiations and may undertake negotiations with the next ranked vendor; and (3-15-02)

i. If negotiations as provided for in this rule fail to result in a contract, as determined by the administrator, the solicitation may be canceled and the administrator may negotiate in the best interest of the state with any qualified vendor. (3-15-02)

**04. Timing of Use.** If conducted as part of a small purchase or under the formal sealed procedure, negotiations are the last step in the procurement process. Use of oral interviews or best and final procedures, as provided for in a solicitation, must precede negotiations as provided for in this rule, unless the administrator makes a written determination that it is in the state's best interest to proceed directly to negotiations in lieu of first conducting oral interviews and the best and final procedures. ~~(3-29-17)~~( )

**05. Termination of Negotiations.** The purchasing authority may terminate negotiations at any time, in the best interest of the state. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**094. COMPETITIVE NEGOTIATIONS.**

Notwithstanding the provisions of Section 041 of these rules applicable to the formal sealed procedure, the administrator may authorize the use of competitive negotiations when it is determined that the use of negotiations may enable the state to more effectively identify and refine potential solutions, especially where the business need is complex or requires innovation. ( )

**01. Written Authorization.** The administrator shall establish guidelines on how and when agencies may request to use competitive negotiations. Requests for authorization to utilize competitive negotiations must be provided in writing, in a format designated by the administrator. The request must provide the reasons that a formal sealed procedure is not practicable; as well as support for the use of competitive negotiations in order to meet a complex business need, solicit innovative solutions, enable the state to keep within approved program budgets, or to otherwise facilitate the receipt of the most cost-effective solution. Written authorization must be provided by the administrator in order for a purchasing authority to use competitive negotiations under this rule. ( )

**02. Form of Solicitation.** Proposals under this rule shall be solicited pursuant to an invitation to negotiate. ( )

**03. Applicability of Other Rules.** An invitation to negotiate shall be subject to the rules applicable to a request for proposals, except as otherwise provided. Modifications under Section 072 of these rules will be allowed after closing to the extent authorized within the invitation to negotiate. Section 083 of these rules, proposal discussion with individual offerors, shall not apply to an invitation to negotiate. ( )

**04. Content of Solicitation for Competitive Negotiation.** Notwithstanding Section 051 of these rules, the following shall be included in an invitation to negotiate: ( )

**a. Submission Information.** Information regarding the applicable closing date, time and location. ( )

**b. Solicitation Procedure.** An outline of the invitation to negotiate process. ( )

**c. Specifications.** Specifications developed in accordance with Section 111 of these rules, to the extent the purchasing authority determines adequate to inform interested vendors of the desired result. ( )

**d. Contract Terms.** Terms and conditions applicable to the contract, subject to the provisions of Section 112 of these rules. ( )

**e. Trade-In Property.** If trade-in property is to be included, a description of the property and location where it may be inspected. ( )

**f. Incorporation by Reference.** A brief description of any documents incorporated by reference that specifies where such documents can be obtained. ( )

**g. Pre-Proposal or Pre-Bid Conference.** The date, time and location of the conference must be included in the solicitation. ( )

**h. Evaluation and Award Criteria.** A summary of evaluation criteria to be used in determining property acceptability; evaluation criteria to classify proposals and determine the competitive threshold for negotiations; as well as the criteria that will be used to make the lowest responsive and responsible determination. ( )

**05. Cost.** The buyer may request cost proposals at any time during the invitation to negotiate process; and may elect to request cost proposals only from those offerors determined to be in the competitive range for award ("finalists"), in accordance with the instructions contained within the solicitation. ( )

**06. Conduct of Negotiations.** Negotiations shall be conducted in accordance with the procedure outlined in the invitation to negotiate, which may include multiple iterations of submissions and discussions in order to classify proposals; allow for revisions to the solicitation proposal(s), including any requirements, terms, conditions or specifications; and to determine finalists. The negotiation process ends upon submission of the best and final offer(s) from the finalists, after which time vendors shall not be allowed to make further modifications to their proposal(s). ( )

**0945. -- 100. (RESERVED)**

(BREAK IN CONTINUITY OF SECTIONS)

**114. INFORMATION TECHNOLOGY RESALE.**

**01. Purpose.** The use of resellers is common in the acquisition of information technology; however, the use of a reseller to acquire information technology attempts to separate the application of the State Procurement Act from the contract terms required by the information technology owner for use of the information technology. The requirements of this rule are in place to apply Idaho law to the contract terms required by the information technology owner, when information technology is acquired through a reseller. ( )

**02. Terms.** All license, sale, or use terms imposed by the information technology owner shall be subject to the following: ( )

**a.** Licensing, sale, or use terms required by a third party owner of information technology sold through a reseller shall be subject to these rules, specifically including Subsection 112.01 and Paragraph 112.02.a. of these rules. If a contract contains a term prohibited by Section 112 of these rules, the term shall be void pursuant to Section 67-9213, Idaho Code. ( )

**b.** The provisions of Section 67-9212, Idaho Code, shall apply to licensing, sale or use terms required by a third party owner of information technology sold through a reseller. Purchasing authorities are not authorized to accept or modify the terms of licensing, sale or use through click-wrap, click-through or similar acceptance methods unless such acceptance or modification is approved in writing by the administrator. ( )

**1145. -- 999. (RESERVED)**

## IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

### 39.03.01 – RULES GOVERNING DEFINITIONS REGARDING OVERLEGAL PERMITS

#### DOCKET NO. 39-0301-1801 (CHAPTER REPEAL)

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312, 49-201 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

Per the Idaho Transportation Department's commercial motor vehicle permit consolidation rulemaking, as directed by the 2018 Idaho Legislature in **Senate Concurrent Resolution 130**, this administrative rule is being repealed and replaced. For additional information, please visit: <https://itd.idaho.gov/rulemaking/>.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published under Docket No. 39-0300-1801 in the May 2, 2018, Idaho Administrative Bulletin, **Vol. 18-5, pages 145-146**.

**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, please contact Ramón Hobdey-Sánchez, Governmental Affairs Program Specialist, at (208) 334-8810.

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 24, 2018.

DATED this 28th Day of August, 2018.

Ramón S. Hobdey-Sánchez  
Governmental Affairs Program Specialist  
Idaho Transportation Department  
3311 W. State St. – PO Box 7129  
Boise ID 83707-1129  
Phone: (208) 334-8810  
[ramon.hobdey-sanchez@itd.idaho.gov](mailto:ramon.hobdey-sanchez@itd.idaho.gov)

**IDAPA 39.03.01 IS BEING REPEALED IN ITS ENTIRETY**

## IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

### 39.03.01 – RULES GOVERNING DEFINITIONS REGARDING SPECIAL PERMITS

#### DOCKET NO. 39-0301-1802 (NEW CHAPTER)

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312, 49-201 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

Per the Idaho Transportation Department's commercial motor vehicle permit consolidation rulemaking, as directed by the 2018 Idaho Legislature in [Senate Concurrent Resolution 130](#), this administrative rule provides definitions related to the permitting of commercial motor vehicles and/or combinations. For additional information, please visit: <https://itd.idaho.gov/rulemaking/>.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: There are no fees being imposed or increased with 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(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published under Docket No. 39-0300-1801 in the May 2, 2018, Idaho Administrative Bulletin, [Vol. 18-5, pages 145-146](#).

**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, please contact Ramón Hobdey-Sánchez, Governmental Affairs Program Specialist, at (208) 334-8810.

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 24, 2018.

DATED this 30th Day of August, 2018.

Ramón S. Hobdey-Sánchez  
Governmental Affairs Program Specialist  
Idaho Transportation Department  
3311 W. State St. – PO Box 7129  
Boise ID 83707-1129  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0301-1802**  
**(New Chapter)**

**IDAPA 39**  
**TITLE 03**  
**CHAPTER 01**

**39.03.01 – RULES GOVERNING DEFINITIONS REGARDING SPECIAL PERMITS**

**000. LEGAL AUTHORITY.**

This rule is adopted under the authority of Section 40-312, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** This rule shall be cited as IDAPA 39.03.01, “Rules Governing Definitions Regarding Special Permits,” IDAPA 39, Title 03, Chapter 01. ( )

**02. Scope.** This rule gives the definitions for terms used in rules in IDAPA 39, Title 03 regarding special permitting. ( )

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations for this chapter. ( )

**003. ADMINISTRATIVE APPEALS.**

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.” ( )

**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 PO Box 7129, Boise, ID 83707-1129. ( )

**02. Office Hours.** Daily office hours are 7:30 a.m. to 5 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 208-334-8420, 1-800-662-7133 or by fax at 208-334-8419. ( )

**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 Title 74, Chapter 1, Idaho Code. ( )

**007. – 009. (RESERVED)**

**010. DEFINITIONS.**

01. **Accessories.** Additional parts of the single item load that have been removed to reduce width, length or height. ( )
02. **Administrative Cost.** The government's cost of processing, issuing and enforcing a permit. ( )
03. **Analysis.** A mathematical study of a vehicle or combination of vehicles and the stress they cause over bridges or specific sections of highways conducted by a professional engineer. ( )
04. **Annual.** Twelve (12) consecutive months. ( )
05. **Automobile Transporter.** See Section 49-102, Idaho Code. ( )
06. **Base Width.** The measurement below the eaves of a manufactured home, modular building, or office trailer. ( )
07. **Boat Transporter.** See Section 49-103, Idaho Code. ( )
08. **Cargo Unit.** A full truck, a semi-trailer, a full trailer, or a semi-trailer converted to a full trailer by means of a dolly or a converter gear mounting a fifth wheel. A dromedary tractor equipped with conventional fifth wheel, not stinger steered, shall be excluded from the definition of a cargo unit. ( )
09. **Convoy.** A group of two (2) or more motor vehicles traveling together for protection or convenience. ( )
10. **Department.** Idaho Transportation Department. ( )
11. **Designated Agent.** An employee or relative of the farmer. ( )
12. **Dromedary Tractor.** See Section 49-105, Idaho Code. ( )
13. **Economic Hardship.** The loss of a substantial amount of money caused by economic changes. ( )
14. **Emergency Movement.** A vehicle or vehicle combination hauling a load traveling to the site of an emergency for the purpose of aiding in eliminating the emergency. ( )
15. **Escort Vehicle.** See Pilot Vehicle. ( )
16. **Excess Weight.** Vehicle combinations hauling reducible loads operating on any highway with total gross loads exceeding eighty thousand (80,000) pounds but not to exceed twenty thousand (20,000) per single axle, thirty-four thousand (34,000) per tandem, not to exceed the weight limit for any group of two (2) or more consecutive axles established by Section 49-1001, Idaho Code, and for the front steer axle not to exceed the manufacturer's load rating per tire or the load rating of the axle or twenty thousand (20,000) pounds per axle; whichever is less. The maximum allowable load for all other vehicle tires shall not exceed six hundred (600) pounds per inch width of tire for vehicles manufactured after July 1, 1987, or not to exceed eight hundred (800) pounds per inch width of tire for vehicles manufactured prior to that date as established by Section 49-1002, Idaho Code. ( )
17. **Extra-Length.** Any vehicle combination in excess of the legal limits, but not more than one hundred fifteen (115') feet as established in Section 49-1010, Idaho Code, that normally haul reducible loads. ( )
18. **Extra-Ordinary Hazard.** Any situation where the traveling public's safety or the capacity of the highway system is endangered. ( )
19. **Farm Tractor.** See Section 49-107, Idaho Code. ( )
20. **Gross Vehicle Weight.** See Section 49-108, Idaho Code. ( )

21. **Heavily Loaded.** Exceeding legal weight or hauling a load that obstructs the driver's view. ( )
22. **Heavy Duty Wrecker Truck.** A motor vehicle designed and used primarily for towing disabled vehicles. ( )
23. **Height.** The total vertical dimension of a vehicle above the ground surface including any load and load-holding device thereon. ( )
24. **Implement of Husbandry.** See Section 49-110, Idaho Code. ( )
25. **Incidentally Operated.** See Section 49-110, Idaho Code. ( )
26. **Legal.** In compliance with the Idaho Code on size and weight. ( )
27. **Length.** The total longitudinal dimension of a single vehicle, a trailer, or a semi-trailer. Length of a trailer or semi-trailer is measured from the front of the cargo-carrying unit to its rear, exclusive of all overhang and any appurtenances listed in IDAPA 39.03.03, "Rules Governing Special Permits – General Conditions and Requirements." ( )
28. **Light Truck.** See Section 49-121, Idaho Code. ( )
29. **Longer Combination Vehicle (LCV).** Any combination of a truck-tractor and two (2) or more trailers or semi-trailers that operate on the National System of Interstate and Defense Highways with a gross vehicle weight (GVW) greater than thirty-six thousand two hundred eighty-eight (36,288) kilograms (eighty thousand (80,000) pounds). ( )
30. **Manufactured Home.** A structure, constructed according to HUD/FHA mobile home construction and safety standards, transportable in one (1) or more sections, that, in the traveling mode, is eight (8') body feet or more in width or is forty (40') body feet or more in length, or when erected on site, is three hundred twenty (320) or more square feet, and that is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein, except that such term shall include any structure that meets all the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of housing and urban development and complies with the standards established under 42 U.S.C. 5401 et seq. Similarly constructed vehicles used permanently or temporarily for offices, advertising, sales, display or promotion of merchandise or services are included in this definition. ( )
31. **Mobile Home.** A structure similar to a manufactured home, but built to a state mobile home code that existed prior to the Federal Manufactured Housing and Safety Standards Act (HUD Code) dated June 15, 1975. ( )
32. **Modular Buildings.** A facility designed as a building or building section that is constructed to standards contained in the Uniform Building Code (UBC), adopted by Section 39-4109, Idaho Code. ( )
33. **Non-Reducible.** Any load or vehicle exceeding applicable length or weight limits that, if separated into smaller loads or vehicles, would: ( )
- a. Compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended; ( )
- b. Destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or ( )
- c. Require more than eight (8) work hours to dismantle using appropriate equipment. The applicant for a nondivisible load permit has the burden of proof of establishing the number of work hours required to dismantle the load. ( )

34. **Off-Tracking.** The difference in the path of the first inside front wheel and of the last inside rear wheel as a vehicle negotiates a curve. ( )
35. **Office Trailer.** See definition of Manufactured Homes. ( )
36. **Overall Combination Length.** The total length of a combination of vehicles, i.e. truck tractor-semitrailer-trailer combination, measured from front bumper of the motor vehicle to the back bumper or rear extremity of the last trailer including the connecting tongue(s). ( )
37. **Overall Length.** The total length of a combination of vehicles, i.e. truck tractor-semitrailer-trailer combination, measured from front bumper of the motor vehicle to the back bumper or rear extremity of the last trailer including the connecting tongue(s) plus any load overhang. ( )
38. **Overdimensional.** Any vehicle or load in excess of the limits established in Section 49-1010, Idaho Code. ( )
39. **Overheight.** A vehicle or load in excess of the limits established in Section 49-1010, Idaho Code. ( )
40. **Overlegal.** Any vehicle, vehicle combination, or load that exceeds the limits established in Idaho Code. ( )
41. **Overlength.** Any load non-reducible in length being hauled or towed that is in excess of the limits established in Section 49-1010, Idaho Code. ( )
42. **Oversize.** A vehicle or load in excess of the limits established in Section 49-1010, Idaho Code. ( )
43. **Overweight.** A single vehicle or a vehicle combination hauling or towing a non-reducible load whose weight is in excess of eighty thousand (80,000) pounds and/or legal axle weights. ( )
44. **Overwidth.** A vehicle or load in excess of the limits established in Section 49-1010, Idaho Code. ( )
45. **Pilot Vehicle.** Passenger cars or trucks equipped as specified in IDAPA 39.03.05, "Rules Governing Special Permits – Oversize Non-Reducible." ( )
46. **Reducible Load.** A single item or multiple items for transport that could reasonably be repositioned so that the load conforms to legal size and weight dimensions. The determination of ability to reduce the load primarily depends on the intended disposition of the contents of the load upon delivery to its destination (i.e. made into smaller pieces). ( )
47. **Single Axle.** An assembly of two (2) or more wheels whose centers are in one (1) transverse vertical plane or may be included between two (2) parallel transverse planes forty (40") inches apart extending across the full width of the vehicle. ( )
48. **Special Permit.** A permit issued by the Idaho Transportation Department that authorizes the movement of vehicles or loads on the state highway system in excess of the sizes and weights allowed by Sections 49-1001, 49-1002, or 49-1010, Idaho Code. ( )
49. **Steering Axle.** The axle or axles on the front of a motor vehicle that are activated by the operator to directly accomplish guidance or steering of the motor vehicle and/or combination of vehicles. ( )
50. **Stinger-Steered.** A truck-tractor semi-trailer combination where the kingpin is located five (5) feet or more to the rear of the centroid of the rear axle(s). ( )
51. **Tandem Axle.** Any two (2) axles whose centers are more than forty (40") inches but not more than

ninety-six (96”) inches apart and are individually attached to and/or articulated from a common attachment to the vehicle including a connecting mechanism designed to equalize the load between axles. ( )

**52. Tridem Axle.** Any three (3) consecutive axles whose extreme centers are not more than one hundred forty-four (144”) inches apart, and are individually attached to and/or articulated from a common attachment to the vehicle including a connecting mechanism designed to equalize the load between axles. ( )

**53. Variable Load Suspension Axle.** See Section 49-123, Idaho Code. ( )

**54. Vocational Vehicle.** A vehicle specifically designed to enable the operator to perform specific tasks none of which are primarily for the purpose of transporting loads. Cranes, loaders, scrapers, motor graders, and drill rigs are examples of vocational vehicles. ( )

**55. Width.** The total outside transverse dimension of a vehicle including any load or load-holding devices thereon, but excluding any appurtenances listed in IDAPA 39.03.03, “Rules Governing Special Permits – General Conditions and Requirements.” ( )

**011. – 999. (RESERVED)**

**IDAHA 39 – IDAHO TRANSPORTATION DEPARTMENT**  
**39.03.02 – RULES GOVERNING MOVEMENT OF DISABLED VEHICLES**  
**DOCKET NO. 39-0302-1801 (NEW CHAPTER)**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312, 49-201 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

Per the Idaho Transportation Department's commercial motor vehicle permit consolidation rulemaking, as directed by the 2018 Idaho Legislature in **Senate Concurrent Resolution 130**, this administrative rule provides the safety conditions, weight limits and time of travel requirements for the movement of disabled vehicles by special permit. For additional information, please visit: <https://itd.idaho.gov/rulemaking/>.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: There are no fees being imposed or increased with 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(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published under Docket No. 39-0300-1801 in the May 2, 2018, Idaho Administrative Bulletin, **Vol. 18-5, pages 145-146**.

**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, please contact Ramón Hobdey-Sánchez, Governmental Affairs Program Specialist, at (208) 334-8810.

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 24, 2018.

DATED this 30th Day of August, 2018.

Ramón S. Hobdey-Sánchez  
Governmental Affairs Program Specialist  
Idaho Transportation Department  
3311 W. State St. – PO Box 7129  
Boise ID 83707-1129  
Phone: (208) 334-8810  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0302-1801**  
**(New Chapter)**

**IDAPA 39**  
**TITLE 03**  
**CHAPTER 02**

**39.03.02 – RULES GOVERNING MOVEMENT OF DISABLED VEHICLES**

**000. LEGAL AUTHORITY.**

This rule, governing the movement of disabled vehicles allowed by Sections 49-1001, 49-1002 or 49-1010, Idaho Code, is adopted under the authority of Sections 40-312 and 49-1004, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** This rule shall be cited as IDAPA 39.03.02, “Rules Governing Movement of Disabled Vehicles,” IDAPA 39, Title 03, Chapter 02. ( )

**02. Scope.** This rule provides the requirements for the movement of disabled vehicles. ( )

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations for this chapter. ( )

**003. ADMINISTRATIVE APPEALS.**

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.” ( )

**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 PO Box 7129, Boise ID 83707-1129. ( )

**02. Office Hours.** Daily office hours are 7:30 a.m. to 5 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 208-334-8420, 1-800-622-7133, or by fax at 208-334-8419. ( )

**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 Title 74, Chapter 1, Idaho Code. ( )

**007. – 009. (RESERVED)**

**010. DEFINITIONS.**

Refer to IDAPA 39.03.01, “Rules Governing Definitions Regarding Special Permits,” for definitions of the terms used in this rule. ( )

**011. – 099. (RESERVED)**

**100. GENERAL.**

Refer to IDAPA 39.03.03, "Rules Governing Special Permits – General Conditions and Requirements," for conditions required for the issuance of special permits. ( )

**101. – 199. (RESERVED)**

**200. REMOVAL OF DISABLED VEHICLES.**

Annual Disabled Vehicle permits will be issued to heavy duty wrecker trucks or other vehicles used for the removal and secondary movement of disabled trucks and/or trailers or combinations and their unladen return, subject to the following rules: ( )

**01. Permitted Vehicle.** The permitted vehicle involved in the removal of disabled vehicles shall be the proper class of vehicle and shall have adequate gross vehicle weight and traction to control the combination of wrecker and attached vehicles, and shall provide brakes to the trailer axles and stop signal and clearance lights to such towed disabled vehicle or vehicle combinations. ( )

**02. Loaded Weight.** Loaded weight of the permitted vehicle's drive axle(s) will be permitted up to the basic allowable unit weight as shown on the current Idaho Transportation Department Route Capacity Map for the corresponding colored route, unless the highway route is posted with a weight restriction. The current Route Capacity Map is maintained by the Special Permit Office and is available to the public from the Special Permit Office at the address listed in rule 39.03.03, and Idaho Ports of Entry or on line at [itd.idaho.gov](http://itd.idaho.gov). Length of the combination will be limited to the legal or permitted length of the disabled combination plus forty-five (45') feet. Width will be limited to ten (10') feet or to the permitted width of the permitted disabled over-width vehicle/load. All VLS axles must be fully deployed when exceeding legal axle weights. ( )

**a.** Disabled Vehicle and Snowplow permits involving overweight loadings will be available at the following levels: ( )

**i.** Red Routes – The red routes contain posted bridges and require approval or analysis from the Department. A vehicle configuration may be issued an annual Disabled Vehicle and Snowplow permit for travel on red routes, upon completion of an analysis verifying the requested weights are acceptable. The annual permit will be issued for a specific vehicle configuration, operating on a specific route, at specific weights. All information will be listed on the annual permit and will be subject to revocation at such time the vehicle configuration changes (such as axle spacings), the approved weights change, or a bridge rating changes. ( )

**ii.** Yellow Routes – The yellow overweight level is based on a single axle loading of twenty-two thousand five hundred (22,500) pounds, a tandem axle loading of thirty-eight thousand (38,000) pounds, and a tridem axle loading of forty-eight thousand (48,000) pounds or the equivalent loading as determined by spacings and number of axles and computed by applying the formula  $W = 560 ((LN/N-1) + 12N + 36)$ . ( )

**iii.** Orange Routes – The orange overweight level is based on a single axle loading of twenty-four thousand (24,000) pounds, a tandem axle loading of forty-one thousand (41,000) pounds, and a tridem axle loading of fifty-one thousand five hundred (51,500) pounds or the equivalent loading as determined by spacings and number of axles and computed by applying the formula  $W = 600 ((LN/N-1) + 12N + 36)$ . ( )

**iv.** Green Routes – The green overweight level is based on a single axle loading of twenty-five thousand five hundred (25,500) pounds, a tandem axle loading of forty-three thousand five hundred (43,500) pounds and a tridem axle loading of fifty-four thousand five hundred (54,500) pounds or the equivalent loading as determined by spacings and number of axles and computed by applying the formula  $W = 640 ((LN/N-1) + 12N + 36)$ . ( )

**v.** Blue Routes – The blue overweight level is based on a single axle loading of twenty-seven thousand (27,000) pounds, a tandem axle loading of forty-six thousand (46,000) pounds, and a tridem axle loading of fifty-seven thousand five hundred (57,500) pounds or the equivalent loading as determined by spacings and number of axles and computed by applying the formula  $W = 675 ((LN/N-1) + 12N + 36)$ . ( )

vi. Purple Routes – The purple overweight level is based on a single axle loading of thirty thousand (30,000) pounds, a tandem axle loading of fifty-one thousand five hundred (51,500) pounds, and a tridem axle loading of sixty-four thousand five hundred (64,500) pounds or the equivalent loading as determined by spacings and number of axles and computed by applying the formula  $W = 755 ((LN/N-1) + 12N + 36)$ . ( )

vii. Black Routes – The black overweight level is based on a single axle loading of thirty-three thousand (33,000) pounds, a tandem axle loading of fifty-six thousand (56,000) pounds, and a tridem axle loading of seventy thousand five hundred (70,500) pounds or the equivalent loading as determined by spacings and number of axles and computed by applying the formula  $W = 825 ((LN/N-1) + 12N + 36)$ . ( )

viii. Vehicles or loads exceeding the axle weights, groups of axle weights, or total gross weights allowed on any of the overweight levels must operate by single trip permit only. ( )

ix. Weight Formula. “W” is the maximum weight in pounds (to the nearest five hundred (500) pounds) carried on any group of two (2) or more consecutive axles. “L” is the distance in feet between the extremes of any group of two (2) or more consecutive axles, “N” is the number of axles under consideration and “F” is the load factor most appropriate based on the most critical bridge on the highway route. ( )

b. The maximum overweight levels shall not exceed eight hundred (800) pounds per inch width of tire nor the maximum weights authorized by IDAPA 39.03.04, “Rules Governing Special Permits – Overweight Non-Reducible,” Subsection.08. ( )

c. Disabled Vehicle and Snowplow permits shall become invalid subject to the conditions of IDAPA 39.03.03, “Rules Governing Special Permits – General Conditions and Requirements.” ( )

**03. Time of Travel Restrictions.** Time of travel restrictions shall be waived during the first movement of the disabled vehicle or vehicle combinations when necessary to clear the travel way. Disabled vehicles that are overwidth and moving at night shall be required to operate in accordance with the lighting requirements as listed in IDAPA 39.03.03, “Rules Governing Special Permits – General Conditions and Requirements.” A front pilot vehicle will be required when disabled vehicle exceeding ten (10’) feet wide are moved at night. ( )

**04. First Movement.** First movement of disabled vehicles will be authorized from the point at which the vehicle or vehicle combination were disabled to a location (i.e. towing company, repair or company facility) where it can be safely secured. Secondary movements of disabled vehicles that have been separated shall be covered by the disabled vehicles permit as long as the weight/size limits as listed in Subsection 200.02 of this rule are not exceeded. ( )

a. First Movement of disabled vehicle or vehicle combination shall be defined as follows: point of original disablement to a location where it can safely secured (i.e. towing company, repair or company facility). ( )

b. Secondary Movement of disabled vehicles shall be defined as follows: a single vehicle or combination of disabled vehicles that have been separated into single vehicles and are moving from other than the original point of disablement. ( )

**05. Annual Disabled Vehicle Permit.** The permitted vehicle involved in the removal of a disabled vehicle shall be allowed (under annual disabled vehicle permit) to tow a functional replacement vehicle to the point of disablement, to replace the disabled vehicle. ( )

**06. Height Restrictions.** The disabled vehicle height shall not exceed the height of fifteen (15’) feet on the first movement. ( )

**300. HAZARDOUS TRAVEL CONDITIONS RESTRICTIONS.** Refer to IDAPA 39.03.03, “Rules Governing Special Permits – General Conditions and Requirements,” for limitations on travel during hazardous conditions. ( )

**301.–999. (RESERVED)**

## IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

### 39.03.03 – RULES GOVERNING SPECIAL PERMITS – GENERAL CONDITIONS AND REQUIREMENTS

DOCKET NO. 39-0303-1801 (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 Sections 40-312, 49-201 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

Per the Idaho Transportation Department's commercial motor vehicle permit consolidation rulemaking, as directed by the 2018 Idaho Legislature in [Senate Concurrent Resolution 130](#), this administrative rule provides the general safety conditions and travel requirements for special permitted vehicles and/or loads. This rule also provides the issuing authority to the Department and local highway jurisdictions and the administrative fees imposed by the Department for various special permits. This rule also provides the permittee general responsibilities when operating under any special permit. For additional information, please visit: <https://itd.idaho.gov/rulemaking>.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: This rule contains the fees associated with commercial motor vehicles and/or loads and combinations that require a special permit. As a part of this negotiated rulemaking and permit consolidation, the Department conducted a fee cost study to ensure that the program is revenue neutral and only covers administrative costs. A fee chart can be found here: <https://itd.idaho.gov/wp-content/uploads/2018/05/Permit-Price-List.pdf>.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published under Docket No. 39-0300-1801 in the May 2, 2018, Idaho Administrative Bulletin, [Vol. 18-5, pages 145-146](#).

**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, please contact Ramón Hobdey-Sánchez, Governmental Affairs Program Specialist, at (208) 334-8810 or email at [ramon.hobdey-sanchez@itd.idaho.gov](mailto:ramon.hobdey-sanchez@itd.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 24, 2018.

DATED this 30th Day of August, 2018.

Ramón S. Hobdey-Sánchez  
Governmental Affairs Program Specialist  
Idaho Transportation Department

3311 W. State St. – PO Box 7129  
Boise ID 83707-1129  
Phone: (208) 334-8810

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0303-1801**  
**(New Chapter, Fee Rule)**

**IDAPA 39**  
**TITLE 03**  
**CHAPTER 03**

**39.03.03 – RULES GOVERNING SPECIAL PERMITS –**  
**GENERAL CONDITIONS AND REQUIREMENTS**

**000. LEGAL AUTHORITY.**

This rule, governing the movement of vehicles or loads that are in excess of the sizes or weights allowed by Sections 49-1001, 49-1002 or 49-1010, Idaho Code, is adopted under the authority of Sections 40-312, 49-201, 49-1001, 49-1004, and 49-1005 Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** This rule shall be cited as IDAPA 39.03.03, “Rules Governing Special Permits – General Conditions and Requirements,” IDAPA 39, Title 03, Chapter 03. ( )

**02. Scope.** This rule states the general conditions and requirements for special permits. ( )

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations for this chapter. ( )

**003. ADMINISTRATIVE APPEALS.**

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.” ( )

**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 PO Box 7129, Boise, ID 83707-1129. ( )

**02. Office Hours.** Daily office hours are 7:30 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 208-334-8420, 1-800-622-7133, or by fax at 208-334-8419. ( )

**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 Title 74, Chapter 1, Idaho Code. ( )

**007. – 009. (RESERVED)**

**010. DEFINITIONS.**

Refer to IDAPA 39.03.01, “Rules Governing Definitions Regarding Special Permits,” for definitions of the terms used in this rule. ( )

**01. Loaded Truck.** A truck or truck combination equipped with VLS axles shall be considered to be hauling a load when VLS axles need to be fully deployed to reduce loads on fixed axles and groups of axles that would otherwise exceed legally prescribed weight limits as set forth in Section 49-1001, Idaho Code. ( )

**011. – 049. (RESERVED)**

**050. SAFETY INSPECTION REQUIREMENTS FOR PERMITTED VEHICLES AND/OR LOADS.**

**01. Inspections.** All vehicles, tractors, trailers, and dolly converters operating under the authority of a special permit issued by the Department must have a valid annual inspection at the time a permit is issued. The inspection shall be completed in compliance with 49 CFR Part 396.17. ( )

**02. Inspectors.** Inspectors completing required annual inspections shall meet the certifications requirement in 49 CFR 396.19 and brake inspector qualification in 49 CFR 396.25. ( )

**03. Drivers.** All drivers shall meet the special training requirements for Longer Combination Vehicles as outlined in 49 CFR Part 380. ( )

**04. Motor Carriers.** By applying for a special permit, motor carriers self-certify that they have performed inspections as set forth in 49 CFR Part 396.17. ( )

**05. Exemption.** Oversize vehicles and/or loads operating under an exemption outlined in Section 67-2901B (2), Idaho Code, are exempt from this safety inspection requirement. ( )

**051. – 059. (RESERVED)**

**060. BRAKES.**

Brakes shall meet the Federal Motor Carrier Safety Regulations and shall be maintained to the Federal Motor Vehicle Safety Standards No. 121 in effect at the time the commercial motor vehicle was manufactured. ( )

**061. – 069. (RESERVED)**

**070. LIGHTING REQUIREMENTS FOR LOADS TRAVELING AFTER DARK.**

Those over dimensional vehicles and/or loads traveling during hours of darkness shall be required to display lights to mark the extremities of the vehicle and/or loads and shall be in addition to those clearance lights required on legal size vehicles when traveling at night. ( )

**01. Standards for Lights on Oversize Vehicles and/or Loads.** ( )

**a.** Lights are required on those vehicles traveling sunset to sunrise. ( )

**b.** The lights must be visible from a minimum of five hundred (500) feet. ( )

**c.** The lights may be flashing or steady burning. ( )

**d.** The color of the lights shall be as follows: ( )

**i.** Lights visible from the front of the oversized vehicle and/or loads and the extremities in the middle or near the front of the oversized vehicle and/or load shall be amber. ( )

**ii.** Lights visible from the back of the oversized vehicle and/or load and the extremities near the back of the oversized vehicle and/or load shall be red. ( )

**02. Standards for Lights on Rear Overhang.** Lights are required when rear overhang exceeds the end of the trailer by four (4') feet or more. ( )

**a.** If the overhang is two (2') feet wide or less, only one (1) light is required on the end of the overhang. ( )

**b.** If the overhang is over two (2') feet wide, two (2) lights are required on the end of the overhang to show the maximum width of the overhang. ( )

**071. – 079. (RESERVED)**

**080. FLAGGING REQUIREMENTS FOR OVERSIZE VEHICLES AND/OR LOADS.**

Warning flags for oversize vehicles and/or loads, excluding extra-length vehicle combinations, shall be marked by warning flags meeting the following: ( )

**01. Warning Flags.** Warning flags are required on all overwidth vehicles and/or loads, and when the rear overhang exceeds the end of the trailer by four (4') feet or more. ( )

**02. Size.** Minimum size of flags is eighteen (18") inches by eighteen (18") inches. ( )

**03. Color.** Red or fluorescent orange. ( )

**04. Placement of Flags.** On overwidth vehicles and/or loads flags shall be placed at the four (4) corners and/or extremities of the vehicle and/or load as follows: ( )

**a.** Front. Fastened to each front corner of the oversized vehicle and/or load if it exceeds legal width. ( )

**b.** Rear. Fastened to each rear corner of the oversized vehicle and/or load if it exceeds legal width. ( )

**c.** Side. Fastened to mark any extremity, when extremity is wider than the front or the rear of the vehicle and/or load. ( )

**d.** Overhang. If the overhang is two (2') feet wide or less, only one (1) flag is required on the end of the overhang. If the overhang is over two (2') feet wide, two (2) flags are required on the end of the overhang to show the maximum width of the overhang. ( )

**081. – 089. (RESERVED)**

**090. SIGN REQUIREMENTS FOR VEHICLES COMBINATIONS INCLUSIVE OF LOAD.**

Refer to IDAPA39.03.05, "Rules Governing Special Permits – Oversize Non-Reducible," for conditions in this rule. ( )

**091. –099. (RESERVED)**

**100. RESPONSIBILITY OF ISSUING AUTHORITY.**

**01. Primary Concerns.** The primary concern of the Department, in the issuance of special permits, shall be the safety and convenience of the general public and the preservation of the highway system. ( )

**02. Permit Issuance.** The Department shall, in each case, predicate the issuance of a special permit on a reasonable determination of the necessity and feasibility of the proposed movement. ( )

**101. –199. (RESERVED)**

**200. AUTHORITY TO ISSUE PERMITS.**

The authority to issue permits on state highways is described in Subsection 200.01. Subsection 200.02 describes the Department’s authority to issue special permits on local jurisdiction highways pursuant to an agreement between the Department and the local highway jurisdictions. ( )

**01. Special Permit.** The special permit authority of the Department shall cover travel on state highways only and special permits issued by the Department shall be valid only on completed sections of state highway, described on the permit by route number or otherwise. The right to use county highways or city streets is neither granted nor implied. The special permit authority of the Department shall include those sections of state highways within corporate limits of cities and towns, but will not include sections of state highways intersecting with local highways, when travel is occurring on the local highway(s). Contractors hauling loads within the limits of state highway construction projects do not require special permits, but the loads must comply with the weight limits specified in the state highway contract. ( )

**02. Authority.** Special permit authority agreed to by the Department and local highway jurisdiction shall include travel on the local jurisdiction’s highways under the rules of this title, IDAPA 39.03.03, “Rules Governing Special Permits – General Conditions and Requirements.” ( )

**201. – 299. (RESERVED)**

**300. OFFICES FOR ISSUANCE OF SPECIAL PERMITS.**

The Department shall maintain a centralized special permit office at the Department Headquarters, making permits available electronically at the following listed office and Ports of Entry throughout the State. Permits will be available Monday through Friday, state holidays excluded, from 7:30 a.m. to 5 p.m. Mountain Time. Special permits can also be obtained online at [td.idaho.gov](http://td.idaho.gov) or by phone. ( )

- 01. Headquarters.**  
Idaho Transportation Department  
Special Permit Office  
P.O. Box 7129  
3311 West State Street  
Boise, Idaho 83707-1129  
(208) 334-8420 ( )
- 02. Huetter Port of Entry, District One.**  
Mile Post 8.5 I-90  
Coeur d’Alene, Idaho 838145  
(208) 769-1551 ( )
- 03. Lewiston Port of Entry, District Two.**  
33443 US Hwy 95  
Lewiston, Idaho 83501-0837  
(208) 799-4824 ( )
- 04. East Boise Port of Entry, District Three.**  
Mile Post 66.5 I-84 EB  
Boise, Idaho 83634  
(208) 334-3272 ( )
- 05. Cotterell Port of Entry, District Four.**  
Mile Post 229 I-84 EB  
Cotterell, Idaho 8323  
(208) 349-5650 ( )
- 06. Inkom Port of Entry, District Five.**  
Mile Post 59 I-15 NB  
Inkom, Idaho 83245  
(208) 775-3322 ( )

- 07. Sage Junction Port of Entry, District Six.**  
2452 E 1500 N  
Terreton, Idaho 83450  
(208) 228-3636 ( )

**301. – 399. (RESERVED)**

**400. INSURANCE OR BOND FOR EXTRAORDINARY HAZARD.**

Evidence of insurance or the posting of a bond shall be required when necessary because of loads creating an extraordinary hazard to the traveling public or to protect the public investment when a load presents an extraordinary hazard to the highway system. In such cases of extraordinary hazard to the roadway or structures, the Department may require the posting of a cash bond in such amount as to cover the maximum damage that could be expected to occur to the highway with the permittee also required to reimburse the Department for any engineering required to ascertain the extent of damages, if any, occurring to the roadway during the movement of the excessive load. ( )

**401. – 449. (RESERVED)**

**450. RESPONSIBILITY OF PERMITTEE.**

**01. General Responsibilities.** The permittee shall determine and declare the gross weight, distribution of weight, and the dimensions of the vehicle and load and shall submit all other required information before issuance of the permit. The acceptance of a special permit by the permittee is his agreement that the vehicle and load covered by the permit can and will be moved in compliance with the terms and limitations set forth in the permit. When a permit has been accepted by the permittee, such action shall be deemed an unequivocal assurance that he has complied, or will comply with all operating, licensing, and financial responsibility requirements. ( )

**02. Permit to Be Carried in Vehicle. ( )**

**a.** The special permit must be carried or available electronically in the vehicle to which it refers during the time of movement and shall upon demand be delivered for inspection to any peace officer or authorized agent of the Idaho Transportation Board or any officer or employee charged with the care and protection of the public highways. ( )

**b.** When the route of the permitted vehicle will not pass in the vicinity of a state operated transceiver station, the applicant may complete Form ITD-216, APPLICATION FOR SPECIAL PERMIT NUMBER, and provide pertinent information by telephone to the special permit office. If the special permit office approves the application, a special permit number will be assigned to complete the Form ITD-216. Form ITD-216 will serve as evidence of intent to obtain the special permit and will be honored by law enforcement subject to the officer checking with the special permit office. The applicant must qualify for this procedure by obtaining a permit fee account number. The special permit office will complete the Special Permit Form ITD-216 and charge the fee to the applicant's permit fee account number. ( )

**03. Certification Load Is Non-Reducible.** Upon application, the permittee must certify that steps have been taken to reduce the dimensions, the weight of vehicle, or the load, or all three, concerned in the permit to legal limitations or, if that is impractical, to reduce the excess to a minimum. ( )

**04. Basic Limitations Shall Not Be Exceeded.** Special permits shall not be issued for vehicles or loads in excess of the maximum limitations of size or weight or that otherwise exceed the limitations for loads as set forth in these rules unless exception is made by the Transportation Board, or as otherwise provided herein. ( )

**05. Hazardous Travel Conditions Restrictions.** Extreme caution in the operation of a special-permitted vehicle shall be exercised when hazardous conditions exist. The driver of a permitted vehicle is responsible for checking the conditions of the permitted route before travel. The movement of vehicles or loads operating on valid permits shall automatically become invalid en route when: ( )

- a.** The Idaho Transportation Department, Idaho State Police, or other law enforcement office

determines and provides public notice by any available means that a hazardous road condition exists. ( )

b. The driver reasonably knows that hazardous road conditions exist along route. ( )

c. Whenever a road is marked “Difficult” on 511 or as having a hazardous condition. ( )

d. Hazardous road conditions may include, but are not limited to: ( )

i. Loss of traction on roadways due to ice, snow, frost, excessive water, or mud; ( )

ii. Whenever a roadway is under conditions of wind over forty (40) mph; ( )

iii. Visibility is less than five hundred (500) feet due to snow, rain, smoke, dust, or fog; ( )

iv. Whenever a roadway becomes obstructed due to snow, water, mud, rocks, or other debris; or ( )

v. Whenever a roadway is subject to a natural disaster or emergency. ( )

**06. Delaying Movement.** Enforcement personnel responsible for any section of highway shall carry out enforcement action for violations involving special permit operations and may delay movements. ( )

**451. – 499. (RESERVED)**

**500. ALLOWABLE TOLERANCE, LEGAL OR PERMITTED SIZE LIMITS.**

**01. Determination of Vehicular Dimensions.** Determination of vehicular length and/or width as defined by Idaho Code or by Board rule shall be exclusive of those external devices or appurtenances whose function is related to safe and efficient operation. ( )

**02. Appurtenances.** Rearview mirrors, turn signal lamps, splash and spray suppressant devices; awnings on recreational vehicles, load induced tire bulge, and other noncargo carrying appurtenances shall be excluded from the calculation of allowable width. Front mounted refrigeration units, energy conservation devices, bolsters, mechanical fastening devices, hydraulic lift gates, external front mounted side curtain rollers, and other noncargo carrying appurtenances or devices shall be excluded from a determination of allowable length. ( )

**03. Other Appurtenances.** Other appurtenances not listed above may not extend beyond three (3) inches on each side or end of a vehicle or load. Other appurtenances may include, but shall not be limited to, clearance lights, door handles, handholds, window fasteners, door and window trim, moldings, and load securement devices. ( )

**501. – 509. (RESERVED)**

**510. DROMEDARY TRACTORS.**

A truck tractor containing a dromedary box, deck, or plate in legal operation on or before December 1, 1982, shall be authorized to continue to operate, notwithstanding its cargo carrying capacity, throughout its useful life. Proof of such legal operation on December 1, 1982, shall rest upon the operator of the equipment. ( )

**511. – 519. (RESERVED)**

**520. LOAD OVERHANG.**

The overhang or extension of a load shall not extend beyond the limits as set forth in Section 49-1010, Idaho Code. ( )

**521. – 599. (RESERVED)**

**600. GENERAL.**

A special permit, in writing, shall be required for any movement on any completed section of highway under the

jurisdiction of the Department by any vehicle or vehicles with reducible or non-reducible loads that exceed the allowable weights or sizes established in Sections 49-1001, 49-1002 and 49-1010, Idaho Code. ( )

**601. – 619. (RESERVED)**

**620. COMPLIANCE WITH OTHER LAWS AND ORDINANCES.**

The special permit will be effective only insofar as the Department has authority for its issue and does not release the permittee from complying with other existing laws, local ordinances or resolutions which may govern the movement. ( )

**621. – 629. (RESERVED)**

**630. WAIVER OF LIMITATIONS FOR EMERGENCY MOVEMENTS.**

Notwithstanding other provisions of these rules, the Idaho Transportation Board may waive existing permit policy limitations in the event of an emergency, subject to such limitations or special requirements as the Board may impose. ( )

**01. Military Emergency Affecting National Security.** Any movement by or for a military or other government agency which is in excess of permit policy maximum limits of weight or size or which is otherwise outside established rules must be certified as a military necessity involving national security before receiving any special consideration to provide any waiver of normal permit rules. Certification of military necessity must be made by an official designated as having such authority by the Department of Defense Directory, issued by the Office of the Chief of Transportation, Department of Army. All applications for military emergency movements must be channeled through the Special Permit Office, Idaho Transportation Department. ( )

**02. Emergencies Endangering the Public Health, Safety, or Welfare Including but Not Limited to Fire, Flood, or Earthquake.** During an emergency endangering the public health, safety or welfare, there may be an urgent and immediate need for equipment and it will not be in the public interest to require that a special permit be in the vehicle prior to an over legal movement. Verbal approval to proceed without a special permit in the vehicle may be obtained from the Special Permit Office or an Idaho Port-of-Entry. Once the emergency movement is completed, formal application for a Special Permit must be submitted to the Special Permit Office. ( )

**03. Emergency Movement of Implements of Husbandry.** It shall be considered an emergency when an implement of husbandry being operated on an official state holiday or a weekend breaks down and a dealer brings replacement equipment to the farmer that exceeds legal height, length, and weight. Verbal approval to proceed without a special permit in the vehicle may be obtained from the Special Permit on-call staff. That verbal authorization may include escort vehicle requirements based on the route of travel and dimensions of load. Once the emergency movement is completed, the permittee shall make formal application for a permit to the Special Permit Office on the first working day after the occurrence. ( )

**04. Economic Emergencies.** When a circumstance occurs in which an economic hardship is expected to result due to the application of existing rules or limitations, the Transportation Board may consider a petition for the temporary waiver of those rules or limitations which are perceived as being the cause of such economic hardship. ( )

**631. – 699. (RESERVED)**

**700. SPRING BREAKUP SEASON TYPE OF LOAD RESTRICTIONS.**

Depending upon the type of road construction, the amount of moisture, temperature conditions, and severity of frost heaves and breakup, routes or sections of routes will be posted for restricted loadings to one (1) of the following categories as required to protect the roadway and in the interests of public safety: ( )

- 01. Legal Weight. Maximum of legal allowable weight; ( )
- 02. 16,000 Pounds. Maximum of sixteen thousand (16,000) pounds on any axle; ( )
- 03. 14,000 Pounds. Maximum of fourteen thousand (14,000) pounds on any axle; and ( )

04. 12,000 Pounds. Maximum of twelve thousand (12,000) pounds on any axle. ( )

**701. – 709. (RESERVED)**

**710. WEIGHT LIMITS BASED ON TIRE SIZES.**

In administering load limits based on tire sizes or width of tires, credit for tubed tires will be based on the manufacturer's width marked on the tire; for example, a ten point zero-zero by twenty-four (10.00 x 24) tire will be given credit for ten (10") inches of tire width. Tubeless tires will be given credit for the width of the conventional tubed tires that they replace. ( )

**711. – 719. (RESERVED)**

**720. WIDTH LIMITATION ON TWO LANE ROAD.**

A spring breakup weight restriction to less than legal weight shall automatically place a restriction on width allowed by special permit. On any section of highway restricted to less than legal weight, the maximum width by special permit shall be restricted to twelve feet six (12'6") inches during the period of the weight restriction. ( )

**721. – 729. (RESERVED)**

**730. SPEED RESTRICTIONS.**

On those sections of highways which are posted for a maximum of legal loads, or to less than legal loads, trucks and buses with a gross weight of ten thousand (10,000) pounds or more will be restricted in critical areas to a maximum speed of thirty (30) miles per hour. Restricted speed zones will be marked by red and green markers. A red marker will mean speed is restricted to thirty (30) miles per hour and a green marker will mean that legal speed may be resumed. These markers will generally be attached to existing highway sign posts and when properly used will afford protection to the highway subgrade and surface as well as speeding the flow of traffic. ( )

**731. – 739. (RESERVED)**

**740. SPECIAL PERMIT POLICY DURING SPRING BREAKUP.**

**01. Suspended Weight Limits.** Normal overweight special permit limits will be suspended on all highways in the area when seasonal load and speed restrictions are imposed. ( )

**02. Weight Restrictions.** Spring breakup weight restrictions are primarily concerned with limiting the weight imposed on the highway by individual axles rather than the total gross weight of vehicles or vehicle combination. It will therefore be permissible to issue special permits that exceed legal allowable total gross load for a vehicle combination subject to these conditions: ( )

**a.** Minimum tire width is ten (10") inches or larger. ( )

**b.** Maximum axle weight on single axle having two (2) single wheels shall not exceed ten thousand (10,000) pounds. ( )

**c.** Maximum axle weight on single axle having four (4) or more tires shall not exceed fourteen thousand (14,000) pounds. ( )

**d.** Permits for nonreducible loads only. ( )

**741. – 749. (RESERVED)**

**750. LEGAL WEIGHT LIMITS MAINTAINED ON CERTAIN HIGHWAYS.**

The policy of the Department will be to maintain legal load limits on the Interstate highway system and arterials serving through state traffic or connecting major terminals, unless conditions are such that severe breakup will result. ( )

751. – 759. (RESERVED)

**760. ENFORCEMENT OF POSTED WEIGHT AND/OR SPEED RESTRICTIONS.**

The Districts will sign and mark affected state highways the day before the weight and/or speed restrictions are in effect. The weight and/or speed restrictions will be enforced the day after the Districts sign and mark a state highway. ( )

761. – 769. (RESERVED)

**770. TEMPORARY SUSPENSION OF POSTED WEIGHT AND SPEED RESTRICTIONS.**

**01. Why Required.** Spring breakup restrictions are required because of a seasonal characteristic in which freeze/thaw cycles occur, making the roadway unstable and reducing its load-bearing capability. The load-bearing capacity may be temporarily restored by a freeze-up of the pavement after a section has been posted for load and speed restrictions. ( )

**02. Temporary Waiver of Spring Breakup.** District Engineers may provide a temporary waiver of the spring breakup restrictions by posting GREEN markers on the speed limit signs, and on other signs, if appropriate, within a section of highway posted for reduced loads. ( )

771. – 779. (RESERVED)

**780. SPECIAL ALLOWANCES FOR EMERGENCY AND CRITICAL SERVICE VEHICLES.**

District Engineers may allow exceptions to the spring breakup weight restrictions for emergency and critical service vehicle(s), ie. fire trucks, heating fuel trucks, and other such service vehicles that are critical to the health and safety of the public. Documentation of special allowance shall be in writing from the District Engineer and must be carried in the vehicle. ( )

781. – 799. (RESERVED)

**800. SPECIAL PERMIT FEES COSTS TO BE BORNE BY PERMITTEE.**

The movement of oversize or overweight vehicles or vehicles with special loads is a privilege not accorded every user of the highway. Administrative cost incurred in the processing, issuance and enforcement of special permits shall be borne by such permittees and not by the general traveling public through expenditure of highway user funds. Special permits issued for non-reducible, overweight vehicles and/or loads will be charged a road use fee as set forth in Section 49-1004(2), Idaho Code. Tax supported agencies are required to obtain special permits if their loads exceed the sizes or weights stated in Idaho Code, but they are exempt from paying fees for the permits. ( )

801. – 909. (RESERVED)

**910. PAYMENT OF SPECIAL PERMIT FEES.**

**01. Payment of Fees.** The Idaho Constitution prohibits the state from extending credit to any individual, corporation, municipality, or association. Permit fees are collectible at the time of issuance. ( )

**02. Refund.** Permit fees are not refundable once they have been processed into the Department's accounting system, unless the permittee contacts the Special Permit Office no more than two (2) working days (during office hours) following the start date of the special permit or the Department issued the special permit in error. ( )

**03. Permit Costs.** Special permit fees listed below are intended to cover cost of administration and are subject to periodic change depending on costs incurred in processing, issuance, and enforcement of special permit rules. ( )

**04. Current Schedule of Fees.** Periodic changes to the fee schedule will be subject to legislative review and approval procedures in accordance with Chapter 52, Title 67, Idaho Code, Administrative Procedure Act. ( )

- a. Oversize only, single trip, thirty dollars (\$30). ( )
- b. Oversize only, two (2) trips, thirty six dollars (\$36). ( )
- c. Oversize single trip exceeding sixteen (16') feet wide, or sixteen (16') feet high or one hundred ten (110') feet long, thirty-three dollars (\$33). ( )
- d. Reducible Loads, annual, twelve (12) consecutive months: Cylindrical hay bales, two (2) wide, Multiple width loads of kiln stacked lumber, reducible loads, up to and including fifteen (15') feet high, Disabled Vehicle, forty-five dollars (\$45). ( )
- e. Oversize Non-Reducible, annual, twelve (12) consecutive months: Manufactured homes, modular building and office trailers; Farm tractors exceeding nine (9') feet width on Interstate and implements of husbandry; Oversize/Overweight Snowplow; Multiple width loads of crane booms; Multiple width loads of conveyer units; East port/Canadian Weight; forty five dollars (\$45). ( )
- f. Extra Length/Weight (reducible) annual, twelve (12) consecutive months, authority to exceed eighty thousand (80,000) lbs. on reducible loads up to one hundred twenty nine thousand (129,000) pounds, or exceeding the length limits imposed in Section 49-1010, Idaho Code, forty five dollars (\$45). ( )
- g. Overweight/Oversize or Overweight only (non-reducible) single trip, thirty-three dollars (\$33). ( )
- h. Overweight/Oversize or Overweight only (non-reducible), two (2) trips, thirty-three dollars (\$33). ( )
- i. Overweight/Oversize (non-reducible) single trip, exceeding sixteen (16') feet wide, or sixteen (16') feet high or one hundred ten (110') feet long, thirty- three dollars (\$33). ( )
- j. Overweight/Oversize (non-reducible) two (2) trips within seven (7) days, exceeding sixteen (16') feet wide, or sixteen (16') feet high or one hundred ten (110') feet long, thirty-three dollars (\$33). ( )
- k. Overweight/Oversize (non-reducible) annual permit fee for twelve (12) consecutive months, one hundred twenty-eight dollars (\$128). ( )
- l. Fee for reissuance or transfers, fifteen dollars (\$15). ( )
- m. Annual special permits purchased online will be five dollars (\$5) less than the listed price. ( )

**05. Additional Fees.** The Department may require reimbursement of actual costs incurred for extraordinary services provided, incidental and necessary to the planning and/or movement of loads that require a special permit moving under the requirements of a traffic control plan. ( )

**911. – 949. (RESERVED)**

**950. REVOCATION OF PERMIT FOR NON-COMPLIANCE WITH THE LIMITATIONS OR PROVISIONS OF THE PERMIT.**

**01. Disqualification of Permits.** The permit shall become invalid and the cited vehicle may be disqualified for reissuance of permits if convicted of the following: ( )

- a. The vehicle combination does not satisfy the requirements of Federal Motor Carrier Safety Regulations Part 393. ( )
- b. The vehicle combination violates permitting conditions (other than weight) for the following: ( )

- i. Failure to travel on Extra Length or Up to 129,000 Pound designated routes. ( )
- ii. Failure to properly display required flags and/or signs. ( )
- iii. Failure to provide required number of pilot cars and/or proper placement. ( )
- iv. Failure to provide required lighting for travel during hours of darkness. ( )
- v. Failure to travel during the hours of operation as specified on the permit. ( )
- vi. Failure to comply with wind velocity requirements when moving manufactured housing, office trailers, and modular buildings. ( )
- vii. Failure to comply when travel conditions become hazardous. Hazardous conditions include, but are not limited to, ice, snow or frost; or when visibility is restricted to less than five hundred (500) feet. ( )
- c. The vehicle combination violates weight limits under Section 49-1001 (1)(2) and (9), Idaho Code. ( )
  - i. Violating weight limits for single, tandem, tridem, quad, or other type axle groups by more than fifteen percent (15%). ( )
  - ii. Violating gross or bridge weight allowances by more than seven percent (7%). ( )
- d. The motor carrier has violated an Out-of-Service order by the Federal Motor Carrier Safety Administration as described in Part 386 (386.73) of the Federal Motor Carrier Safety Regulations. ( )

**02. Permit Revocation Process.** A copy of the judgment of conviction from the court and the special permit authorizing operation must be provided to the Permit Office by enforcement personnel. Paperwork will be reviewed for compliance with the provisions of this rule and, if met, notification will be sent to the company informing them of the pending revocation that will occur within ten (10) days of the letter being issued. ( )

**03. Disqualification Periods.** When a permit has become invalid, the vehicle identified on the invalidated permit may be disqualified for reapplication for permit for a period of thirty (30) days after the first violation, for a period of six (6) months after the second violation, and for a period of one (1) year after the third violation. ( )

**04. Penalties.** In addition to revocation of permits as authorized in this rule, the permittee shall be subject to all applicable penalties provided by law with regard to the provisions violated. ( )

**951. – 979. (RESERVED)**

**980. PERMITTEE RESPONSIBLE FOR INJURY TO PERSONS OR PROPERTY.**

The permittee shall assume all responsibility for injury to persons or damage to public or private property caused directly or indirectly by the transportation of a vehicle or vehicle and load under special permit; and he shall hold harmless the Department and all its officers, agents, employees, and servants from all suits, claims, damages or proceedings, of any kind, as a direct or indirect result of the transportation of the vehicle or vehicle with a load that requires a special permit. ( )

**981. – 999. (RESERVED)**

**IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT**  
**39.03.04 – RULES GOVERNING MOVEMENT OF DISABLED VEHICLES**  
**DOCKET NO. 39-0304-1801 (CHAPTER REPEAL)**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312, 49-201 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

Per the Idaho Transportation Department's commercial motor vehicle permit consolidation rulemaking, as directed by the 2018 Idaho Legislature in **Senate Concurrent Resolution 130**, this administrative rule is being repealed and replaced. For additional information, please visit: <https://itd.idaho.gov/rulemaking/>.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published under Docket No. 39-0300-1801 in the May 2, 2018, Idaho Administrative Bulletin, **Vol. 18-5, pages 145-146**.

**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, please contact Ramón Hobdey-Sánchez, Governmental Affairs Program Specialist, at (208) 334-8810.

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 24, 2018.

DATED this 28th Day of August, 2018.

Ramón S. Hobdey-Sánchez  
Governmental Affairs Program Specialist  
Idaho Transportation Department  
3311 W. State St. – PO Box 7129  
Boise ID 83707-1129  
Phone: (208) 334-8810  
[ramon.hobdey-sanchez@itd.idaho.gov](mailto:ramon.hobdey-sanchez@itd.idaho.gov)

**IDAPA 39.03.04 IS BEING REPEALED IN ITS ENTIRETY**

## IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

### 39.03.04 – RULES GOVERNING SPECIAL PERMITS – OVERWEIGHT NON-REDUCIBLE

#### DOCKET NO. 39-0304-1802 (NEW CHAPTER)

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312, 49-201 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

Per the Idaho Transportation Department's commercial motor vehicle permit consolidation negotiated rulemaking, as directed by the 2018 Idaho Legislature in [Senate Concurrent Resolution 130](#), this administrative rule provides specific safety conditions and travel requirements for the movement of overweight non reducible permitted vehicles and/or loads. This rule also provides the analysis procedures utilized by the Department in the issuance of special permits to vehicles and/or loads that exceed various bridge ratings. For additional information, please visit: <https://itd.idaho.gov/rulemaking/>.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: There are no fees being imposed or increased with 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(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published under Docket No. 39-0300-1801 in the May 2, 2018, Idaho Administrative Bulletin, [Vol. 18-5, pages 145-146](#).

**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, please contact Ramón Hobdey-Sánchez, Governmental Affairs Program Specialist, at (208) 334-8810.

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 24, 2018.

DATED this 30th Day of August, 2018.

Ramón S. Hobdey-Sánchez  
Governmental Affairs Program Specialist  
Idaho Transportation Department  
3311 W. State St. – PO Box 7129  
Boise ID 83707-1129  
Phone: (208) 334-8810  
[ramon.hobdey-sanchez@itd.idaho.gov](mailto:ramon.hobdey-sanchez@itd.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0304-1802**  
**(New Chapter)**

**IDAPA 39**  
**TITLE 03**  
**CHAPTER 04**

**39.03.04 – RULES GOVERNING SPECIAL PERMITS – OVERWEIGHT NON-REDUCIBLE**

**000. LEGAL AUTHORITY.**

This rule, governing the movement of vehicles or loads which are in excess of the sizes or weights allowed by Sections 49-1001, 49-1002 or 49-1010, Idaho Code, is adopted under the authority of Sections 40-312 and 49-1004, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** This rule shall be cited as IDAPA 39.03.04, “Rules Governing Special Permits – Overweight Non-Reducible,” IDAPA 39, Title 03, Chapter 04. ( )

**02. Scope.** This rule states the responsibility of the permittee, the travel restrictions, and maximum weight authorized for special loads. ( )

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations for this chapter. ( )

**003. ADMINISTRATIVE APPEALS.**

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.” ( )

**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 PO Box 7129, Boise, ID 83707-1129. ( )

**02. Office Hours.** Daily office hours are 7:30 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 208-334-8420, 1-800-622-7133, or by fax at 208-334-8419. ( )

**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 Title 74, Chapter 1, Idaho Code. ( )

**007. – 009. (RESERVED)**

**010. DEFINITIONS.**

Refer to IDAPA 39.03.01, “Rules Governing Definitions,” for definitions of the terms used in this rule. ( )

**011. GENERAL RULES AND CONDITIONS.**

Refer to IDAPA 39.03.03, “Rules Governing Special Permits – General Conditions and Requirements” for conditions required for the issuance of special permits. ( )

**012. – 099. (RESERVED)**

**100. RESPONSIBILITY OF PERMITTEE.**

**01. General Responsibilities.** The permittee shall determine and declare the gross weight, distribution of weight, and the dimensions of the vehicle and load and shall submit all other required information before issuance of the permit. The acceptance of a special permit by the permittee is his agreement that the vehicle and load covered by the permit can and will be moved in compliance with the terms and limitations set forth in the permit. When a permit has been accepted by the permittee, such action shall be deemed an unequivocal assurance that he has complied, or will comply with all operating, licensing, and financial responsibility requirements. ( )

**02. Permit to Be Carried in Vehicle.** Refer to IDAPA 39.03.03, “Rules Governing Special Permits – General Conditions and Requirements,” for conditions required for the issuance of special permits. ( )

**03. Certification Load is Non-Reducible.** Refer to IDAPA 39.03.03, “Rules Governing Special Permits – General Conditions and Requirements,” for conditions required for the issuance of special permits. ( )

**04. Basic Limitations Shall not be Exceeded.** Refer to IDAPA 39.03.03, “Rules Governing Special Permits – General Conditions and Requirements,” for conditions required for the issuance of special permits. ( )

**05. Movement, Traffic Control Plans, Loading, Parking on State Highways.** ( )

**a.** The movement of special loads shall be made in such a way that the traveled way will remain open as often as feasibly possible and to provide for frequent passing of vehicles traveling in the same direction. In order to achieve this, a traffic control plan is required to be submitted when operating on two (2) lane highways and exceeding the following dimensions: ( )

i. Width exceeds twenty (20) feet. ( )

ii. Length exceeds one hundred fifty (150) feet. ( )

**b.** The traffic control plan shall be prepared by a licensed engineer or an American Traffic Safety Services Association (ATSSA) certified traffic control supervisor and include the following information: ( )

i. Locations and mileposts of where the vehicle/load can pull over to allow for traffic relief; ( )

ii. How pilot cars and traffic control personnel will be utilized; ( )

iii. Identification of any railroad tracks being crossed and the emergency contact number for the governing entity; and ( )

iv. Procedure for allowing emergency vehicles to navigate around the vehicle/load when necessary. ( )

**c.** The permitted vehicle shall not be loaded, unloaded, or parked upon any State highway, except for emergencies, without the specific permission or by direction of the Department or policing agency having jurisdiction over such highway. ( )

**d.** Overwidth Hauling Vehicles, Restrictions. Refer to IDAPA 09.03.05 “Rules for Governing Special Permits – Oversize Non-Reducible.” ( )

**06. Application for Special Permits. ( )**

**a. How To Apply.** The Special Permit Form ITD-217 becomes a valid application when signed by the Permittee. A separate application Form ITD-217C may be completed by the applicant from which the necessary information may be transferred to the permit by the permit writer. Such applications on Form ITD-217C will usually be received through Ports of Entry and applications may also be accepted by letter or by telephone provided all pertinent and necessary information is submitted. ( )

**b. Information To Be Furnished By Applicant.** Any application for a special permit shall provide for the submittal of all pertinent information required to establish the necessity of the proposed movement and the requisite to an engineering determination of the feasibility of the proposed movement. The following information shall be furnished: ( )

i. **Name.** Name of owner, operator, or lessee of vehicle or vehicles concerned. ( )

ii. **Description of Load.** Manufacturer, model number, etc. ( )

iii. **Identification of Vehicles.** License number, if registered, otherwise serial number, unit number. ( )

iv. **Weight.** Licensed capacity of vehicles subject to registration, if overweight is involved. ( )

v. **Axles.** Number of axles, spacing between axles, number and size of tires. ( )

vi. **Gross Weight.** Gross weight, distribution of weight, overall dimensions. ( )

vii. **Route.** Point of origin and destination, preferred route by road number. ( )

viii. **Start Date.** Date of movement and days required. ( )

ix. **If House Trailer.** License number if privately owned, serial number if caravan permit. ( )

x. **Insurance.** Evidence of insurance, if required. ( )

xi. **Necessity.** Necessity for movement. ( )

xii. **Special Instructions.** Special instructions regarding address to which permit is to be sent and any other pertinent information. ( )

xiii. **Signature.** Signature of applicant. ( )

xiv. **Registration.** Any vehicle hauling or towing non-reducible loads subject to registration is not required to register for the maximum legal weight it can haul to be eligible for an overweight permit. Farm tractors, off road equipment, etc., are exempt from registration but are not exempt from weight limitations. ( )

xv. **Overweight Permit Requirements.** Overweight permits will be issued for non-reducible vehicles and/or loads that exceed legal axle weights and/or eighty thousand (80,000) pounds, with weight reduced to a practical minimum, except that a permit may be issued for a machine with an accessory and loaded separately on the transporting vehicle. Vehicles hauling overweight loads will be required to have five (5) or more axles to qualify for an overweight permit. Self-propelled vocational vehicles or vehicles towing overweight loads may have less than five (5) axles to qualify for an overweight permit. ( )

xvi. **Variable Load Suspension Axle Requirements.** Any vehicle which is equipped with variable load suspension axles (lift axles) transporting overweight loads shall have lift axles fully deployed when adjacent axles exceed legal axle weights. ( )

xvii. **Maximum Tire Weights.** The maximum overweight levels shall not exceed eight hundred (800)

pounds per inch width of tire. ( )

xviii. Single Axle Weight Restriction. When a single axle or steer axle is over thirty five thousand (35,000) pounds, bridge approval shall be required. ( )

xix. Hauling Equipment in Excess of Ten Feet. Special overwidth hauling vehicles exceeding ten (10) feet in width will be permitted, and may be required, in the hauling of excessively heavy loads to improve the lateral distribution of weight, or when a combination of weight, width, or height makes extra width in the hauling vehicle desirable in the public interest. The use of such vehicles more than ten (10) feet in width shall be restricted to loads requiring an overwidth hauling vehicle and the backhaul permit shall be for the unladen vehicle. ( )

**101. – 199. (RESERVED)**

**200. TIME OF TRAVEL RESTRICTIONS FOR SPECIAL LOADS.**

Oversize loads may be transported on Idaho Highways subject to the following conditions: ( )

**01. Red-Coded Routes.** Daylight travel until 2 p.m. on Friday or the day before a holiday, no Saturday, no Sunday. Due to low traffic volumes on these routes early in the mornings of Saturday and Sunday, single trip permits may be issued for dawn to 8 a.m. If the movement is not completed by 8 a.m. the permittee will be required to safely park and not proceed until the next day. ( )

**02. Black-Coded Routes.** Loads not in excess of ten (10) feet wide, one hundred (100) feet long or fifteen (15) feet high may travel twenty-four (24) hours per day, seven (7) days per week; loads in excess of ten (10) feet wide, one hundred (100) feet long, or fifteen (15) feet high may travel daylight hours seven (7) days per week. ( )

**03. Interstate.** Loads not in excess of ten (10) feet wide, one hundred and twenty (120) feet long or fifteen (15) feet high may travel twenty-four (24) hours per day, seven (7) days per week; loads in excess of ten (10) feet wide, one hundred and twenty (120) feet long, or fifteen (15) feet high may travel daylight hours, seven (7) days per week. ( )

**04. Nez Perce – Clearwater Forest Safety and Travel Requirements.** As per a Federal Court decision, the United States Forest Service has the duty to regulate oversize loads traveling through the Nez Perce – Clearwater Forest (US 12 from milepost 74 to 174). ( )

**a.** The Forest Service has issued the following written criteria to determine which “oversize” loads will be subject to Forest Service review: ( )

i. Load exceeds sixteen (16) feet wide, one hundred and fifty thousand pounds (150,000 lbs.), and/or one hundred and fifty (150) feet in length. ( )

ii. Load movement requires longer than twelve (12) hours to travel through the designated mileposts. ( )

iii. Load movement requires physical modification of the roadway or adjacent vegetation to facilitate passage beyond normal highway maintenance. ( )

**b.** For those loads meeting any of the criteria in Paragraph 200.04.a.i. through 200.04.a.iii. of this rule, there will be additional safety requirements for the movement of such loads on US 12 from milepost 74 to 174. These additional safety requirements include, at a minimum, the following: ( )

i. Ambulances and possible law enforcement escorts to ensure public safety. ( )

ii. Safety lighting will be addressed so as to not create a safety hazard to the traveling public. ( )

iii. Loads cannot utilize turnouts, which are designated for recreational vehicles for non-emergency parking. ( )

iv. Time of travel will be determined based on traffic volume and best interest of the public. Night time movement may be required and/or movement may be restricted during holidays or weekends. ( )

v. Loads require a vehicle safety inspection by the Idaho State Police or equivalent agency of another jurisdiction prior to issuance of a permit. ( )

vi. ITD shall monitor the loads as they travel the highway and ensure only one (1) load shall operate on this section of highway at any one time. ( )

**05. Additional Restrictions.** ( )

**a.** Red-Coded Routes – No travel for any load after 2 p.m. on the day preceding a holiday or holiday weekend. A holiday weekend occurs as three (3) consecutive days, when a designated holiday occurs on a Friday or Monday, or when the designated holiday occurs on a Saturday or Sunday, in which case the preceding Friday or the following Monday shall be included in such three (3) day holiday weekend. Travel may be resumed at dawn on the day following the holiday or holiday weekend. ( )

**b.** Black-Coded Routes and Interstate Routes – Loads in excess of ten (10) feet wide, one hundred (100) feet long, or fifteen (15) feet high may not travel after 4:00 p.m. on the day preceding a holiday. Travel may be resumed at dawn on the day following the holiday. ( )

**c.** The following days are designated as holidays: ( )

i. New Year’s Day; ( )

ii. Memorial Day; ( )

iii. Independence Day; ( )

iv. Labor Day; ( )

v. Thanksgiving; and ( )

vi. Christmas. ( )

**d.** Additional restrictions relating to movement of buildings and houses are: ( )

i. Excessively Oversize Loads. Excessively oversize loads shall be restricted to the time of day, or day of the week, when traffic interference will be at a minimum. ( )

ii. Buildings. Time of travel of loads in the building size category shall be restricted to the time of day and/or day of the week, when traffic interference will be at a minimum. ( )

iii. Early Morning Moves. In metropolitan areas and in certain other cases where a serious disruption of traffic would otherwise be unavoidable, the movement of excessively oversize buildings may be permitted, at the discretion of the District Engineer, between 2 a.m. and daybreak to avoid traffic congestion. ( )

**e.** Other time of travel restrictions may be noted on the permit due to special circumstances. ( )

**f.** Overlength restrictions. Oversize vehicles operating under authority of a special permit which exceed seven (7) feet of front overhang, on any vehicle in the combination, are restricted to daylight travel only on two (2) lane, two (2) way highways. ( )

**06. Hours of Darkness.** Hours are defined as extending from sunset to sunrise or at any other time when visibility is restricted to less than five hundred (500) feet. ( )

**07. Heavy Commuter Traffic Restrictions.** ( )

**a.** The movement of oversize permitted vehicles or loads which are in excess of thirteen (13) feet in width may be prohibited from movement on highways on all state and interstate routes at times of heavy commuter traffic within one (1) mile of the city limits of the following cities: ( )

- i. Boise; ( )
- ii. Caldwell; ( )
- iii. Coeur d’Alene; ( )
- iv. Eagle; ( )
- v. Emmett; ( )
- vi. Idaho Falls; ( )
- vii. Meridian; ( )
- viii. Middleton; ( )
- ix. Nampa; ( )
- x. Pocatello; ( )
- xi. Star; ( )
- xii. Twin Falls; ( )
- xiii. Garden City; and ( )
- xiv. Chubbuck. ( )

**b.** Authorized oversize permitted vehicles operating during hours of heavy commuter traffic shall be restricted to the furthest right hand lane. Emergency movement of vehicles/loads responding to imminent hazards to persons or property shall be exempt from the provisions of Section 200. Unless otherwise defined on the permit, the times of heavy commuter traffic shall be considered to be 6:30 a.m. to 8:30 a.m., and 4 p.m. to 6 p.m. Monday through Friday except as noted under Holiday restrictions. Restrictions to the operation of oversize permitted vehicles and/or loads during times of heavy commuter traffic shall appear either on the face of the permit or in the attachments for annual permits. ( )

**08. Hazardous Travel Conditions Restrictions.** Refer to IDAPA 39.03.03, “Rules Governing Special Permits – General Conditions and Requirements,” for limitations on travel during hazardous conditions. ( )

**09. Delaying Movement.** Enforcement personnel responsible for any section of highway shall carry out enforcement action for violations involving special permit operations and may delay movements. ( )

**10. Map Resources.** The Pilot/Escort Vehicle and Travel Time Requirement Map available at the Idaho Transportation Department Special Permit Office, and Ports of Entry. ( )

**11. Additional District Approval and Allowance for Approval Time.** District approval will be obtained by the Special Permit office and may require up to twenty-four (24) working hours. District approval is required when vehicles or loads exceed: ( )

- a.** Sixteen (16) feet wide on red coded routes; ( )

- b. Eighteen (18) feet wide on black coded routes and interstate highways; ( )
- c. Sixteen (16) feet high on any route; or ( )
- d. One hundred twenty (120) feet long on any route. ( )

**300. MAXIMUM OVERWEIGHT LEVELS FOR ANNUAL OVERWEIGHT/OVERSIZE PERMITS.**

**01. Allowable Gross Vehicle Weight.** The gross vehicle weight allowable by overweight permit is subject to the seasonal stability of the roadway and the capacity of the structures on the route of travel. For the purpose of issuing special permits, seven (7) levels of overweight are established, based on the weight formula of  $W = 500((LN/N-1) + 12N + 36)$  and routes for carrying the various levels of overweight are designated by color coding. The Weight Formula (“W”) is the maximum weight in pounds (to the nearest five hundred (500) pounds) carried on any group of two (2) or more consecutive axles. “L” is the distance in feet between the extremes of any group of two (2) or more consecutive axles, “N” is the number of axles under consideration. The load factor based on the most critical bridge on the highway route will also be used in determining allowable weights. ( )

**a. Red Routes –** The red routes contain posted bridges and require approval or analysis from the Department. A vehicle configuration may be issued an annual overweight/oversize permit for travel on red routes only, upon completion of an analysis verifying the requested weights are acceptable. The annual permit will be issued for a specific vehicle configuration, operating on a specific route, at specific weights. All information will be listed on the annual permit and will be subject to revocation at such time the vehicle configuration changes (such as axle spacings), the approved weights change, or a bridge rating changes. Annual permits issued for red routes will be in addition to the annual permit required for other routes. ( )

**b. Yellow Routes –** The yellow overweight level is based on a single axle loading of twenty-two thousand five hundred (22,500) pounds, a tandem axle loading of thirty-eight thousand (38,000) pounds, and a tridem axle loading of forty-eight thousand (48,000) pounds or the equivalent loading as determined by spacings and number of axles and computed by applying the formula  $W = 560 ((LN/N-1) + 12N + 36)$ . ( )

**c. Orange Routes –** Orange overweight level is based on a single axle loading of twenty-four thousand (24,000) pounds, a tandem axle loading of forty-one thousand (41,000) pounds, and a tridem axle loading of fifty-one thousand five hundred (51,500) pounds or the equivalent loading as determined by spacings and number of axles and computed by applying the formula  $W = 600 ((LN/N-1) + 12N + 36)$ . ( )

**d. Green Routes –** The green overweight level is based on a single axle loading of twenty-five thousand five hundred (25,500) pounds, a tandem axle loading of forty-three thousand five hundred (43,500) pounds, and a tridem axle loading of fifty-four thousand five hundred (54,500) pounds or the equivalent loading as determined by spacings and number of axles and computed by applying the formula  $W = 640 ((LN/N-1) + 12N + 36)$ . ( )

**e. Blue Routes –** Blue overweight level is based on a single axle loading of twenty-seven thousand (27,000) pounds, a tandem axle loading of forty-six thousand (46,000) pounds, and a tridem axle loading of fifty-seven thousand five hundred (57,500) pounds or the equivalent loading as determined by spacings and number of axles and computed by applying the formula  $W = 675 ((LN/N-1) + 12N + 36)$ . ( )

**f. Purple Routes –** The purple overweight level is based on a single axle loading of thirty thousand (30,000) pounds, a tandem axle loading of fifty-one thousand five hundred (51,500) pounds, and a tridem axle loading of sixty-four thousand five hundred (64,500) pounds or the equivalent loading as determined by spacings and number of axles and computed by applying the formula  $W = 755 ((LN/N-1) + 12N + 36)$ . ( )

**g. Black Routes –** The black overweight level is based on a single axle loading of thirty-three thousand (33,000), pounds a tandem axle loading of fifty-six thousand (56,000) pounds, and a tridem axle loading of seventy thousand five hundred (70,500) pounds or the equivalent loading as determined by spacings and number of axles and computed by applying the formula  $W = 825 ((LN/N-1) + 12N + 36)$ . ( )

**02. Vehicles or Loads Exceeding Annual Permitted Weights.** Vehicles or loads exceeding the axle

weights, groups of axle weights, or total gross weights allowed on any of the overweight levels described in Subsection 300.01 of this rule must operate by single trip permits only if approved. ( )

**301. – 399. (RESERVED)**

**400. OVERWEIGHT PERMITS REQUIRING BRIDGE ANALYSIS.**

Requests to transport vehicles and/or loads at weights in excess of the weights allowed on a routine basis will require, at a minimum, an additional review and approval from the special permit office and may require an engineering analysis when structures are involved on the route(s) to be traveled. The Department may waive the requirement for engineering analysis provided sufficient prior analyses for similar loadings have been performed by the Department for the involved structures. The following information may be requested, to be provided to the special permit office when an engineering analysis is required: ( )

**01. Drawing of Vehicle.** A schematic drawing or other specific information with regard to placement of axles, distance between axles and/or wheels, and distribution of gross weight on axles and/or wheels. ( )

**401. – 499. (RESERVED)**

**500. BRIDGE ANALYSIS CRITERIA AND TIME FRAMES.**

The Department may take up to five (5) business days for an analysis on a vehicle or vehicle combination not in excess of two hundred fifty thousand (250,000) pounds and up to ten (10) business days for an analysis on a vehicle or vehicle combination over two hundred fifty thousand (250,000) pounds. Up to ten (10) business days will also be used for the review process of an analysis done by a third party. The following criteria will be used to determine bridge analysis work and whether it is to be completed by the Department or a qualified and pre-approved third party. If a third party is required, the applicant is responsible for finding, initiating and paying for the cost of that analysis. ( )

**01. Vehicle Combinations in Excess of Eight Hundred Thousand (800,000) Pounds.** Vehicle combinations in excess of eight hundred thousand (800,000) pounds will be required to have a third party complete the bridge analysis. The analysis will then be reviewed by the Department for final approval or denial. ( )

**02. Preliminary Information or Bid Work.** When a permit request is placed and paid for, the Department will complete the analysis, otherwise a third party will be required to complete the bridge analysis. An analysis completed by a third party may be used when a permit request is made and it will be reviewed by the Department for final approval or denial. ( )

**03. Overweight Permit Requests with Multiple Configurations.** Requests made to analyze multiple vehicle configurations for a specific route to determine which vehicle combination will be approved requires the analysis to be completed by a third party. The analysis will then be reviewed by the Department for final approval or denial. ( )

**04. Overweight Permit Requests with Multiple Routes.** Requests made to analyze multiple routes for a specific vehicle combination in order to determine which route will be approved requires the analysis to be completed by a third party. The analysis will then be reviewed by the Department for final approval or denial. ( )

**05. Extenuating Circumstances.** The Department may under extenuating circumstances require that a bridge analysis be completed by a third party. ( )

**501. – 599. (RESERVED)**

**600. SPECIAL PERMITS FOR SELF PROPELLED VEHICLES.**

Permitted overweight/oversize self-propelled vocational vehicles (such as cranes, loaders, motor graders, drills) may haul or tow a motorized vehicle provided that the motorized vehicle or combination of vehicles being towed (trailer and motorized vehicle) does not exceed eight thousand (8,000) pounds and the motorized vehicle is used solely for return trip after delivery of the permitted vehicle. ( )

**601. – 999. (RESERVED)**

**IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT**  
**39.03.05 – RULE GOVERNING VARIABLE LOAD SUSPENSION AXLES**  
**DOCKET NO. 39-0305-1801 (CHAPTER REPEAL)**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312, 49-201 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

Per the Idaho Transportation Department's commercial motor vehicle permit consolidation rulemaking, as directed by the 2018 Idaho Legislature in **Senate Concurrent Resolution 130**, this administrative rule is being repealed and replaced. For additional information, please visit: <https://itd.idaho.gov/rulemaking/>.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published under Docket No. 39-0300-1801 in the May 2, 2018, Idaho Administrative Bulletin, **Vol. 18-5, pages 145-146**.

**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, please contact Ramón Hobdey-Sánchez, Governmental Affairs Program Specialist, at (208) 334-8810.

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 24, 2018.

DATED this 28th Day of August, 2018.

Ramón S. Hobdey-Sánchez  
Governmental Affairs Program Specialist  
Idaho Transportation Department  
3311 W. State St. – PO Box 7129  
Boise ID 83707-1129  
Phone: (208) 334-8810  
[ramon.hobdey-sanchez@itd.idaho.gov](mailto:ramon.hobdey-sanchez@itd.idaho.gov)

**IDAPA 39.03.05 IS BEING REPEALED IN ITS ENTIRETY**

## IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

### 39.03.05 – RULES GOVERNING SPECIAL PERMITS – OVERSIZE NON-REDUCIBLE

#### DOCKET NO. 39-0305-1802 (NEW CHAPTER)

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312, 49-201 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

Per the Idaho Transportation Department's commercial motor vehicle permit consolidation rulemaking, as directed by the 2018 Idaho Legislature in **Senate Concurrent Resolution 130**, this administrative rule provides specific safety conditions and travel requirements in the movement of non-reducible (size only) permitted vehicles and/or loads. This rule also provides specific safety requirements for escort vehicles in the movement of oversize vehicles and/or loads. For additional information, please visit: <https://itd.idaho.gov/rulemaking/>.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: There are no fees being imposed or increased with 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(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published under Docket No. 39-0300-1801 in the May 2, 2018, Idaho Administrative Bulletin, **Vol. 18-5, pages 145-146**.

**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, please contact Ramón Hobdey-Sánchez, Governmental Affairs Program Specialist, at (208) 334-8810.

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 24, 2018.

DATED this 30th Day of August, 2018.

Ramón S. Hobdey-Sánchez  
Governmental Affairs Program Specialist  
Idaho Transportation Department  
3311 W. State St. – PO Box 7129  
Boise ID 83707-1129  
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[ramon.hobdey-sanchez@itd.idaho.gov](mailto:ramon.hobdey-sanchez@itd.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0305-1802**  
**(New Chapter)**

**IDAPA 39**  
**TITLE 03**  
**CHAPTER 05**

**39.03.05 – RULES GOVERNING SPECIAL PERMITS – OVERSIZE NON-REDUCIBLE**

**000. LEGAL AUTHORITY.**

This rule, governing the movement of vehicles or loads that are in excess of the sizes allowed by Sections 49-940, 49-1001, 49-1002, 49-1004, or 49-1010, Idaho Code, is adopted under the authority of Section 49-201 and 49-312, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** This rule shall be cited as IDAPA 39.03.05, “Rules Governing Special Permits – Oversize Non-Reducible,” IDAPA 39, Title 03, Chapter 05. ( )

**02. Scope.** This rule states the requirements for the movement of oversize loads. ( )

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations for this chapter. ( )

**003. ADMINISTRATIVE APPEALS.**

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.” ( )

**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 PO Box 7129, Boise, ID 83707-1129. ( )

**02. Office Hours.** Daily office hours are 7:30 a.m. to 5 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 208-334-8420, 1-800-622-7133, or by fax at 208-334-8419. ( )

**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 Title 74, Chapter 1, Idaho Code. ( )

**007. – 009. (RESERVED)**

**010. DEFINITIONS.**

Refer to IDAPA 39.03.01, “Rules Governing Definitions Regarding Special Permits,” for definitions of the terms used in this rule. ( )

**011. – 049. (RESERVED)**

**050. SAFETY INSPECTION REQUIREMENTS FOR OVERSIZE VEHICLES AND/OR LOADS.**

Refer to IDAPA 39.03.03, “Rules Governing Special Permits – General Conditions and Requirements,” for conditions required in this rule. ( )

**051. – 059. (RESERVED)**

**060. BRAKES.**

Refer to IDAPA 39.03.03, “Rules Governing Special Permits – General Conditions and Requirements,” for conditions required in this rule. ( )

**061. – 069. (RESERVED)**

**070. GENERAL OVERSIZE LIMITATIONS.**

**01. Maximum Dimensions Allowed.** The maximum dimensions of oversize vehicles or oversize loads shall depend on the character of the route to be traveled: width of roadway, alignment and sight distance, vertical or horizontal clearance, and traffic volume. ( )

**02. Practical Minimum Dimension of Load.** Oversize loads shall be reduced to a practical minimum dimension. Except where noted below, permits will not be issued to exceed legal size if the load is more than one (1) unit in width, height, or length that results in them exceeding legal overhang. Additionally, permits shall not be utilized for multiple unit loads that may be re-positioned to meet legal dimensions established in Section 49-1010, Idaho Code. ( )

**03. Overwidth Loads on Single or Double Trailers.** Non-reducible loads may be transported on double trailer combinations not exceeding seventy-five (75’) feet combination length and single trailers not exceeding fifty-three (53’) feet exclusive of load overhang. ( )

**04. Overwidth Overhang.** Overwidth loads shall distribute overhang to the sides of the trailer as evenly as possible. ( )

**05. Oversize.** Special permits may be issued for continuous operation to haul or transport nonreducible loads having specified maximum oversize dimensions provided such permits for multiple trips can maintain the same measure of protection to highway facilities and to the traveling public as is provided by single trip permits. ( )

**a.** Permits for continuous operation, oversize only. ( )

**i.** Permits for continuous operation shall be issued to one (1) specified power unit. The permittee may tow various units with the specified power unit, either as towaway vehicles or as trailers hauling oversize loads. Oversize loads shall be nonreducible in width, length, or height. In the case of specially constructed equipment, mounted on a towed vehicle, or if the towed vehicle is only hauling an oversize but not overweight load, the permit may be issued to the towed vehicle. ( )

**ii.** Maximum size of loads or vehicles transported under authority of an annual oversize for black and interstate routes shall be limited to a width of sixteen (16’) feet, a height of fifteen feet six inches (15’6”), and to a combination length of one hundred ten (110’) feet including load overhang. Annual oversize permits for red coded routes shall be limited to a width of twelve feet six inches (12’6”). A current Pilot/Escort Vehicle and Travel Time Requirements Map shall accompany such permits for extended operations and shall be considered to be a part of the permit. ( )

**06. Passing Lane Must Be Provided.** Except for short movements in urban areas, and on routes having very low Average Daily Traffic (ADT), permits will not be issued for a load of such dimension that

continuous passage of opposing traffic and frequent passing of following traffic cannot be maintained. Ten (10') feet or more of travelway should be provided for passage of traffic unless there are frequent turnouts, intersections, etc., to provide relief of accumulated traffic to the rear. ( )

**07. Hazardous Travel Conditions Restrictions.** Refer to IDAPA 39.03.03, "Rules Governing Special Permits – General Conditions and Requirements," for limitations on travel during hazardous conditions. ( )

**071. – 079. (RESERVED)**

**080. OVERWIDTH HAULING VEHICLES, RESTRICTIONS.**

**01. Width of Hauling Equipment.** Special permits may be issued for up to ten (10') foot wide trailers hauling non-reducible loads smaller than ten (10') feet wide. The permit issued for oversize loads being hauled on oversize equipment will be valid for the unladen movement and the laden movement, which shall not include commodities either to or from the point of loading or unloading of the oversize load. ( )

**02. Load Dimensions.** Any load exceeding the dimensions of the trailer shall be non-reducible in size. ( )

**03. Hauling Equipment in Excess of Ten Feet.** Special overwidth hauling vehicles exceeding ten (10') feet in width will be permitted, and may be required, in the hauling of excessively heavy loads to improve the lateral distribution of weight, or when a combination of weight, width, or height makes extra width in the hauling vehicle desirable in the public interest. The use of such vehicles more than ten (10') feet in width shall be restricted to loads requiring an overwidth hauling vehicle and the backhaul permit shall be for the unladen vehicle. ( )

**04. Buildings.** Buildings that are too wide to be safely transported on legal-width hauling vehicles shall be moved either on house moving dollies or on trailers that can be reduced to legal width for unladen travel. ( )

**081. – 089. (RESERVED)**

**090. GENERAL CONDITIONS AND REQUIREMENTS.**

Refer to IDAPA 39.03.03, "Rules Governing Special Permits – General Conditions and Requirements," for conditions required for the issuance of special permits. ( )

**091. – 099. (RESERVED)**

**100. LIGHTING REQUIREMENTS FOR OVERSIZE VEHICLES AND/OR LOADS TRAVELING AFTER DARK.**

Refer to IDAPA 39.03.03, "Rules Governing Special Permits – General Conditions and Requirements," for conditions in this rule. ( )

**101. – 199. (RESERVED)**

**200. FLAGGING REQUIREMENTS FOR OVERSIZE VEHICLES AND/OR LOADS.**

Refer to IDAPA 39.03.03, "Rules Governing Special Permits – General Conditions and Requirements," for conditions in this rule. ( )

**201. – 299. (RESERVED)**

**300. SIGNING REQUIREMENTS OF TOWING VEHICLES, OVERSIZE VEHICLES AND/OR LOADS.**

Oversize load signs shall meet the following specifications: ( )

**01. Dimensions.** A minimum of twelve (12") inches high by five (5') feet wide and eight (8") inch high letters, one (1") inch stroke width and black letters on yellow background. ( )

**02. Displaying Signs.** Signs shall be displayed on: ( )

- a. The front or the roof top of the towing vehicle and the rear of the oversize load; or ( )
- b. The front and back or the roof top of self-propelled oversize vehicles. ( )

**03. When Signs Are Required.** Oversize load signs shall be required on all vehicles and/or loads exceeding legal width or vehicle combinations inclusive of loads that exceed seventy five (75') feet. Signs shall not be displayed when the vehicle is empty and of legal dimensions. ( )

**301. – 399. (RESERVED)**

**400. PILOT/ESCORT VEHICLES.**

Pilot/escort vehicle(s) shall be furnished by the permittee and shall be either passenger car(s), truck(s), or vehicles authorized by the Special Permit Office, however shall not exceed sixteen (16,000) pounds. The truck(s) used as pilot/escort vehicle(s) shall not be loaded in such a manner as to cause confusion to the public as to which vehicle is the one under escort. Vehicles towing trailers shall not qualify as pilot/escort vehicles. ( )

**01. Loads Over Sixteen Feet High.** Height poles are required in the front of the pilot/escort vehicles leading all loads over sixteen (16') feet high with a non-metallic height pole deployed. ( )

**401. PILOT/ESCORT VEHICLE SIGN REQUIREMENTS.**

**01. Oversize Load Signs.** All pilot/escort vehicles while escorting an oversize load shall display a sign on the roof top of the vehicle having the words OVERSIZE LOAD. Such signs shall not be displayed and shall be considered illegal except when the pilot/escort vehicle is actually piloting/escorting an oversize load. ( )

**02. Dimensions.** Twelve (12") inches high by five (5') feet wide and eight (8") inch high letters, one (1") inch stroke width, and black letters on yellow background. ( )

**402. PILOT/ESCORT VEHICLE LIGHTING REQUIREMENTS.**

**01. Multiple Lights.** Flashing or rotating amber lights displayed on the pilot/escort vehicle shall be mounted at each end of the required OVERSIZE LOAD sign above the roofline of the vehicle and be visible from the front, rear, and sides of the pilot/escort vehicle. These lights shall meet the minimum standards outlined under oversize vehicle and/or load lighting requirements and shall be on at all times during escorting movements. ( )

**02. Single Light.** As an alternate, a pilot/escort vehicle may display one (1) rotating or flashing amber beacon visible from a minimum of five hundred (500') feet, mounted above the roofline and visible from the front, and rear, and sides of the pilot/escort vehicle. The light shall be on at all times during escorting movements. ( )

**03. Light Bars.** Light bars, when in use shall display amber colored lights meeting the minimum visibility requirements, found in IDAPA 39.03.03, "Rules Governing Special Permits – General Conditions and Requirements," Section 070. ( )

**04. Pilot/Escort Lights On During Movement of Escorted Load.** The pilot/escort vehicle's headlights and taillights shall be on while escorting the permitted load. ( )

**403. PILOT/ESCORT VEHICLE EQUIPMENT.**

**01. Required Equipment to be Carried in a Pilot/Escort Vehicle.** A pilot/escort vehicle shall carry the following items of equipment when piloting/escorting an over dimensional vehicle and/or load. ( )

- a. Standard eighteen (18") inch STOP and SLOW paddle sign. ( )
- b. Three (3) bi-directional emergency reflective triangles. ( )
- c. A minimum of one (1) five (5) pound B, C, fire extinguisher. ( )

**d.** An ANSI Class 2 or 3 safety vest, shirt, or jacket either orange or yellow, which must be worn by the operator when working out of the vehicle during daylight hours. An ANSI Class3 safety vest, shirt or jacket either orange or yellow, which must be worn by the operator when working out of the vehicle during nighttime hours. ( )

**e.** Two (2) spare oversize load signs for escorted loads meeting the size requirements of Section 300 of these rules. ( )

**f.** Non-conductive non-destructive height pole with a flexible tip on the front of the pilot/escort vehicle for determining vertical clearances (when required). ( )

**g.** Valid drivers license. ( )

**h.** Two-Way Radio. ( )

**i.** Hardhat. ( )

**j.** Flashlight (operable). ( )

**k.** First Aid Kit. ( )

**02. Two-Way Radio.** On all movements requiring a pilot/escort vehicle, both the towing unit and the pilot/escort vehicle(s) shall be equipped with two-way radio equipment licensed under Federal Communications Commission regulations adequate to provide reliable voice communication between the drivers thereof at all times during the movement of the piloted/escorted vehicle and/or load. Transmitting and receiving capabilities of the radio equipment used shall be adequate to provide the required communication over a minimum distance of one-half (1/2) mile separation under conditions normally encountered along the proposed route. ( )

**404. PILOT/ESCORT VEHICLE PLACEMENT.**

**01. Front Pilot/Escort Vehicle.** The movement of an oversize vehicle and/or load may be preceded by a pilot/escort vehicle on those sections of highway where the vehicle and/or load cannot travel within its proper travelway lane. ( )

**02. Rear Pilot/Escort Vehicle.** As authorized by Section 49-940, Idaho Code, when the width of a load obstructs the driver's view to the rear so they cannot see two hundred (200') feet behind them, a rear escort shall be required to accompany the oversize load and to communicate with the driver of the permitted load concerning impeded overtaking traffic for the purpose of providing passing opportunity. ( )

**03. Advance Pilot/Escort Vehicle.** A third pilot/escort vehicle may be required when the load is of such extreme dimensions for the route of travel as to require holding opposing traffic at turnouts and intersections to provide for passage of the load. ( )

**04. First Movement from the Forest.** A pilot/escort vehicle is not required on the first movement from the forest of tree-length logs or poles if the overall length does not exceed one hundred ten (110') feet. Secondary movements must comply with the requirements stated on the Pilot/Escort Vehicle and Travel Time Requirements map. ( )

**05. Spacing.** Approximately one thousand (1,000') feet shall be maintained in rural areas between the piloting/escorting vehicle and any oversize load. This spacing may be reduced in urban areas when necessary to provide traffic control for turning movements. ( )

**405. – 499. (RESERVED)**

**500. TIME OF TRAVEL RESTRICTIONS FOR SPECIAL LOADS.** Refer to IDAPA 39.03.04, "Rules Governing Special Permits – Overweight Non-Reducible," for conditions required in this rule. ( )

**501. – 549. (RESERVED)**

**550. MOVEMENT, TRAFFIC CONTROL PLANS, LOADING, PARKING ON STATE HIGHWAYS.**

Refer to IDAPA 39.03.04, “Rules Governing Special Permits – Overweight Non-Reducible,” for conditions required in this rule. ( )

**01. Additional District Approval and Allowance for Approval Time.** District approval will be obtained by the Special Permit office and may require up to twenty-four (24) working hours. District approval is required when vehicles or loads exceed: ( )

- a.** Sixteen (16’) feet wide on red coded routes; ( )
- b.** Eighteen (18’) feet wide on black coded routes and interstate highways; ( )
- c.** Sixteen (16’) feet high on any route; or ( )
- d.** One hundred twenty (120’) feet long on any route. ( )

**551. – 599. (RESERVED)**

**600. OVERWIDTH PERMITS FOR IMPLEMENTS OF HUSBANDRY.**

**01. Farm Tractors on Interstate Highways.** Farm tractors transported on Interstate Highways are required to have special permit authority if width exceeds nine (9’) feet. A farm tractor when attached to an implement of husbandry or when drawing an implement of husbandry shall be construed to be an implement of husbandry and is not required to have a permit. Farmers, equipment dealers, or custom operators may be issued single trip or annual permits under this rule for transportation of farm tractors, having a width in excess of nine (9’) feet to or from a farm involving Interstate Highway travel. The transportation of farm tractors or implements of husbandry for hire, or not being transported from one farm operation to another, is a common-carrier operation. Exemptions from legal width limitation do not apply to common-carrier operations. Farm tractors or implements of husbandry hauled for hire, or used in the furtherance of a business (not to include farming operations), are subject to the same special permit regulations as other oversize loads when the width of the load exceeds legal-width limitations, and must operate under oversize permits. ( )

**02. Other Than Farm to Farm.** Implements of husbandry exceeding eight feet six inches (8’6”) in width being transported other than from one (1) farm operation to another farm operation shall require special permits except when the farmer or their designated agents, including without limitation, equipment dealers transporting implements of husbandry and equipment for the purpose of: ( )

- a.** The repair or maintenance of such implements of husbandry and equipment when traveling to or from a farm to a repair or maintenance facility during daylight hours; or ( )
- b.** The purchase, sale, lease or rental of such implements of husbandry or equipment when traveling between a farm and a dealership, auction house, or other facility during daylight hours. ( )

**03. Farm Permits.** Single trip permits must be ordered at the permit office. Annual permits will be issued to towing units or to self-propelled farm tractors or towed units, or blanket permits may be issued to an Idaho domicile applicant without vehicle identification. Such blanket permits may be transferred from one (1) vehicle to another vehicle but shall be valid only when the permit is with the overwidth vehicle and/or load. A photocopy of the permit is valid, provided that the Pilot/Escort Vehicle and Travel Time Requirements Map and Vertical Clearance of Structures Map furnished by the Idaho Transportation Department are included. Such annual permits for implements of husbandry or farm tractors are subject to the same maximum dimensions, travel time exclusions, and safety requirements as other overwidth annual permits and are valid for continuous travel for twelve (12) consecutive months. ( )

**04. Overwidth Farm Trailers.** Trailers or semi-trailers exceeding eight feet six inches (8’ 6”) wide,

but not wider than the implement of husbandry, used for the transportation of implements of husbandry to or from a farm for agricultural operations, shall be exempt from special permitting requirements. This exemption does not apply to trailers or semi-trailers used in common carrier operations, hauling for hire or used in the furtherance of a business (not to include farming operations). ( )

a. Exempt trailers, as listed above, may not be used to haul implements of husbandry that are narrower than the overwidth trailer. ( )

b. Empty trailers, as listed above, being used to pick up or drop off an implement of husbandry from a farm to a farm are also exempt and must be reduced to a practical minimum dimension (i.e. dropping side extensions). ( )

**601. – 699. (RESERVED)**

**700. MANUFACTURED HOMES, MODULAR BUILDINGS, AND OFFICE TRAILERS.**

**01. Registration and Licensing Requirements.** All manufactured homes moved on their own axles on any public highway are required to be licensed, permanently or temporarily, with the exception of, new manufactured homes, being transported either prior to first sale at retail or to the initial setup location of the original purchaser. The manufactured home registration (if required) and general property tax receipt shall be made available for inspection upon demand of any enforcement officer. ( )

**02. Insurance Requirements.** The permittee or the driver of the vehicle hauling or towing overwidth manufactured homes, modular buildings, and office trailers shall be required to carry evidence of general liability insurance in the permitted vehicle written by a company licensed in Idaho showing coverage in the minimum amounts of three hundred thousand dollars (\$300,000) when hauling permittee's own manufactured home. When hauling for hire permittee must carry a minimum amount of seven hundred and fifty thousand dollars (\$750,000) insurance coverage, and have proper authority. ( )

**03. Manufactured Homes, Modular Buildings, and Office Trailers Being Towed on Their Own Axles.** ( )

a. Connection Device. Shall meet the requirements of Federal Motor Carrier Safety Regulations, 49 CFR part 393. ( )

b. Length. Not in excess of eighty (80') feet including tongue. ( )

c. Width. Shall be limited to a maximum of sixteen (16') feet at the base and shall not exceed eighteen (18') feet overall width including the eaves, except on a case-by-case basis as approved by the Department. All movements with a base width in excess of sixteen (16') feet and an overall width in excess of eighteen (18') feet must submit a written request for movement of these units prior to being manufactured and a traffic control plan may also be required with the submission. Prior approval for the movement must be granted before a special permit is issued. Determination of manufactured home, modular building, or office trailer width shall be exclusive of such appurtenances as clearance lights, door handles, window fasteners, door and window trim, moldings and load securement devices up to but not in excess of three (3") inches on each side of load. ( )

d. Eaves. No restrictions on eaves as long as the eighteen (18') feet maximum overall width limitation is not exceeded, or for those movements approved by the Department on a case-by-case basis. ( )

e. Weight. The maximum allowable load for any vehicle tire operated on any public highway shall be in accordance with Code of Federal Regulations, Title 24, Chapter 20, Office of Assistant Secretary for Housing - Federal Housing Commissioner, Department of Housing and Urban Development, Part 3280, Subpart J, (CFR Title 24). ( )

f. Running Gear Assembly – General. The entire system (frame, drawbar, and coupling mechanism, running gear assembly including brake systems, axles and lights) shall be in accordance with CFR Title 24, for the year the manufactured home was built. In addition thereto, all tires used in transportation of manufactured homes

under this category shall be in accordance with Federal Motor Carrier Safety Regulations, part 393. ( )

**g.** Construction. Construction shall be in accordance with CFR Title 24, for the year the manufactured home was built. ( )

**h.** Axles. All axles shall be in accordance with CFR Title 24, for the year the manufactured home was built, except that sixteen (16) foot wide (at the base) manufactured homes shall be required to have a minimum of four (4) axles. ( )

**i.** Brakes. Brakes shall be in accordance with CFR Title 24, for the year the manufactured home was built, except that sixteen (16) foot wide (at the base) manufactured homes shall be required to have brakes on a minimum of three (3) axles. ( )

**j.** Lights. The unit shall have stop lights, turn signals, and tail lights that meet the requirements of Federal Motor Carrier Safety Regulations, part 393. ( )

**k.** Safety Chains. Two (2) safety chains shall be used, one (1) each on right and left sides of, but separate from, the coupling mechanism connecting the tow vehicle and the manufactured home while in transit. Chain shall be three-eighths (3/8) inch diameter steel. Chains shall be strongly fastened at each end to connect the tow vehicle and manufactured home and assure that in the event of a coupling failure the manufactured home will track behind the tow vehicle. ( )

**04. Vehicles for Towing/Hauling Manufactured Homes, Modular Buildings, and Office Trailers.** ( )

**a.** Towing Vehicle. Tow vehicles for manufactured homes, modular buildings, and office trailers shall comply with the following minimum requirements:

<b>Manufactured Homes and Office Trailers Width</b>	<b>Tire Width</b>	<b>Drive Axle Tire Rating</b>	<b>Min. Unladen Weight</b>	<b>Rear Axle Rating</b>
Over 8 feet to 10 feet	7.00 inches	6 Ply	6,000#	None
Over 10 feet to 12 feet	8.00 inches	8 Ply	8,000#	15,000#
Over 12 feet	8.25 inches	10 Ply	12,000#	15,000#

**b.** Brakes. Shall be in accordance with Federal Motor Carrier Safety Regulations part 393. ( )

**c.** Rear Axle. Towing vehicle shall have a minimum of a single axle with dual mounted tires. ( )

**d.** Connection Device. Shall meet the requirements of Federal Motor Carrier Safety Regulations, part 393. ( )

**e.** Horsepower Requirement. When towing/hauling a manufactured home, modular building, or office trailer a minimum speed of twenty-five (25) mph must be maintained. ( )

**f.** Operator Requirements. Operators of vehicles towing manufactured homes, modular buildings and office trailers over ten (10') feet wide at the base shall have a class A or B Commercial Driver's License (CDL) as appropriate. ( )

**g.** Speed Limit Requirements. Vehicles towing manufactured homes or office trailers on their own axles shall be limited to a maximum of sixty (60) miles per hour. ( )

**05. Manufactured Home, Modular Building, Or Office Trailer Being Hauled.** ( )

a. Length. Not in excess of eighty (80') feet. ( )

b. Width. Not in excess of sixteen (16') feet at the base and eighteen (18') feet overall, except on a case-by-case basis as approved by the Department. All movements with a base width in excess of sixteen (16') feet and an overall width in excess of eighteen (18') feet must submit a written request for movement of these units prior to being manufactured and a traffic control plan may also be required with the submission. Prior approval for the movement must be granted before a special permit is issued. ( )

c. Eaves. No restrictions on eaves as long as the eighteen (18') foot maximum overall width limitation is not exceeded, or for those movements approved by the department on a case-by-case basis. ( )

**701. – 729. (RESERVED)**

**730. HAULING EQUIPMENT FOR A MANUFACTURED HOME, MODULAR BUILDING, OR OFFICE TRAILER.**

**01. Hauling Equipment.** Vehicles used to haul manufactured homes, modular buildings, and office trailers shall be combinations designed to meet the requirements of Federal Motor Carrier Safety Regulations for vehicles engaged in interstate commerce. Such vehicles shall be of structural capacity to safely accommodate the loading at all times. ( )

**02. Lights.** The unit shall have stop lights, turn signals, and tail lights that meet the requirements of Federal Motor Carrier Safety Regulations, part 393. ( )

**03. Securing Loads.** A minimum of four (4) steel, three fourths (3/4") inch diameter bolts will be used to directly connect the main support members of the modular building, manufactured home, or office trailer to the support frame of moving equipment. Two (2) bolts each shall be located not less than twelve (12') feet from the forward and rear ends of the modular building, manufactured home or office trailer. Each of the four (4) bolts shall be at least four (4') feet apart. Equivalent methods of fastening, such as chains or binders, may be used as alternatives. ( )

**731. – 749. (RESERVED)**

**750. GENERAL PROVISIONS – MANUFACTURED HOMES, MODULAR BUILDINGS, AND OFFICE TRAILER.**

**01. Paneling of Open Sides of Multi-Section Modular Buildings, Manufactured Homes, or Office Trailers.** Shall be rigid material, or six (6) mil plastic sheathing (or stronger) backed by a grillwork to prevent billowing and fully enclose open sides of section in transit. ( )

**02. Interior Loading.** If the manufactured home, modular building, or office trailer is to transport furnishings or other loose objects, they shall be secured in position for safe travel. ( )

**03. Construction.** Modular buildings shall be constructed in accordance with the Uniform Building Code as applies to design and construction requirements that will affect overall structural strength and roadability. Manufactured homes and office trailers shall be constructed in accordance with Federal HUD Manufactured Home Construction and Safety Standards. ( )

**751. – 799. (RESERVED)**

**800. RELOCATION OF BUILDING OR HOUSES – GENERAL REQUIREMENTS.**

**01. Buildings Exceeding Sixteen Feet Wide.** Special permits for the transportation of buildings or houses having a basic width in excess of sixteen (16') feet shall be limited to the relocation of previously used buildings. The transportation of new, centrally manufactured houses, buildings, building sections, mobile or modular homes, etc., may be denied special permits if the width at the base is in excess of sixteen (16') feet. ( )

**02. Requirements for Permit.** The requirements of each permit for relocation of a used building or house shall depend on the dimensions of the load as well as a consideration of the width and alignment of the roadway, passing opportunity for the traveling public, vertical or horizontal clearance of bridges or other structures along the route of travel, and traffic volumes. ( )

**03. Additional Restrictions Relating to Movement of Buildings and Houses:** ( )

**a. Excessively Oversize Loads.** Excessively oversize loads shall be restricted to the time of day, or day of the week, when traffic interference will be at a minimum. ( )

**b. Buildings.** Time of travel of loads in the building size category shall be restricted to the time of day and/or day of the week when traffic interference will be at a minimum. ( )

**c. Early Morning Moves.** In metropolitan areas and in certain other cases where a serious disruption of traffic would otherwise be unavoidable, the movement of excessively oversize buildings may be permitted, at the discretion of the District Engineer, between 2 a.m. and daybreak to avoid traffic congestion. ( )

**d. Overlength restrictions.** Oversize vehicles operating under authority of a special permit that exceed seven (7') feet of front overhang, on any vehicle in the combination, are restricted to daylight travel only on two-lane, two-way highways. ( )

**e. Other time of travel restrictions** may be noted on the permit due to special circumstances. ( )

**801. – 849. (RESERVED)**

**850. VERTICAL CLEARANCE REQUIREMENTS.**

**01. Permit for Over height.** The issuance of any permit for movement of over height loads will be subject to the vertical clearance of any structure involved along the route of travel. The Department may require a minimum of twenty-four (24) working hours to allow for the proposed route to be evaluated and approved or denied. ( )

**02. Overhead Traffic Signals.** Any movement of a building, or other over height load, having a loaded height of sixteen feet six inches (16'6") or more may require advance notice if overhead traffic signals are involved in the route. ( )

**03. Overhead Power Lines.** Carriers whose load/vehicle combinations exceed seventeen (17') feet high must contact local utility company(s) for approval and assistance with power lines. ( )

**851. – 869. (RESERVED)**

**870. INSURANCE AND BONDING REQUIREMENTS.**

**01. Insurance.** The permittee when hauling buildings fourteen (14') feet or more in width shall be required to carry evidence of insurance in the permitted vehicle in the same minimum amounts as is required for those permits issued for the movement of overwidth manufactured homes. Minimum requirements are three hundred thousand dollars (\$300,000) combined single limit, (when hauling permittee's own building) and seven hundred fifty thousand dollars (\$750,000) when hauling for hire. ( )

**02. Permittee Responsibility.** The permittee shall be responsible for the protection of sign-posts, guideposts, delineators, and may be required to post bond to cover the costs of repairs or replacements of such facilities. ( )

**03. Bond Requirements.** When an expense to the state can be presumed in providing clearance for an over height load, or for repair of signposts or other such facilities, a cash bond based on estimated costs to the State may be required before issuance of such permit. Any part of the cash bond in excess of material costs, labor, and equipment rental will be returned to the permittee after the actual costs to the State have been determined and

deducted. ( )

**871. – 879. (RESERVED)**

**880. FEES.**

Refer to IDAPA 39.03.03, “Rules Governing Special Permits – General Conditions and Requirements,” for conditions required for the issuance of special permits. ( )

**881. – 889. (RESERVED)**

**890. APPLICATION FOR PERMIT.**

Refer to IDAPA 39.03.04, “Rules Governing Special Permits – Overweight Non-Reducible,” for conditions required for the issuance of special permits. ( )

**891. – 899. (RESERVED)**

**900. CONVOY OF OVERSIZE LOADS.**

**01. Convoying Oversize Loads.** Oversize loads that individually would require a pilot/escort vehicle, except overwidth manufactured homes, office trailers, and modular buildings, may be permitted to travel in convoy with pilot/escort vehicles in front of and behind the convoy, but such convoys shall not exceed four (4) oversize loads or vehicles between pilot/escort vehicles. Maximum width of units in a convoy shall be limited to fourteen (14’) feet wide on black-coded routes of the Pilot/Escort Vehicle and Travel Time Requirements Map and to twelve feet six inches (12’6”) on red-coded routes of the Pilot/Escort Vehicle and Travel Time Requirements Map. Oversize loads that do not individually require a pilot/escort vehicle may travel in convoy without pilot/escort vehicles. Maximum length of units in a convoy shall be limited to one hundred (100’) feet on black-coded routes and seventy five (75’) feet on red-coded routes of the pilot/escort vehicle and travel time requirements map and one hundred twenty (120’) feet on the interstate system. ( )

**02. Convoying Manufactured Homes, Office Trailers, and Modular Buildings.** No convoy of overwidth manufactured homes, modular buildings, or office trailers shall include more than two (2) units between two (2) piloting/escorting vehicles. On those routes where pilot/escort vehicles are required in front and to the rear of an overwidth manufactured home or office trailer, two (2) units may travel in convoy between such piloting/escorting vehicles. On routes requiring only a front pilot/escort vehicle, the manufactured home or office trailer mover may have the option of convoying two (2) units between front and rear pilots/escorts. At no time shall more than one (1) manufactured home or office trailer be piloted/escorted by one (1) pilot/escort vehicle. Maximum width of units in a convoy shall be limited to fourteen (14’) feet wide on black-coded routes and to ten (10’) feet wide on red-coded routes of the Pilot/Escort Vehicle and Travel Time Requirements Map. Minimum spacing of approximately one thousand (1,000’) feet shall be maintained between all units in a convoy except when a pilot/escort is required to control traffic in turning movements. Maximum length of units in a convoy shall be limited to one hundred (100’) feet on black-coded routes and seventy five (75’) feet on red-coded routes of the Pilot/Escort Vehicle and Travel Time Requirements Map and one hundred twenty (120’) feet on the interstate system. ( )

**901. – 999. (RESERVED)**

## IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

### 39.03.06 – RULES GOVERNING ALLOWABLE VEHICLE SIZE

#### DOCKET NO. 39-0306-1801 (CHAPTER REPEAL)

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312, 49-201 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

Per the Idaho Transportation Department's commercial motor vehicle permit consolidation rulemaking, as directed by the 2018 Idaho Legislature in **Senate Concurrent Resolution 130**, this administrative rule is being repealed and replaced. For additional information, please visit: <https://itd.idaho.gov/rulemaking/>.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published under Docket No. 39-0300-1801 in the May 2, 2018, Idaho Administrative Bulletin, **Vol. 18-5, pages 145-146**.

**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, please contact Ramón Hobdey-Sánchez, Governmental Affairs Program Specialist, at (208) 334-8810.

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 24, 2018.

DATED this 28th Day of August, 2018.

Ramón S. Hobdey-Sánchez  
Governmental Affairs Program Specialist  
Idaho Transportation Department  
3311 W. State St. – PO Box 7129  
Boise ID 83707-1129  
Phone: (208) 334-8810  
[ramon.hobdey-sanchez@itd.idaho.gov](mailto:ramon.hobdey-sanchez@itd.idaho.gov)

**IDAPA 39.03.06 IS BEING REPEALED IN ITS ENTIRETY**

## IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

### 39.03.06 – RULES GOVERNING SPECIAL PERMITS FOR EXTRA-LENGTH/EXCESS WEIGHT, UP TO 129,000 POUND VEHICLE COMBINATIONS

DOCKET NO. 39-0306-1802 (NEW CHAPTER)

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312, 49-201 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

Per the Idaho Transportation Department's commercial motor vehicle permit consolidation rulemaking, as directed by the 2018 Idaho Legislature in [Senate Concurrent Resolution 130](#), this administrative rule provides the specific safety conditions, travel requirements and the designated routes for extra-length/excess weight, over 80,000 pounds and up to 129,000 pounds vehicle combinations. The rule also provides the requirements for the request of additional 129,000 pound designated routes. For additional information, please visit: <https://itd.idaho.gov/rulemaking/>.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: There are no fees being imposed or increased with 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(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published under Docket No. 39-0300-1801 in the May 2, 2018, Idaho Administrative Bulletin, [Vol. 18-5, pages 145-146](#).

**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, please contact Ramón Hobdey-Sánchez, Governmental Affairs Program Specialist, at (208) 334-8810.

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 24, 2018.

DATED this 30th Day of August, 2018.

Ramón S. Hobdey-Sánchez  
Governmental Affairs Program Specialist  
Idaho Transportation Department  
3311 W. State St. – PO Box 7129  
Boise ID 83707-1129  
Phone: (208) 334-8810  
[ramon.hobdey-sanchez@itd.idaho.gov](mailto:ramon.hobdey-sanchez@itd.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0306-1802**  
**(New Chapter)**

**IDAPA 39**  
**TITLE 03**  
**CHAPTER 06**

**39.03.06 – RULES GOVERNING SPECIAL PERMITS FOR EXTRA-LENGTH/EXCESS WEIGHT,**  
**UP TO 129,000 POUND VEHICLE COMBINATIONS**

**000. LEGAL AUTHORITY.**

This rule, governing the movement of vehicles which are in excess of eighty thousand (80,000) pounds, and the sizes allowed by 49-1004, 49-1004A, and 49-1010, is adopted under the authority of Section 40-312, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** This rule shall be cited as IDAPA 39.03.06, “Rules Governing Special Permits for Extra-Length/Excess Weight, Up to 129,000 Pound Vehicle Combinations” IDAPA 39, Title 03, Chapter 06. ( )

**02. Scope.** This rule states the requirements and routes for extra-length/excess weight over eighty thousand (80,000) pounds and up to one hundred twenty-nine thousand (129,000) pound vehicle combinations. ( )

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations for this chapter. ( )

**003. ADMINISTRATIVE APPEALS.**

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.” ( )

**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 PO Box 7129, Boise, ID 83707-1129. ( )

**02. Office Hours.** Daily office hours are 7:30 a.m. to 5 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 208-334-8420, 1-800-662-7133 or by fax at 208-334-8419. ( )

**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 Title 74, Chapter 1, Idaho Code. ( )

**007. – 009. (RESERVED)**

**010. DEFINITIONS.**

Refer to IDAPA 39.03.01, “Rules Governing Definitions Regarding Special Permits,” for definitions of the terms used in this rule. ( )

**011. – 049. (RESERVED)**

**050. GENERAL RULES AND CONDITIONS.**

Refer to IDAPA 39.03.03, “Rule Governing Special Permits – General Conditions and Requirements,” for conditions required for the issuance of special permits. ( )

**051. – 099. (RESERVED)**

**100. DESIGNATED ROUTES FOR EXTRA LENGTH VEHICLE COMBINATIONS CARRYING UP TO ONE HUNDRED FIVE THOUSAND FIVE HUNDRED (105,500) POUNDS SHALL BE DESIGNATED IN FOUR CATEGORIES.**

The “Extra Length Map” listing the designated routes for vehicles operating up to one hundred five thousand five hundred (105,500) pounds is available at the Idaho Transportation Department offices. This map is not the same as the “Designated Routes Up to 129,000 Pound Map” listed in Section 200 of these rules. ( )

**01. Blue-Coded Routes.** Routes for combinations not exceeding ninety-five (95) feet in overall length including load overhang (blue-coded routes). A vehicle combination operating on routes designated for up to ninety-five (95) feet shall be designed and assembled in a manner whereby its maximum off-tracking will not exceed five point five zero (5.50) feet on a one hundred sixty-five (165) foot radius when computed. ( )

**02. Red-Coded Routes.** Routes for combinations of vehicles not exceeding one hundred fifteen (115) feet in overall length including load overhang (red-coded routes). A vehicle combination operating on routes designated for up to one hundred fifteen (115) feet shall be designed and assembled in a manner whereby its maximum off-tracking will not exceed six point five zero (6.50) feet on a one hundred sixty-five (165) foot radius when computed. ( )

**03. Black-Coded Routes.** Interstate system routes and specified interchanges providing access to approved breakdown areas located in close proximity to the Interstate system (black-coded routes). A vehicle combination operating on routes in this category shall be designed and assembled in such a manner that its off-tracking may exceed six point five zero (6.50) feet but shall not exceed eight point seventy-five (8.75) feet when computed. Specified interchanges providing access to approved breakdown areas are required to be used by combinations that exceed six point five zero (6.50) feet off-tracking. The specified interchanges will be authorized for either combinations in excess of six point five zero (6.50) feet off-tracking, but not in excess of seven (7) feet off-tracking, or for combinations in excess of seven (7) feet off-tracking but not in excess of eight point seventy-five (8.75) feet off-tracking. ( )

**04. Green-Coded Routes.** Selected state highway routes (green coded routes) for operation of a vehicle combination whereby its maximum off-tracking will not exceed three (3) feet on a one hundred sixty-five (165) foot radius when computed, and its overall length including load overhang does not exceed eighty-five (85) feet. Route approval shall be subject to analysis of pavement condition, bridge capacity, safety considerations, pavement width, curvature, traffic volumes, and traffic operations. ( )

**101. – 199. (RESERVED)**

**200. DESIGNATED ROUTES FOR VEHICLE COMBINATIONS UP TO ONE HUNDRED TWENTY-NINE THOUSAND (129,000) POUNDS.**

In addition to the requirements listed in Sections 300 and 400, vehicle combinations operating up to one hundred twenty-nine thousand (129,000) pounds, must meet the following requirements: ( )

**01. Brakes.** All axles shall be equipped with brakes that meet the Federal Motor Carrier Safety

Regulations and shall be maintained to the Federal Motor Vehicle Safety Standards No. 121 in effect at the time the commercial motor vehicle was manufactured. ( )

**02. Designated Routes.** All designated state approved routes for vehicle combinations to operate at weights above one hundred five thousand five hundred (105,500) pounds will be identified on the “Designated Routes Up to 129,000 Pound Map” which is available at the Idaho Transportation Department. ( )

**a. Black-Coded Routes.** Interstate system routes and specified interchanges providing access to approved breakdown areas located in close proximity to the Interstate system (black-coded routes). A vehicle combination operating on routes in this category shall be designed and assembled in such a manner that its off-tracking may exceed six point five zero (6.50) feet but shall not exceed eight point seven five (8.75) feet when computed. Specified interchanges providing access to approved breakdown areas are required to be used by combinations that exceed six point five zero (6.50) feet off-tracking. The specified interchanges will be authorized for either combinations in excess of six point five zero (6.50) feet off-tracking, but not in excess of seven (7) feet off-tracking, or for combinations in excess of seven (7) feet off-tracking but not in excess of eight point seven five (8.75) feet off-tracking. ( )

**b. Magenta-Coded Routes.** Routes for combinations of vehicles not exceeding one hundred fifteen (115) feet in overall length including load overhang (magenta-coded routes). A vehicle combination operating on routes designated for up to one hundred fifteen (115) feet shall be designed and assembled in a manner whereby its maximum off-tracking will not exceed six point five zero (6.50) feet on a one hundred sixty-five (165) foot radius when computed. ( )

**c. Brown-Coded Routes.** Routes for combinations not exceeding ninety-five (95) feet in overall length including load overhang (brown-coded routes). A vehicle combination operating on routes designated for up to ninety-five (95) feet shall be designed and assembled in a manner whereby its maximum off-tracking will not exceed five point five zero (5.50) feet on a one hundred sixty-five (165) foot radius when computed. ( )

**d.** Routes for combinations operating on non-state maintained highways (orange-coded routes). Local jurisdictions adding, modifying or deleting non-state maintained routes for vehicle combinations operating up to one hundred twenty-nine thousand (129,000) pounds shall provide the route information to the Department. ( )

**03. Requests for Adding Idaho Transportation Department Maintained Non-Interstate Routes.** Routes not currently designated to operate at up to one hundred twenty-nine thousand (129,000) pounds may be added as follows: ( )

**a. Request Form Submission.** The request form (ITD form number 4886) will be completed and submitted to the Idaho Transportation Department Office of the Chief Engineer by the requestor. The requestor will forward the form to the adjacent local jurisdictions. ( )

**b. Request Review/Analysis Process.** ( )

**i.** Once submitted, the request will be reviewed for completeness and the department’s analysis will be completed for engineering and safety criteria. The criteria shall include assessment of pavement and bridges to allow legal tire, axle, and gross weight limits as per Section 49-1001 and 49-1002, Idaho Code, and route off-track requirements which includes road width and curvature. Additional consideration shall be given to traffic volumes and other safety factors. ( )

**ii.** Once the analysis is completed, the request will be submitted to the Chief Engineer, who will report to the Idaho Transportation Board Sub-committee. ( )

**iii.** The Idaho Transportation Board Sub-committee will make a recommendation (proceed to hearing, reject, or request additional information) to the Idaho Transportation Board based upon the Department’s analysis. ( )

**iv.** If the Idaho Transportation Board recommends that the request proceed to hearing, it shall instruct the Chief Engineer to schedule a hearing in the district(s) where the requested route is located. The hearing will be

conducted pursuant to the Idaho Administrative Procedures Act, Title 67, Chapter 52, Idaho Code. ( )

v. The Chief Engineer or designee will conduct the hearing(s) and make a determination after the hearing(s) are held. Following the determination, the Chief Engineer will issue Findings and a Preliminary Order, hereafter referred to as Preliminary Order. ( )

vi. The Department will notify the requestor of the Chief Engineer’s Preliminary Order and post to the Idaho Transportation Department Web site. ( )

vii. An appeal of the Preliminary Order may be made pursuant to the Idaho Administrative Procedures Act, Title 67, Chapter 52, Idaho Code. The appeal shall be made to the Director of the Idaho Transportation Department. ( )

c. Local Highways Approved for Travel Up to 129,000 Pounds. Local routes will be added or removed on the “Designated Routes Up to 129,000 Pound Map” when information and approval is provided to the Department by the local jurisdiction having authority over the local route. ( )

**201. – 299. (RESERVED)**

**300. OPERATING REQUIREMENTS FOR EXTRA-LENGTH/EXCESS WEIGHT PERMITS UP TO ONE HUNDRED TWENTY-NINE THOUSAND (129,000) POUNDS VEHICLE COMBINATIONS.**

All vehicle combinations shall be subject to the following conditions, limitations, and requirements: ( )

**01. Cargo Carrying Units.** Vehicle combinations operating with an overall length in excess of the limits imposed in Section 49-1010, Idaho Code, shall consist of not more than four (4) units, shall not exceed one hundred fifteen (115) feet overall and no such vehicle combination shall include more than three (3) cargo units except that a full truck and full trailer may have an overall length in excess of seventy-five (75) feet but not in excess of eighty-five (85) feet including load overhang. ( )

**02. Power Unit.** The power unit of all vehicle combinations shall have adequate power and traction to maintain a minimum of twenty (20) miles per hour under normal operating conditions on any up-grade over which the combination is operated. ( )

**03. Connecting Devices.** Fifth wheel, drawbar, and other coupling devices shall be as specified by Federal Motor Carrier Safety Regulations, Part 393. ( )

**04. Hazardous Travel Conditions Restrictions.** Refer to IDAPA 39.03.03, “Rules Governing Special Permits – General Conditions and Requirements,” for limitations on travel during hazardous conditions. ( )

**05. Trailer Weight Sequence.** In any extra-length combination, the respective loading of any trailer shall not be substantially greater than the weight of any trailer located ahead of it in the vehicle combination. (Substantially greater shall be defined as more than four thousand (4,000) pounds heavier.) ( )

**06. Operating Restrictions.** Operators of all vehicle combinations governed by this rule shall comply with the following operating restrictions: ( )

a. A minimum distance of five hundred (500) feet shall be maintained between combinations of vehicles except when overtaking and passing. ( )

b. Except when passing another vehicle traveling in the same direction, the combination shall be driven so as to remain at all times on the right hand side of the centerline of a two (2) lane, two (2) way highway, or on the right hand side of a lane stripe or marker of a highway of four (4) or more lanes. ( )

c. Be in compliance with all Federal Motor Carrier Safety Regulations. ( )

**07. Insurance Requirements.** Every vehicle combination operated under this rule shall be covered by insurance of not less than five hundred thousand dollars (\$500,000) combined single limit. The permittee or driver of

the permitted vehicle combination shall carry in the vehicle evidence of insurance written by an authorized insurer to certify that insurance in this minimum amount is currently in force. ( )

**08. Tire Limitations.** Single axles on vehicle combinations shall be equipped with four (4) tires except on the steering axle, or variable load suspension axles (VLS-lift axles), unless equipped with fifteen (15) inch wide or wider single tires. Multiple axle configurations may be equipped with single tires on each of the axles as long as the pounds-per-inch width of tire does not exceed six hundred (600) pounds, the manufacturers rating or legal weights whichever is less. Load for inch width of tire for the front steer axle may not exceed the manufacturer's load rating per tire or the load rating of the axle or twenty thousand (20,000) pounds per axle whichever is less. ( )

**09. Brakes.** Brakes shall meet the Federal Motor Carrier Safety Regulations and shall be maintained to the Federal Motor Vehicle Safety Standards No. 121 in effect at the time the commercial motor vehicle was manufactured. Refer to IDAPA 39.03.03, "Rules Governing Special Permits – General Conditions and Requirements." ( )

**10. Drivers.** Drivers of LCVs shall meet the special training requirements for Longer Combination Vehicles as outlined in 49 CFR Part 380. ( )

**11. Permits.** Permits will be vehicle specific. ( )

**301. – 399. (RESERVED)**

**400. SPECIAL PERMITS FOR OPERATIONS OF EXTRA-LENGTH/EXCESS WEIGHT PERMIT UP TO ONE HUNDRED TWENTY-NINE THOUSAND (129,000) POUNDS VEHICLE COMBINATIONS.**

**01. Permit Attachments.** All vehicles in operation shall be allowed to travel under the authority of special permits issued to the power unit. A copy of this rule shall accompany and shall be a part of all annual extra-length/excess weight, up to one hundred twenty-nine thousand (129,000) pound permits. An allowable gross loads table shall accompany and be referred to on the face of the permit. Operations shall be valid only on routes of the state highway system designated for such purposes as set forth on the "Extra Length Map" of designated routes, or the "Designated Routes Up to 129,000 Pound Map," which shall accompany the permit, and is available at the special permit office and ports of entry. ( )

**02. Permit Requirements and Special Requirements.** Permits issued for operations of extra-length / excess weight up to 129,000 pound vehicle combinations shall be subject to the general requirements of Section 300, and to the following special conditions. ( )

**a.** The operator of any extra-length, excess weight, and up to one hundred twenty-nine thousand (129,000) pound vehicle combination shall complete the Idaho Off-Track Computation Form to provide internal dimensions of the combination and computation of off-track as evidence of compliance with maximum off-track requirements specified for the designated route being traveled. The completed Idaho Off-Track Computation Form, when required, shall be available for inspection by enforcement officers with the permit for the vehicle combination. When the Idaho Off-Track Computation Form is required, permit shall be invalid until the form is completed and available for inspection. ( )

**b.** Permits shall become automatically invalid subject to conditions cited in IDAPA 39.03.03, "Rules Governing Special Permits – General Conditions and Requirements." ( )

**03. Exceeding Allowed Length and/or Idaho Off-Track Limitations.** Extra-length/excess weight permit up to one hundred twenty-nine thousand (129,000) pound vehicle combinations apprehended for exceeding allowed length and/or off-track limitations as set forth in this rule shall be subject to the following course of action: ( )

**a.** The vehicle combination will be escorted by the apprehending officer to the first safe parking location; and ( )

**b.** The driver of the vehicle combination will be issued a single trip, one (1) day permit via a specified

route to the nearest permitted route. The condition of this permit shall require an advance pilot/escort vehicle to escort the vehicle combination, and the pilot/escort vehicle shall meet the pilot/escort vehicle requirements as set forth in IDAPA 39.03.05, "Rules Governing Special Permits - Oversize Non-Reducible." ( )

**401. – 499. (RESERVED)**

**500. GENERAL WEIGHT REQUIREMENTS AND CONDITIONS.**

**01. Weights Allowed on Interstate.** The Federal Highway Amendment Act of 1974 established allowable legal weight limits on Interstate System Highways at twenty thousand (20,000) pounds on single axles, thirty-four thousand (34,000) pounds on tandems, and total gross loads not exceeding eighty thousand (80,000) pounds. ( )

**02. Weights Allowed on Non-Interstate Highways.** Allowable legal weight limits on non-interstate highways are set at twenty thousand (20,000) pounds on single axles, thirty-seven thousand eight hundred (37,800) pounds on tandems, and total gross loads not exceeding eighty thousand (80,000) pounds. ( )

**03. Permit Types to Exceed Eighty Thousand Pounds Gross Weight.** Permits will be issued for vehicle combinations operating on Interstate and non-interstate highways with total gross loads exceeding eighty thousand (80,000) pounds but not to exceed twenty thousand (20,000) per single axle, thirty-four thousand (34,000) pounds per tandem, and not to exceed the weight limit for any group of two (2) or more consecutive axles established by Section 49-1001, Idaho Code. ( )

**a.** Extra Length/Excess Weight Permit Up to One Hundred Twenty-Nine Thousand (129,000) Pounds. Gross weight limited to one hundred five thousand five hundred (105,500) pounds on interstate, non-interstate and local highways and length limited to those specified in these rules. Except that no vehicle combination weighing more than one hundred five thousand five hundred (105,500) pounds shall operate on local highways contrary to the provisions of Section 49-1004A, Idaho Code, and these rules. ( )

**b.** Extra Length/Excess Weight Permit Up to One Hundred Twenty-Nine Thousand (129,000) Pounds. Gross weight not to exceed one hundred twenty-nine thousand (129,000) pounds on designated routes, as specified in Section 49-1004 and Section 49-1004B, Idaho Code. ( )

**501. – 999. (RESERVED)**

**IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT**  
**39.03.07 – RULES GOVERNING RESTRICTED ROUTES FOR SEMITRAILERS**  
**DOCKET NO. 39-0307-1801 (CHAPTER REPEAL)**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312, 49-201 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

Per the Idaho Transportation Department's commercial motor vehicle permit consolidation rulemaking, as directed by the 2018 Idaho Legislature in **Senate Concurrent Resolution 130**, this administrative rule is being repealed and replaced. For additional information, please visit: <https://itd.idaho.gov/rulemaking/>.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published under Docket No. 39-0300-1801 in the May 2, 2018, Idaho Administrative Bulletin, **Vol. 18-5, pages 145-146**.

**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, please contact Ramón Hobdey-Sánchez, Governmental Affairs Program Specialist, at (208) 334-8810.

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 24, 2018.

DATED this 28th Day of August, 2018.

Ramón S. Hobdey-Sánchez  
Governmental Affairs Program Specialist  
Idaho Transportation Department  
3311 W. State St. – PO Box 7129  
Boise ID 83707-1129  
Phone: (208) 334-8810  
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**IDAPA 39.03.07 IS BEING REPEALED IN ITS ENTIRETY**

## IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

### 39.03.07 – RULES GOVERNING SPECIAL PERMITS FOR REDUCIBLE LOADS

#### DOCKET NO. 39-0307-1802 (NEW CHAPTER)

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312, 49-201 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

Per the Idaho Transportation Department's commercial motor vehicle permit consolidation rulemaking, as directed by the 2018 Idaho Legislature in **Senate Concurrent Resolution 130**, this administrative rule provides the maximum sizes allowed by special permits for specific Department approved reducible loads. For additional information, please visit: <https://itd.idaho.gov/rulemaking/>.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: There are no fees being imposed or increased with 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(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published under Docket No. 39-0300-1801 in the May 2, 2018, Idaho Administrative Bulletin, **Vol. 18-5, pages 145-146**.

**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, please contact Ramón Hobdey-Sánchez, Governmental Affairs Program Specialist, at (208) 334-8810.

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 24, 2018.

DATED this 30th Day of August, 2018.

Ramón S. Hobdey-Sánchez  
Governmental Affairs Program Specialist  
Idaho Transportation Department  
3311 W. State St. – PO Box 7129  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0307-1802**  
**(New Chapter)**

**IDAPA 39**  
**TITLE 03**  
**CHAPTER 07**

**39.03.07 – RULES GOVERNING SPECIAL PERMITS FOR REDUCIBLE LOADS**

**000. LEGAL AUTHORITY.**

This rule, governing the movement of vehicles and/or loads that are in excess of the sizes allowed by Sections 49-1004 and 49-1010, Idaho Code, is adopted under the authority of Section 49-201, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** This rule shall be cited as IDAPA 39.03.07, “Rules Governing Special Permits for Reducible Loads,” IDAPA 39, Title 03, Chapter 07. ( )

**02. Scope.** This rule states the maximum sizes allowed by special permit for reducible loads. ( )

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations for this chapter. ( )

**003. ADMINISTRATIVE APPEALS.**

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.” ( )

**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 PO Box 7129, Boise, ID 83707-1129. ( )

**02. Office Hours.** Daily office hours are 7:30 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 208-334-8420, 1-800-622-7133, or by fax at 208-334-8419. ( )

**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 Title 74, Chapter 1, Idaho Code. ( )

**007. – 009. (RESERVED)**

**010. DEFINITIONS.**

Refer to IDAPA 39.03.01, "Rules Governing Definitions Regarding Special Permits," for definitions of the terms used in this rule. ( )

**011. – 099. (RESERVED)**

**100. GENERAL REQUIREMENTS.**

Refer to IDAPA 39.03.05, "Rules Governing Special Permits – Oversize Non-Reducible," for conditions required for the issuance of special permits. ( )

**01. Maximum Dimensions Allowed.** The maximum dimensions of oversize vehicles or oversize loads shall depend on the character of the route to be traveled: width of roadway, alignment and sight distance, vertical or horizontal clearance, and traffic volume. ( )

**02. Overwidth Overhang.** Overwidth loads shall distribute overhang to the sides of the trailer as evenly as possible. ( )

**101. – 199. (RESERVED)**

**200. PERMITS FOR MULTIPLE-WIDTH OR MULTIPLE-HEIGHT LOADING.**

**01. Cylindrical Hay Bales.** Special permits may be issued for overwidth transportation of cylindrical hay bales, produced by balers having bale chambers which may be five (5') feet or more in width. Such bales may be loaded two (2) bales wide and two (2) bales high. Hauling vehicles eligible for permit for this purpose shall be legal size vehicles registered for travel on public highways. Operation of such overwidth loads shall be subject to the same time of travel and other safety requirements as other overwidth loads having a similar width, see IDAPA 39.03.04, "Rules Governing Special Permits – Overweight Non-Reducible." This type of operation is intended as an option to the use of farm tractors hauling such loads on size-exempt implement of husbandry vehicles. Maximum width of such loads without tolerance may not exceed eleven feet six inches (11'6"). ( )

**02. Reducible Height Loads.** Special permits may be issued to allow the transportation of reducible loads in excess of fourteen (14') feet high but not in excess of fifteen (15') feet high on designated highways. The vehicle height must not exceed fourteen (14') feet. A map listing the vertical clearances is available at the Idaho Transportation Department Special Permit Office and online at [itd.idaho.gov](http://itd.idaho.gov). ( )

**03. Kiln Lumber Stacks.** Special permits may be issued to allow the transportation of specifically produced kiln lumber stacks in excess of eight feet six inches (8'6") wide but not in excess of nine feet three inches (9'3") wide on designated highways. Each kiln lumber stack shall be considered a single non-reducible unit and may be hauled two (2) stacks wide and two (2) stacks high. Hauling vehicles eligible for permit for this purpose shall be legal size vehicles registered for travel on public highways. Operations of such overwidth loads shall be subject to the same type of travel restrictions and other safety requirements as other overwidth loads having a similar width, see IDAPA 39.03.04, "Rules Governing Special Permits – Overweight Non-Reducible." ( )

**201. – 999. (RESERVED)**

**IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT**  
**39.03.08 – RULES GOVERNING SELF-PROPELLED SNOWPLOWS**  
**DOCKET NO. 39-0308-1801 (NEW CHAPTER)**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312, 49-201 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

Per the Idaho Transportation Department’s commercial motor vehicle permit consolidation rulemaking, as directed by the 2018 Idaho Legislature in **Senate Concurrent Resolution 130**, this administrative rule provides the regulations, safety requirements and standardizes the lighting systems for overwidth and/or overweight snowplows operating under special permits. For additional information, please visit: <https://itd.idaho.gov/rulemaking/>.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: There are no fees being imposed or increased with 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(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published under Docket No. 39-0300-1801 in the May 2, 2018, Idaho Administrative Bulletin, **Vol. 18-5, pages 145-146**.

**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, please contact Ramón Hobdey-Sánchez, Governmental Affairs Program Specialist, at (208) 334-8810.

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 24, 2018.

DATED this 30th Day of August, 2018.

Ramón S. Hobdey-Sánchez  
Governmental Affairs Program Specialist  
Idaho Transportation Department  
3311 W. State St. – PO Box 7129  
Boise ID 83707-1129  
Phone: (208) 334-8810  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0308-1801**  
**(New Chapter)**

**IDAPA 39**  
**TITLE 03**  
**CHAPTER 08**

**39.03.08 – RULES GOVERNING SELF-PROPELLED SNOWPLOWS**

**000. LEGAL AUTHORITY.**

The rule is adopted under authority of Sections 40-312, 49-929, and 49-1004, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** This rule shall be cited as IDAPA 39.03.08, “Rules Governing Self-Propelled Snowplows,” IDAPA 39, Title 03, Chapter 08. ( )

**02. Scope.** Self-propelled snowplows cannot comply with the safety requirements as other oversize loads due to the nature of their operation. Therefore, this rule is promulgated to state the regulations, safety, and standardizes the lighting systems for overwidth self-propelled snowplows operating under special permit authority. These specifications and standards supersede Administrative Policy A-05-26 (dated 6-23-82) and Board Policy B-05-26 (dated 6-16-82). The self-propelled snowplows will be permitted at the rates listed in Rule 39.03.03, “Rules Governing Special Permit – General Conditions and Requirements,” for oversize loads. ( )

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations for this chapter. ( )

**003. ADMINISTRATIVE APPEALS.**

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.” ( )

**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 PO Box 7129, Boise, ID 83707-1129. ( )

**02. Office Hours.** Daily office hours are 7:30 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 208-334-8420, 1-800-622-7133, or by fax at 208-334-8419. ( )

**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 Title 74, Chapter 1, Idaho Code. ( )

**007. – 009. (RESERVED)**

**010. DEFINITIONS.**

In addition to the definitions set forth in IDAPA 39.03.01, “Rules Governing Definitions Regarding Special Permits,” the following terms are used in this rule. ( )

**01. Snow Removal Equipment.** Any private or publicly-owned vehicle classified as a motorized vehicle as defined in Section 49-123, Idaho Code, that has been equipped with snow removal equipment and is being used for snow removal on any public highway. ( )

**011. – 099. (RESERVED)**

**100. CONDITIONS AND REQUIREMENTS FOR OPERATION OF SELF-PROPELLED SNOWPLOWS ON THE STATE HIGHWAY SYSTEM.**

**01. General Conditions.** Refer to IDAPA 39.03.03, “Rules for Governing Special Permits – General Conditions and Requirements,” for conditions required for the issuance of special permits. ( )

**02. No Pilot/Escort Vehicles Required.** Self-propelled snowplows utilized to clear roads, streets, and other locations of snow or debris may operate with no escort vehicles required twenty-four (24) hours a day, seven (7) days a week, including holidays. ( )

**03. Warning Flags.** An eighteen (18”) inch by eighteen (18”) inch red or fluorescent orange flag shall be mounted near the extremities of the blade if it exceeds eight feet six inches (8’6”) inches in width. ( )

**04. Clearance Light or Reflector Requirements.** When operating during hours of darkness, a clearance light or a clearance reflector that meets the specifications listed in Sections 49-910 and 49-911, Idaho Code, shall be mounted near the extremities of the blade if the blade exceeds eight feet six inches (8’6”) inches in width. ( )

**05. Headlamps, Turn Signals, and Flashing Lights.** Headlamps, turn signals, and flashing lights shall be mounted on snow removal equipment at sufficient height to clear all snow removal apparatus. ( )

**06. Visibility Requirements.** Flashing identification lights on snow removal equipment must be amber or red colored, and mounted on the cab or truck bed. They shall be mounted so as to be visible from the front, amber only in color, and rear, red or amber in color, regardless of vehicle configuration, for example, when the truck bed is raised. Flashing lights shall be visible from a distance of not less than one thousand (1,000’) feet in normal sunlight, and not less than two thousand five hundred (2,500’) feet under average visibility conditions at night. ( )

**07. Lights to Meet Idaho Code Requirements.** Tail lamps, stop lamps, and clearance lamps on snow removal equipment must meet standards specified in Idaho Code. ( )

**101. – 999. (RESERVED)**

## IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

### 39.03.09 – RULES GOVERNING OVERLEGAL PERMITS – GENERAL CONDITIONS AND REQUIREMENTS

#### DOCKET NO. 39-0309-1801 (CHAPTER REPEAL)

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312, 49-201 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

Per the Idaho Transportation Department's commercial motor vehicle permit consolidation rulemaking, as directed by the 2018 Idaho Legislature in **Senate Concurrent Resolution 130**, this administrative rule is being repealed and replaced. For additional information, please visit: <https://itd.idaho.gov/rulemaking/>.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published under Docket No. 39-0300-1801 in the May 2, 2018, Idaho Administrative Bulletin, **Vol. 18-5, pages 145-146**.

**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, please contact Ramón Hobdey-Sánchez, Governmental Affairs Program Specialist, at (208) 334-8810.

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 24, 2018.

DATED this 28th Day of August, 2018.

Ramón S. Hobdey-Sánchez  
Governmental Affairs Program Specialist  
Idaho Transportation Department  
3311 W. State St. – PO Box 7129  
Boise ID 83707-1129  
Phone: (208) 334-8810  
[ramon.hobdey-sanchez@itd.idaho.gov](mailto:ramon.hobdey-sanchez@itd.idaho.gov)

**IDAPA 39.03.09 IS BEING REPEALED IN ITS ENTIRETY**

## IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

### 39.03.10 – RULES GOVERNING WHEN AN OVERLEGAL PERMIT IS REQUIRED

#### DOCKET NO. 39-0310-1801 (CHAPTER REPEAL)

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312, 49-201 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

Per the Idaho Transportation Department's commercial motor vehicle permit consolidation rulemaking, as directed by the 2018 Idaho Legislature in **Senate Concurrent Resolution 130**, this administrative rule is being repealed and replaced. For additional information, please visit: <https://itd.idaho.gov/rulemaking/>.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published under Docket No. 39-0300-1801 in the May 2, 2018, Idaho Administrative Bulletin, **Vol. 18-5, pages 145-146**.

**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, please contact Ramón Hobdey-Sánchez, Governmental Affairs Program Specialist, at (208) 334-8810.

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 24, 2018.

DATED this 28th Day of August, 2018.

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**IDAPA 39.03.10 IS BEING REPEALED IN ITS ENTIRETY**

**IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT**  
**39.03.11 – RULES GOVERNING OVERLEGAL PERMITTEE RESPONSIBILITY**  
**AND TRAVEL RESTRICTIONS**

**DOCKET NO. 39-0311-1801 (CHAPTER REPEAL)**

**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312, 49-201 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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

Per the Idaho Transportation Department's commercial motor vehicle permit consolidation rulemaking, as directed by the 2018 Idaho Legislature in **Senate Concurrent Resolution 130**, this administrative rule is being repealed and replaced. For additional information, please visit: <https://itd.idaho.gov/rulemaking/>.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published under Docket No. 39-0300-1801 in the May 2, 2018, Idaho Administrative Bulletin, **Vol. 18-5, pages 145-146**.

**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, please contact Ramón Hobdey-Sánchez, Governmental Affairs Program Specialist, at (208) 334-8810.

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 24, 2018.

DATED this 28th Day of August, 2018.

Ramón S. Hobdey-Sánchez  
Governmental Affairs Program Specialist  
Idaho Transportation Department  
3311 W. State St. – PO Box 7129  
Boise ID 83707-1129  
Phone: (208) 334-8810  
[ramon.hobdey-sanchez@itd.idaho.gov](mailto:ramon.hobdey-sanchez@itd.idaho.gov)

**IDAPA 39.03.11 IS BEING REPEALED IN ITS ENTIRETY**

## IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

### 39.03.12 – RULES GOVERNING SAFETY REQUIREMENTS OF OVERLEGAL PERMITS

#### DOCKET NO. 39-0312-1801 (CHAPTER REPEAL)

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312, 49-201 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

Per the Idaho Transportation Department's commercial motor vehicle permit consolidation rulemaking, as directed by the 2018 Idaho Legislature in **Senate Concurrent Resolution 130**, this administrative rule is being repealed and replaced. For additional information, please visit: <https://itd.idaho.gov/rulemaking/>.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published under Docket No. 39-0300-1801 in the May 2, 2018, Idaho Administrative Bulletin, **Vol. 18-5, pages 145-146**.

**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, please contact Ramón Hobdey-Sánchez, Governmental Affairs Program Specialist, at (208) 334-8810.

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 24, 2018.

DATED this 28th Day of August, 2018.

Ramón S. Hobdey-Sánchez  
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**IDAPA 39.03.01 IS BEING REPEALED IN ITS ENTIRETY**

## IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

### 39.03.13 – RULES GOVERNING OVERWEIGHT PERMITS

#### DOCKET NO. 39-0313-1801 (CHAPTER REPEAL)

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312, 49-201 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

Per the Idaho Transportation Department's commercial motor vehicle permit consolidation rulemaking, as directed by the 2018 Idaho Legislature in **Senate Concurrent Resolution 130**, this administrative rule is being repealed and replaced. For additional information, please visit: <https://itd.idaho.gov/rulemaking/>.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published under Docket No. 39-0300-1801 in the May 2, 2018, Idaho Administrative Bulletin, **Vol. 18-5, pages 145-146**.

**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, please contact Ramón Hobdey-Sánchez, Governmental Affairs Program Specialist, at (208) 334-8810.

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 24, 2018.

DATED this 28th Day of August, 2018.

Ramón S. Hobdey-Sánchez  
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**IDAPA 39.03.13 IS BEING REPEALED IN ITS ENTIRETY**

## IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

### 39.03.14 – RULES GOVERNING POLICY DURING SPRING BREAKUP SEASON

#### DOCKET NO. 39-0314-1801 (CHAPTER REPEAL)

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312, 49-201 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

Per the Idaho Transportation Department's commercial motor vehicle permit consolidation rulemaking, as directed by the 2018 Idaho Legislature in **Senate Concurrent Resolution 130**, this administrative rule is being repealed and replaced. For additional information, please visit: <https://itd.idaho.gov/rulemaking/>.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published under Docket No. 39-0300-1801 in the May 2, 2018, Idaho Administrative Bulletin, **Vol. 18-5, pages 145-146**.

**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, please contact Ramón Hobdey-Sánchez, Governmental Affairs Program Specialist, at (208) 334-8810.

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 24, 2018.

DATED this 28th Day of August, 2018.

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**IDAPA 39.03.14 IS BEING REPEALED IN ITS ENTIRETY**

## IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

### 39.03.15 – RULES GOVERNING EXCESS WEIGHT PERMITS FOR REDUCIBLE LOADS

#### DOCKET NO. 39-0315-1801 (CHAPTER REPEAL)

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312, 49-201 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

Per the Idaho Transportation Department's commercial motor vehicle permit consolidation rulemaking, as directed by the 2018 Idaho Legislature in **Senate Concurrent Resolution 130**, this administrative rule is being repealed and replaced. For additional information, please visit: <https://itd.idaho.gov/rulemaking/>.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published under Docket No. 39-0300-1801 in the May 2, 2018, Idaho Administrative Bulletin, **Vol. 18-5, pages 145-146**.

**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, please contact Ramón Hobdey-Sánchez, Governmental Affairs Program Specialist, at (208) 334-8810.

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 24, 2018.

DATED this 28th Day of August, 2018.

Ramón S. Hobdey-Sánchez  
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**IDAPA 39.03.15 IS BEING REPEALED IN ITS ENTIRETY**

## IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

### 39.03.16 – RULES GOVERNING OVERSIZE PERMITS FOR NON-REDUCIBLE VEHICLES AND/OR LOADS

#### DOCKET NO. 39-0316-1801 (CHAPTER REPEAL)

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312, 49-201 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

Per the Idaho Transportation Department's commercial motor vehicle permit consolidation rulemaking, as directed by the 2018 Idaho Legislature in **Senate Concurrent Resolution 130**, this administrative rule is being repealed and replaced. For additional information, please visit: <https://itd.idaho.gov/rulemaking/>.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published under Docket No. 39-0300-1801 in the May 2, 2018, Idaho Administrative Bulletin, **Vol. 18-5, pages 145-146**.

**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, please contact Ramón Hobdey-Sánchez, Governmental Affairs Program Specialist, at (208) 334-8810.

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 24, 2018.

DATED this 28th Day of August, 2018.

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**IDAPA 39.03.16 IS BEING REPEALED IN ITS ENTIRETY**

**IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT**  
**39.03.17 – RULES GOVERNING PERMITS FOR MANUFACTURED HOMES,**  
**MODULAR BUILDINGS, AND OFFICE TRAILERS**  
**DOCKET NO. 39-0317-1801 (CHAPTER REPEAL)**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312, 49-201 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

Per the Idaho Transportation Department's commercial motor vehicle permit consolidation rulemaking, as directed by the 2018 Idaho Legislature in **Senate Concurrent Resolution 130**, this administrative rule is being repealed and replaced. For additional information, please visit: <https://itd.idaho.gov/rulemaking/>.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published under Docket No. 39-0300-1801 in the May 2, 2018, Idaho Administrative Bulletin, **Vol. 18-5, pages 145-146**.

**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, please contact Ramón Hobdey-Sánchez, Governmental Affairs Program Specialist, at (208) 334-8810.

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 24, 2018.

DATED this 28th Day of August, 2018.

Ramón S. Hobdey-Sánchez  
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3311 W. State St. – PO Box 7129  
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**IDAPA 39.03.17 IS BEING REPEALED IN ITS ENTIRETY**

## IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

### 39.03.18 – RULES GOVERNING OVERLEGAL PERMITS FOR RELOCATION OF BUILDINGS OR HOUSES

DOCKET NO. 39-0318-1801 (CHAPTER REPEAL)

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312, 49-201 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

Per the Idaho Transportation Department's commercial motor vehicle permit consolidation rulemaking, as directed by the 2018 Idaho Legislature in **Senate Concurrent Resolution 130**, this administrative rule is being repealed and replaced. For additional information, please visit: <https://itd.idaho.gov/rulemaking/>.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published under Docket No. 39-0300-1801 in the May 2, 2018, Idaho Administrative Bulletin, **Vol. 18-5, pages 145-146**.

**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, please contact Ramón Hobdey-Sánchez, Governmental Affairs Program Specialist, at (208) 334-8810.

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 24, 2018.

DATED this 28th Day of August, 2018.

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**IDAPA 39.03.18 IS BEING REPEALED IN ITS ENTIRETY**

**IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT**

**39.03.19 – RULES GOVERNING ANNUAL OVERLEGAL PERMITS**

**DOCKET NO. 39-0319-1801 (CHAPTER REPEAL)**

**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312, 49-201 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

Per the Idaho Transportation Department's commercial motor vehicle permit consolidation rulemaking, as directed by the 2018 Idaho Legislature in **Senate Concurrent Resolution 130**, this administrative rule is being repealed and replaced. For additional information, please visit: <https://itd.idaho.gov/rulemaking/>.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published under Docket No. 39-0300-1801 in the May 2, 2018, Idaho Administrative Bulletin, **Vol. 18-5, pages 145-146**.

**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, please contact Ramón Hobdey-Sánchez, Governmental Affairs Program Specialist, at (208) 334-8810.

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 24, 2018.

DATED this 28th Day of August, 2018.

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**IDAPA 39.03.19 IS BEING REPEALED IN ITS ENTIRETY**

**IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT**  
**39.03.20 – RULES GOVERNING APPLICATION FOR SPECIAL PERMITS**  
**DOCKET NO. 39-0320-1801 (CHAPTER REPEAL)**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312, 49-201 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

Per the Idaho Transportation Department's commercial motor vehicle permit consolidation rulemaking, as directed by the 2018 Idaho Legislature in **Senate Concurrent Resolution 130**, this administrative rule is being repealed and replaced. For additional information, please visit: <https://itd.idaho.gov/rulemaking/>.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published under Docket No. 39-0300-1801 in the May 2, 2018, Idaho Administrative Bulletin, **Vol. 18-5, pages 145-146**.

**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, please contact Ramón Hobdey-Sánchez, Governmental Affairs Program Specialist, at (208) 334-8810.

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 24, 2018.

DATED this 28th Day of August, 2018.

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**IDAPA 39.03.20 IS BEING REPEALED IN ITS ENTIRETY**

## IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

### 39.03.21 – RULES GOVERNING OVERLEGAL PERMIT FEES

#### DOCKET NO. 39-0321-1801 (CHAPTER REPEAL)

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312, 49-201 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

Per the Idaho Transportation Department's commercial motor vehicle permit consolidation rulemaking, as directed by the 2018 Idaho Legislature in **Senate Concurrent Resolution 130**, this administrative rule is being repealed and replaced. For additional information, please visit: <https://itd.idaho.gov/rulemaking/>.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published under Docket No. 39-0300-1801 in the May 2, 2018, Idaho Administrative Bulletin, **Vol. 18-5, pages 145-146**.

**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, please contact Ramón Hobdey-Sánchez, Governmental Affairs Program Specialist, at (208) 334-8810.

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 24, 2018.

DATED this 28th Day of August, 2018.

Ramón S. Hobdey-Sánchez  
Governmental Affairs Program Specialist  
Idaho Transportation Department  
3311 W. State St. – PO Box 7129  
Boise ID 83707-1129  
Phone: (208) 334-8810  
[ramon.hobdey-sanchez@itd.idaho.gov](mailto:ramon.hobdey-sanchez@itd.idaho.gov)

**IDAPA 39.03.21 IS BEING REPEALED IN ITS ENTIRETY**

## IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

### 39.03.22 – RULES GOVERNING OVERLEGAL PERMITS FOR EXTRA-LENGTH, EXCESS WEIGHT, AND UP TO 129,000 POUND VEHICLE COMBINATIONS

#### DOCKET NO. 39-0322-1801 (CHAPTER REPEAL)

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312, 49-201 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

Per the Idaho Transportation Department's commercial motor vehicle permit consolidation rulemaking, as directed by the 2018 Idaho Legislature in **Senate Concurrent Resolution 130**, this administrative rule is being repealed and replaced. For additional information, please visit: <https://itd.idaho.gov/rulemaking/>.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published under Docket No. 39-0300-1801 in the May 2, 2018, Idaho Administrative Bulletin, **Vol. 18-5, pages 145-146**.

**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, please contact Ramón Hobdey-Sánchez, Governmental Affairs Program Specialist, at (208) 334-8810.

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 24, 2018.

DATED this 28th Day of August, 2018.

Ramón S. Hobdey-Sánchez  
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Idaho Transportation Department  
3311 W. State St. – PO Box 7129  
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**IDAPA 39.03.22 IS BEING REPEALED IN ITS ENTIRETY**

**IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT**  
**39.03.23 – RULES GOVERNING REVOCATION OF OVERLEGAL PERMITS**  
**DOCKET NO. 39-0323-1801 (CHAPTER REPEAL)**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312, 49-201 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

Per the Idaho Transportation Department's commercial motor vehicle permit consolidation rulemaking, as directed by the 2018 Idaho Legislature in **Senate Concurrent Resolution 130**, this administrative rule is being repealed and replaced. For additional information, please visit: <https://itd.idaho.gov/rulemaking/>.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published under Docket No. 39-0300-1801 in the May 2, 2018, Idaho Administrative Bulletin, **Vol. 18-5, pages 145-146**.

**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, please contact Ramón Hobdey-Sánchez, Governmental Affairs Program Specialist, at (208) 334-8810.

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 24, 2018.

DATED this 28th Day of August, 2018.

Ramón S. Hobdey-Sánchez  
Governmental Affairs Program Specialist  
Idaho Transportation Department  
3311 W. State St. – PO Box 7129  
Boise ID 83707-1129  
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**IDAPA 39.03.23 IS BEING REPEALED IN ITS ENTIRETY**

**IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT**  
**39.03.24 – RULES GOVERNING SELF-PROPELLED SNOWPLOWS**  
**DOCKET NO. 39-0324-1801 (CHAPTER REPEAL)**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312, 49-201 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

Per the Idaho Transportation Department's commercial motor vehicle permit consolidation rulemaking, as directed by the 2018 Idaho Legislature in **Senate Concurrent Resolution 130**, this administrative rule is being repealed and replaced. For additional information, please visit: <https://itd.idaho.gov/rulemaking/>.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published under Docket No. 39-0300-1801 in the May 2, 2018, Idaho Administrative Bulletin, **Vol. 18-5, pages 145-146**.

**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, please contact Ramón Hobdey-Sánchez, Governmental Affairs Program Specialist, at (208) 334-8810.

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 24, 2018.

DATED this 28th Day of August, 2018.

Ramón S. Hobdey-Sánchez  
Governmental Affairs Program Specialist  
Idaho Transportation Department  
3311 W. State St. – PO Box 7129  
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**IDAPA 39.03.24 IS BEING REPEALED IN ITS ENTIRETY**

**IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT**  
**39.03.25 – RULES GOVERNING LIGHTS ON SNOW REMOVAL EQUIPMENT**  
**DOCKET NO. 39-0325-1801 (CHAPTER REPEAL)**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312, 49-201 and 49-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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:

Per the Idaho Transportation Department's commercial motor vehicle permit consolidation rulemaking, as directed by the 2018 Idaho Legislature in **Senate Concurrent Resolution 130**, this administrative rule is being repealed and replaced. For additional information, please visit: <https://itd.idaho.gov/rulemaking/>.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published under Docket No. 39-0300-1801 in the May 2, 2018, Idaho Administrative Bulletin, **Vol. 18-5, pages 145-146**.

**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, please contact Ramón Hobdey-Sánchez, Governmental Affairs Program Specialist, at (208) 334-8810.

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 24, 2018.

DATED this 28th Day of August, 2018.

Ramón S. Hobdey-Sánchez  
Governmental Affairs Program Specialist  
Idaho Transportation Department  
3311 W. State St. – PO Box 7129  
Boise ID 83707-1129  
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[ramon.hobdey-sanchez@itd.idaho.gov](mailto:ramon.hobdey-sanchez@itd.idaho.gov)

**IDAPA 39.03.25 IS BEING REPEALED IN ITS ENTIRETY**

## IDAPA 47 – DIVISION OF VOCATIONAL REHABILITATION

### 47.01.02 – RULES AND MINIMUM STANDARDS GOVERNING EXTENDED EMPLOYMENT SERVICES

DOCKET NO. 47-0102-1801

#### 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 33-2211, and 33-2303, 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 17, 2018.

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 amendments make technical corrections, add defined terms, and update the referral and eligibility requirements for the Extended Employment Services Program. Added definitions include: Extended Employment Services, Customer Rights and Responsibilities, Enclave Group Community-Based Non-Integrated Support Employment, Fee, Individual Community Supported Employment, Provider Agreement, and Work Services. Amended definitions include: CARF and Individual Program Plan. Updates and clarification is made to the application process, evaluation of the eligibility requirements, process for payment services and submission of individual program plans, and record retention requirements.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the May 2, 2018 Idaho Administrative Bulletin, [Vol. 18-5, page 147](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tracie Bent at (208) 332-1582 or [tracie.bent@osbe.idaho.gov](mailto:tracie.bent@osbe.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 24, 2018.

Dated this 31st day of August, 2018.

Tracie Bent, Chief Planning and Policy Officer  
State Board of Education  
650 W. State Street  
P.O. Box 83720  
Boise, Idaho 83720-0037  
Phone: (208)332-1582  
Fax: (208)334-2632

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 47-0102-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**010. DEFINITIONS.**

For the purpose of the rules contained in this chapter, the following terms and abbreviations are used as herein defined. (3-14-07)

**01. CARF.** The Rehabilitation Commission on Accreditation Commission of Rehabilitation Facilities, an international independent, nonprofit accrediting body of employment and community services providers. (3-29-17)( )

**02. Customer.** An individual residing in the state of Idaho who has applied for, and who is eligible to receive EES. A customer must be at least sixteen (16) years of age. (3-29-17)

**03. Certified Extended Employment Services (EES) Provider.** A community rehabilitation program services provider sometimes referred to in these rules as a provider, that has been approved by EES program to provide extended employment services. (3-29-17)( )

**04. Extended Employment Services Customer Rights and Responsibilities.** Extended Employment Services document outlining customer protections and reasonable service expectations during all phases of EES. ( )

**05. Enclave Group Community-Based Non-Integrated Supported Employment.** Self-employment or paid employment which is: ( )

**a.** For a group of no more than eight (8) customers who are paid not less than minimum wage and who, because of their disabilities, need ongoing support to maintain employment; ( )

**b.** Conducted in a variety of community and industry settings where the customers have opportunities to interact with co-workers or others without known paid work supports at least to the extent that those opportunities typically exist in that work setting; ( )

**c.** Supported by training and supervision needed to maintain that employment; and ( )

**d.** Not conducted in the work services area of an EES provider. ( )

**046. Extended Employment Services (EES).** Long term maintenance services that assist customers in maintaining employment, or in gaining employment skills in preparation for community employment, or which provide assistance to adult customers with disabilities within an industry/business community setting or a community rehabilitation program, intended to maintain paid employment. Such services include individual supported employment, group community-based non-integrated supported employment, and work services. (3-29-17)

**07. Fee.** Payment(s) made to EES providers for long-term employment supports as outlined in a customer's annual Individual Program Plan. Fee rates are established through the annual EES Provider Agreement. ( )

**08. Individual Community Supported Employment.** Self-employment or paid employment that is: ( )

**a.** For a customer paid not less than minimum wage and who, because of his or her disability(ies), needs ongoing support to maintain employment; ( )

**b.** Conducted in a community or industry setting where persons without known paid work supports

are employed; and ( )

c. Supported by authorized activities needed to sustain paid work by persons with disabilities, including but not limited to supervision, training, and transportation, and; ( )

d. Not conducted in the work services area of an EES provider. ( )

09. Idaho Division of Vocational Rehabilitation (IDVR). The Idaho Division of Vocational Rehabilitation, a state agency under the Idaho State Board of Education, with administrative oversight of the EES program. ( )

105. Individual Program Plan. The EES plan ~~to be provided to~~ that outlines the annual service need for an individual customer ~~to maintain employment.~~ (3-29-17)( )

0611. Idaho Division of Vocational Rehabilitation (IDVR). The Idaho Division of Vocational Rehabilitation, a state agency under the Idaho State Board of Education, with administrative oversight of the EES program. (3-29-17)

12. Provider Agreement. An annual written contract between EES and EES providers, entered into in accordance with these rules. ( )

0713. RSAS. Rehabilitation Services Accreditation Systems, a national accrediting body of vocational rehabilitative services providers. (3-29-17)( )

14. Work Services. A program that utilizes individual and group work to assist individuals in understanding the value and demands of work, enhancing positive work attitudes, and developing functional capacities that will enhance the ability to achieve and maintain an employment outcome. Limited non-paid work-related activities and transportation may be billed only when authorized on an Individual Program Plan. Work services are typically conducted on EES provider premises. ( )

011. -- 099. (RESERVED)

100. PROGRAM YEAR.

01. Program Year and Application Submission Date. For purposes of these rules, the EES program fiscal year is July 1 of a given year through June 30 of the next succeeding year. ~~An EES Provider Agreement for a fiscal year must be submitted on or before the first business day of May preceding the fiscal year for which approval is sought.~~ (3-29-17)( )

101. -- 199. (RESERVED)

200. EXTENDED EMPLOYMENT SERVICES PROVIDER AGREEMENT.

01. Standard Form. (3-29-17)

a. Prior to providing services, a provider shall enter into an annual EES Provider Agreement with the EES program which will specify the terms and conditions of the approval. Such agreement shall be on a standard form approved by the EES program, ~~after consultation with the EES provider.~~ When changes to the provider agreement are considered, EES will engage with providers to request input prior to finalizing the new agreement. Such EES Provider Agreement shall detail the provider requirements, services, scope of work, other special provisions, and fees for service. The EES program will make the EES Provider Agreement available the first business day of ~~April~~ May. (3-29-17)( )

b. Approval to provide EES will be provided by the EES program ~~on or before the first business day of June preceding such fiscal year.~~ If approved by the EES program, a provider is eligible to deliver EES ~~effective July 1, the first day of such fiscal year~~ when all required provider eligibility criteria are met. An agreement that is denied may be reconsidered during the course of a fiscal year. ~~The EES program has the discretion to add a new or~~

~~additional providers after July 1, if there have been significant developments in a region that justify the need for new or additional providers. In such event, the EES program will give preference to denied applications based on date of application. An approval will be based on the applicant demonstrating they have met all Provider Qualifications as outlined in IDAPA 47.01.02.300.~~ (3-29-17)( )

**02. Annual Provider Agreement.** This agreement must be signed ~~prior to the beginning~~ by June 1 of the EES fiscal year by an authorized representative of the provider and the IDVR ~~State~~ Administrator or a designee ~~prior to providing extended employment services to EES customers.~~ (3-29-17)( )

**03. Provider Agreement Revision.** The agreement shall be entered into annually, and is subject to revision, as may be required by the EES program. The EES program will provide providers notification of any changes to the agreement, with as much notification as possible. (3-29-17)( )

**201. -- 299. (RESERVED)**

**300. PROVIDER QUALIFICATIONS.**

An approved EES provider shall meet all of the following requirements: (3-29-17)

~~**01. Experience.** A new provider must have a minimum of three (3) full years of experience working with customers who are receiving Medicaid Waiver or must have worked with IDVR customers in employment services, or both.~~ (3-29-17)

**021. Accreditation.** ~~Receive and m~~Maintain accreditation by CARF or RSAS and provide IDVR a copy of the accreditation. (3-14-07)( )

~~**032. Staff.**~~ All staff will meet the following requirements: (3-29-17)

**a.** Satisfactorily complete a criminal history background check, to be obtained by the provider; (3-14-07)

**b.** Be eighteen (18) years of age and, if less than twenty-one (21) years of age, have not less than ~~six (6) months~~ seven hundred fifty (750) documented hours of experience with people with disabilities; (3-29-17)( )

**c.** Demonstrate the ability to deliver services as specified in the Individual Program Plan for each customer; and (3-29-17)

**d.** Document completion of not less than forty (40) hours of training directly related to vocational support for people with disabilities. Training must be documented no later than six (6) months from the date of hire and include all of the following topics: (3-14-07)

i. Behavior technology, especially positive behavioral support; (3-14-07)

ii. Instructional techniques; (3-14-07)

iii. Strategies for dealing with aberrant or maladaptive behavior; (3-14-07)

iv. Integration/normalization; (3-14-07)

v. Functional impact of disabilities, particularly developmental disabilities and mental illness; (3-29-17)

vi. Strategies for remediation and accommodation. (3-14-07)

vii. Ethics and confidentiality; (3-29-17)

viii. The development and use of measurable objectives; and (3-29-17)

- ix. Overview of assistive technology. (3-29-17)

(BREAK IN CONTINUITY OF SECTIONS)

500. EXTENDED EMPLOYMENT SERVICES CUSTOMER REFERRAL, ELIGIBILITY, AND CASE CLOSURE.

**01. Referral Application.** ~~Each applicant to be a customer for EES under these rules will be referred by a Vocational Rehabilitation Counselor, employed by IDVR, who will provide the applicant with information on the services available from EES providers.~~ An individual can apply for EES through: (3-29-17)( )

**a.** Demonstrated need for EES long-term supports. An individual that has a demonstrated need for a specific EES service will be referred to the EES program by a Vocational Rehabilitation Counselor (VRC) employed by IDVR. ( )

**b.** Individual Informed Choice. An individual who expresses an interest in non-integrated employment and who has received career counseling on integrated employment from a VRC employed by IDVR may be referred to the EES program. IDVR will document completion of career counseling at the time of referral to EES. ( )

**02. Application Process.** The application process is complete when the following has occurred: ( )

**a.** The referring IDVR counselor provides EES with a completed EES referral form; and ( )

**b.** The rights and responsibilities form has been reviewed and signed by the applicant and guardian (when applicable); and ( )

**c.** The guardianship documentation has been received (when applicable). ( )

**023. Eligibility.** ~~The EES program will assess the eligibility of each applicant for services. Applicants who are eligible for and have access to other public funding sources for long-term support services are not eligible for EES services.~~ Eligibility will be determined for each customer based on the following: ( )

**a.** For customers requesting non-integrated employment, the EES Program Manager or designee will conduct a records review and interview(s) with the customer and when applicable, the customer's guardian. Based on information gathered, the EES Program Manager or designee will determine if long-term supports are necessary to maintain employment, and that the customer is choosing non-integrated employment. If determined eligible, EES will assist with the informed choice process to select an EES provider. ( )

**b.** A customer who has engaged in the VR process and demonstrates a need for long-term supports will be referred to EES by the customer's IDVR counselor. ( )

**c.** Applicants who are eligible for Medicaid Waiver funding must use Medicaid Waiver funding for long-term employment support services when the customer's IDVR counselor recommends individual community supported employment for the customer. If, after service needs are assessed, and an individual has service needs greater than what Medicaid will approve for long-term job coaching, EES will require Medicaid to provide written documentation denying such funding prior to EES providing this service. ( )

**04. Disability Criteria.** Eligible applicants must have a disability that falls into one (1) of four (4) categories described below, and such disability must constitute a barrier to such person maintaining paid employment without long term vocational support: (3-29-17)( )

**a.** Developmental Disabilities. Pursuant to Section 66-402, Idaho Code, a chronic disability of a person that appears before the age of twenty-two (22) years; and (3-14-07)

i. Is attributable to impairment, such as intellectual disability, cerebral palsy, epilepsy, autism, or other condition found to be closely related to or similar to one (1) of those impairments that requires similar treatment or services, or is attributable to dyslexia resulting from such impairments; (3-29-17)

ii. Results in substantial functional limitations in three (3) or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (3-14-07)

iii. Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of life-long or extended duration and individually planned and coordinated. (3-14-07)

**b.** Mental Illness. A person has been assessed by a qualified professional and been diagnosed under DSM-IV or later editions with schizophrenia, schizoaffective disorder, major affective disorder, delusional disorder or ~~a~~ borderline personality disorder, in which this psychiatric disorder must be of sufficient severity to cause a disturbance in role performance or coping skills in at least two (2) of these areas on either a continuous or an intermittent (at least once per year) basis: vocational/academic, financial, social/interpersonal, family, basic living skills, housing, community, or health. ~~(3-29-17)~~( )

**c.** Specific Learning Disability. A disorder in one (1) or more of the psychological processes involved in understanding, perceiving, or using language or concepts (spoken or written). A disorder which may manifest itself in problems related to speaking, reading, spelling, or mathematical calculations (or to a lesser extent, listening, thinking, or writing), and seriously limit two (2) or more functional capacities (mobility, communication, self-care, self-direction, work tolerance or work skills). (3-14-07)

**d.** Traumatic Brain Injury. A traumatically acquired insult to the brain that may cause physical, intellectual, emotional, social, and vocational changes. A closed head injury may be caused by a rapid acceleration/deceleration, as in a motor vehicle accident. An open head injury is visible insult and may be the result of an accident, gun-shot wound, or other physical injuries. Immediate effects are loss of consciousness, loss of memory, or change in vision, strength, coordination, or sensory function. Anatomical abnormalities may be present, such as cerebral hemorrhage or skull fracture. Long term effects may include physical, cognitive, and psycho-social-behavioral-emotional impairments. (3-14-07)

~~035.~~ **Case Closure.** Cases will be closed from the EES program for the following reasons and will include documentation in the case record that supports such reason: (3-29-17)

- a. Unable to locate or contact customer; (3-29-17)
- b. Customer is eligible for or utilizing Medicaid Waiver services for CSE; ~~(3-29-17)~~( )
- c. Customer's disability is too significant to benefit from services; ~~(3-29-17)~~( )
- d. Customer is non-compliant or has not followed through with EES services; (3-29-17)
- e. Customer has retired from employment; (3-29-17)
- f. Customer no longer interested in pursuing employment ~~or receiving EES services;~~ ~~(3-29-17)~~( )
- g. Customer no longer needs EES services; (3-29-17)
- h. Customer has moved out of state; or (3-29-17)
- i. All other appropriate reasons Death of customer. ~~(3-29-17)~~( )

501. -- 599. (RESERVED)

600. COVERED SERVICES.

The Extended Employment Services that may be provided to customers by providers are described below. EES typically follow the completion of other vocational rehabilitation services, such as vocational evaluation, job site development, and initial training at the job site. Such covered services include: (3-29-17)(    )

**01. Individual Community Supported Employment.** ~~Self employment or paid employment that is:~~ (3-29-17)(    )

~~a. For a customer paid not less than minimum wage and who, because of his or her disability(ies), needs ongoing support to maintain that employment;~~ (3-29-17)

~~b. Conducted in a community or industry setting where persons without known paid work supports are employed; and~~ (3-14-07)

~~c. Supported by authorized activities needed to sustain paid work by persons with disabilities, including but not limited to supervision, training, and transportation.~~ (3-14-07)

**02. Group Community-Based Non-Integrated Supported Employment (Enclave).** ~~Self employment or paid employment which is:~~ (3-29-17)(    )

~~a. For a group of no more than eight (8) customers who are paid not less than minimum wage and who, because of their disability(ies), need ongoing support to maintain that employment;~~ (3-29-17)

~~b. Conducted in a variety of community and industry settings where the customers have opportunities to interact with co-workers or others without known paid work supports at least to the extent that those opportunities typically exist in that work setting;~~ (3-29-17)

~~c. Supported by training and supervision needed to maintain that employment; and~~ (3-14-07)

~~d. Not conducted in the work services area of an EES provider.~~ (3-29-17)

**03. Work Services.** ~~The work services program utilizes individual and group work to assist individuals in understanding the value and demands of work, enhancing positive work attitudes, and developing functional capacities that will enhance the ability to achieve and maintain an employment outcome. Limited non-paid work related activities and transportation may be billed only when authorized on an Individual Program Plan. Work services are typically conducted on EES provider premises.~~ (3-29-17)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**800. SERVICE PROVISION.**

**01. Services on Individual Program Plan.** EES ~~for~~ with each individual customer must be based on the Individual Program Plan developed for such customer. (3-29-17)(    )

**02. Development of Individual Program Plan.** Those involved in developing the Individual Program Plan must include, but are not limited to, the following: (3-14-07)

**a.** The customer. Efforts must be made to maximize the customer's involvement in the planning process by providing him or her with information and education regarding rights, and available options; and (3-29-17)

**b.** The customer's legal guardian, if one has been appointed by the court; and (3-29-17)

**c.** The EES provider program staff, responsible for the implementation of the Individual Program Plan. (3-29-17)

**03. Submission of the Individual Program Plan.** The ~~Certified~~ EES provider must submit the Individual Program Plan ~~to the EES program using the standard format provided or approved by the EES program. The program will either accept the Individual Program Plan as submitted, or may require revisions to the Individual Program Plan before acceptance~~ as outlined in the annual Provider Agreement. (3-29-17)(    )

**04. Timeline for Submission.** The Individual Program Plan must be submitted ~~to the EES program within thirty (30) days from the beginning of the provision of EES. No payment will be made for EES without receipt of the Individual Program Plan covering those Extended Employment Services~~ as outlined in the annual Provider Agreement. (3-29-17)(    )

**05. Revision.** The EES provider must submit an updated Individual Program Plan for each customer to the EES program at least annually based on the criteria outlined in the annual Provider Agreement. (3-29-17)(    )

**06. Progress Reports.** The EES provider must submit ~~a~~ progress reports on each customer to the EES program at six (6) month intervals. A standardized format provided or approved by the EES program must be used as outlined in the annual Provider Agreement. (3-29-17)(    )

**801. RECORDS.**

**01. Customer Files.** EES providers shall maintain individual customer files; as outlined in the Provider Agreement. The EES program will maintain an EES customer file with all records specific to the individual and those records submitted by the EES provider as required which must, at minimum, will include the following: (3-29-17)(    )

- a. Referral information; (3-14-07)
- b. Eligibility; (3-14-07)
- c. Authorization for services; (3-14-07)
- d. Contact information; (3-14-07)
- e. Legal guardianship information; (3-14-07)
- f. Individual Program Plan(s); (3-14-07)(    )
- ~~g.~~ ~~Progress Reports;~~ (3-14-07)
- ~~h.~~ Documentation of service; and (3-14-07)(    )
- h. Release of information. (    )
- ~~i.~~ ~~Satisfaction measures;~~ (3-14-07)
- ~~j.~~ ~~Releases of information; and~~ (3-14-07)
- ~~k.~~ ~~Documentation that updates to customer information were provided to IDVR.~~ (3-29-17)

**02. Storage.** Files must be maintained for five (5) years from the date of discharge of the Client customer to whom the file pertains. (3-14-07)(    )

**802. -- 899. (RESERVED)**

**900. PAYMENT FOR SERVICES.**

**01. Fee for Service.** The IDVR State Administrator or designee shall set the fees for covered services, ~~after discussion with EES providers~~ after annual input from EES providers. Such fees shall be set forth in the annual

EES Provider Agreement. ~~Such fees shall be reviewed annually, and may be adjusted by the IDVR State Administrator to take effect at the beginning of the fiscal year.~~ (3-29-17)(    )

**02. Pre-Authorization.** All EES services must be pre-authorized by the EES program, and shall be set forth in the Individual Program Plan for each customer. Service needs that exceed the approved and authorized hours outlined in the individuals Individual Program Plan may be requested. The EES approval process is outlined in the Provider Agreement. (3-29-17)(    )

**03. Billing Procedures.** (3-14-07)

**a.** EES providers must submit a monthly billing statement for each customer served, in a format approved by an EES program and within timelines set forth in the annual EES Provider Agreement. (3-29-17)

**b.** Bills may only be submitted for EES that have been identified and accepted by the EES program, as stipulated in an Individual Program Plan. (3-29-17)

**c.** All bills submitted by providers are subject to prepayment and post payment review. Documentation sufficient to support each payment item shall be available for review, and must be maintained for five (5) years from the date of service. The provider must submit copies of the documentation regarding the provision of such services upon written request from an EES program. (3-29-17)

**04. Audits.** The EES program may perform audits of billing records and other documentation submitted by providers in order to verify the accuracy of such records. (3-29-17)

**05. Denial/Revocation of Payment.** The EES program may deny payment, or seek reimbursement or set-off for payments previously made, if the provider is not in compliance with these rules, the signed Employment Services Provider Agreement, or if the provider does not provide the services as set forth in a customer's Individual Program Plan. (3-29-17)

## **IDAPA 49 – CERTIFIED SHORTHAND REPORTERS BOARD**

### **49.01.01 – RULES OF PROCEDURE OF THE IDAHO CERTIFIED SHORTHAND REPORTERS BOARD**

**DOCKET NO. 49-0101-1801**

#### **NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-3107, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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

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

The proposed rule removes language pertaining to the executive secretary position which is no longer applicable. The rule adds a new section for the written statement of suitability for licensure to enable the Board to consider certain factors when reviewing an applicant with criminal history.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes to these rules were discussed during noticed, open meetings of the Board.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jennifer Carr 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 24, 2018.

Dated this 29th day of August, 2018.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
700 W. State Street  
P.O. Box 83720  
Boise, ID 83720-0063  
Phone: (208) 334-3233  
Fax: (208) 334-3945

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 49-0101-1101**  
**(Only Those Sections With Amendments Are Shown.)**

**101. OFFICERS.**

Officers elected from the Board shall be chairman, and vice-chairman. ~~An executive secretary may be appointed who is not a member of the Board.~~ (4-9-09)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**201. WRITTEN STATEMENT OF SUITABILITY FOR LICENSURE.**

An applicant or licensee who has a conviction, finding of guilt, withheld judgment, or suspended sentence for a felony or crime involving moral turpitude must submit with their application a written statement and any supplemental information establishing their current suitability for licensure. ( )

**01. Consideration of Factors and Evidence.** The Board shall consider the following factors or evidence: ( )

**a.** The severity or nature of the crime; ( )

**b.** The period of time that has passed since the crime under review; ( )

**c.** The number or pattern of crimes; ( )

**d.** The circumstances surrounding the crime that would help determine the risk of repetition; ( )

**e.** The relationship of the crime or discipline to the practice of shorthand reporting; ( )

**f.** The applicant's activities since the crime under review, such as employment, education, participation in treatment, payment of restitution, or any other factors which may be evidence of current rehabilitation; and ( )

**g.** Any other information regarding rehabilitation or mitigating circumstances. ( )

**02. Interview.** The Board may, at its discretion, grant an interview of the applicant. ( )

**03. Applicant Bears the Burden.** The applicant shall bear the burden of establishing his current suitability for licensure. ( )

~~2042.~~ -- 299. (RESERVED)

# **IDAPA 55 – DIVISION OF CAREER TECHNICAL EDUCATION**

## **55.01.03 – RULES OF CAREER TECHNICAL SCHOOLS**

**DOCKET NO. 55-0103-1801**

### **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 Article IX, Section 2 of the Idaho Constitution and under Sections 33-2205, 33-2211 and 33-1002G.

**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 17, 2018.

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 amendments would move career technical school funding from a model based on student average daily attendance and support units to one based on the number of students enrolled in a capstone course during the previous academic year and the number of students completing a technical skills assessment for the program in which the student was enrolled. Additional amendments remove redundant language that is found in Section 33-1002G, Idaho Code, outdated terms and adds definitions for terms used in the rule.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: None, Career Technical School Funding is appropriated by the Legislature, the funding calculation is used to distribute the funds appropriated, regardless of amount, and do not add to or subtract from the amount.

**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 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, page 207](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tracie Bent at (208) 332-1582 or [tracie.bent@osbe.idaho.gov](mailto:tracie.bent@osbe.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 24, 2018.

Dated this 31st day of August, 2018.

Tracie Bent, Chief Planning and Policy Officer  
State Board of Education  
650 W. State Street  
P.O. Box 83720  
Boise, Idaho 83720-0037  
Phone: (208) 332-1582  
Fax: (208)334-2632

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 55-0103-1801  
(Only Those Sections With Amendments Are Shown.)

005. DEFINITIONS.

**01. Administrator.** A designated school administrator, holding a career technical administrator certificate pursuant to IDAPA 08.02.02, "Rules Governing Uniformity," Section 015, and who oversees and monitors the career technical school programs and is responsible for ensuring the school meets all applicable federal, state, and local school district regulations, rules, and policies. (3-28-18)

~~**02. Attendance Zones.** For purposes of Section 33-1002G, Idaho Code, each high school is classified as an attendance zone. The attendance zone requirement can be met by having students from at least two (2) high school zones within a district or at least two (2) high school zones in different districts participate in the career technical school. A minimum of fifteen percent (15%) of the total student body must reside in attendance zones apart from the attendance zone of the majority of students. Cooperative Service Agencies must meet the fifteen percent (15%) attendance criteria on a program by program basis. (3-30-01)~~

~~**03. Capstone Course.** A culminating course that requires students to demonstrate the knowledge and skills learned throughout their program of study. (3-28-18)~~

~~**04. Career Technical Schools.** Schools designed to provide high-end, state-of-the-art technical programs that foster quality technical education through intermediate and capstone courses. Programs and services are directly related to the preparation of high school students for employment in current or emerging occupations that require other than a baccalaureate or advanced degree. These schools are closely linked to postsecondary education, thereby avoiding redundancy and maintaining rigor. They are also closely linked to current business and industry standards to ensure relevance and quality. (3-28-18)~~

~~**05. Concentrator Student.** A student with junior or senior status enrolled in a capstone course. ( )~~

~~**06. EDUID.** Education Unique Identifier. ( )~~

~~**07. Enrollment Units.** The total number of individual EDUIDs that are reported as enrolled in a capstone course during the previous academic year. ( )~~

~~**08. Field Experience.** Paid or unpaid work experience such as business/industry internship, clinical experience, supervised occupational experience, job placement, school-based enterprise, or similar work experience setting. The field experience must be of sufficient duration and depth to add to the technical competencies of the student. (3-30-01)~~

~~**09. Participation Total.** The total number of technical skills assessments taken by enrolled concentrator students as part of each required capstone course during the previous academic year. ( )~~

~~**10. Technical Skill Assessment.** An assessment given at the culmination of a pathway program during the capstone course and measures a student's understanding of the technical requirements of the occupational pathway. ( )~~

(BREAK IN CONTINUITY OF SECTIONS)

~~**101. CAREER TECHNICAL SCHOOL GENERAL APPROVAL CRITERIA. (RESERVED)**  
For approval, applying career technical school's district must meet at least four (4) of the five (5) criteria listed in Section 33-1002G, Idaho Code. Approval criteria. (3-28-18)~~

- ~~01. High School Attendance Zones. Two (2) or more high school attendance zones. (3-30-01)~~
- ~~02. Dual Credit. (3-30-01)~~
- ~~03. Field Experience. (3-30-01)~~
- ~~04. Funded as a Separate School. (3-30-01)~~
- ~~05. Separate Site or Cooperative Service Agency. Located at a separate site or approved by the State Board of Education as a cooperative service agency. (3-30-01)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**103. APPLICATION PROCESS.**

~~New and renewal~~ Applications for career technical school funding must be received by the Division of Career Technical Education on or before ~~the first Friday in July~~ **April 15** for the following fiscal year. (3-30-01)(    )

**104. CAREER TECHNICAL SCHOOL ADDED COST UNIT FUNDING AND ELIGIBILITY.**

Section 33-1002G, Idaho Code, provides school districts an opportunity to establish career technical schools that qualify for funding appropriated for the specific purpose of supporting the added cost of career technical schools. The funds are appropriated to the State Board for Career Technical Education to be expended by the Division of Career Technical Education. Funding is based on the ~~average daily attendance (ADA) of students enrolled in the career technical school~~ **number of students enrolled in a capstone course during the previous academic year and the aggregate total of students who completed the technical skill assessment for the program the student was enrolled in.** If any approved program within a career technical school does not enroll students from more than one (1) high school during the ~~reporting period~~ **previous academic year**, ~~the enrolled students may not be counted as part of the school's average daily attendance for that reporting period~~ **the program will not be included in the current year funding calculation.** If the overall **school** enrollment exceeds more than eighty-five percent (85%) of students from any single high school during the **previous** school year, the Division of Career Technical Education may withhold all or part of the career technical school's funding. (3-28-18)(    )

**105. CAREER TECHNICAL SCHOOL ~~AVERAGE DAILY ATTENDANCE~~ FUNDING CALCULATION.**

~~The Division of Career Technical Education shall use the enrollment and attendance submitted to the division of career technical education by the school district to calculate career technical school average daily attendance (ADA) in accordance with applicable laws and rules (Section 33-1002, Idaho Code). Students in attendance at a qualifying career technical school shall be reported as aggregate hours and/or aggregate attendance. The aggregate hours and aggregate attendance will be combined to calculate the ADA for the career technical school~~ **Career technical school funding shall be calculated based on the career technical schools unit value. The career technical school unit value shall be the total number of enrollment units combined with the aggregate participation total for each capstone course. Enrollment units shall be reported to the Department of Education. The Division of Career Technical Education shall gather aggregate participation total data from the independent technical skills assessment providers annually.** (3-28-18)(    )

~~01. Aggregate Hours. The daily hours of all students enrolled in approved intermediate and capstone courses who attend less than two and one-half (2.5) hours per day shall be added together and reported as weekly aggregate hours. (3-28-18)~~

~~02. Aggregate Attendance. Students enrolled in approved intermediate and capstone courses who attend more than two and one-half (2.5) hours per day are to be reported as aggregate attendance. (3-28-18)~~

**106. ~~CAREER TECHNICAL SCHOOL ADDED COST UNIT CALCULATION. (RESERVED)~~**

~~The Division of Career Technical Education shall use the career technical school average daily attendance (ADA) as the basis for added cost unit funding. (3-30-01)~~

~~01. **State Support Unit Value.** The added cost support unit value shall be based on state salary-based apportionment, state paid employee benefits (less state unemployment), base support, and safe environment distribution factors found in the Public School Support Program. (3-30-01)~~

~~02. **Support Unit Divisor.** Added cost support units for career technical schools shall be calculated by using the secondary support unit attendance divisor of eighteen and one-half (18.5) as shown in Section 33-1002(6), Idaho Code. (3-30-01)~~

~~03. **Added Cost Support Factor.** The added cost support factor for career technical schools shall be calculated by multiplying point thirty three (.33) times the added cost support units generated in the career technical school. (3-30-01)~~

~~04. **Estimated Distribution.** The estimated distribution shall be calculated by multiplying the state support unit value by the added cost support factor. (3-28-18)~~

107. CAREER TECHNICAL SCHOOL ~~ADDED COST~~ UNIT FUND DISTRIBUTION.

**01. Value Determination.** Once the career technical appropriation is made, the per unit value will be determined by dividing the total units into the appropriation. ~~(3-30-01)~~( )

**02. Payment Distribution.** Added cost support unit funds shall be distributed by the Division of Career Technical Education in two (2) payments: (3-30-01)

a. Seventy percent (70%) of the total estimated appropriated funds for which career technical schools are eligible shall be distributed no later than September 30 each year ~~following receipt of first period attendance data from the approved career technical schools.~~ Funding will not be distributed until ~~reports have been received and approved by the division of career technical education from each approved schools~~ the previous year enrollment units and the Division of Career Technical Education has verified aggregate participation total data. ~~(3-28-18)~~( )

b. ~~Based on actual support units generated during the year, the balance shall be distributed each year by July 15th~~ The remaining funds shall be distributed no later than June 30. ~~(3-30-01)~~( )

**IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**SALT RIVER WATERSHED ASSESSMENT AND TOTAL MAXIMUM DAILY LOAD (TMDL): 2018**  
**(HUC ID 17040105)**  
**DOCKET NO. 58-0000-1803**  
**NOTICE OF FINAL DECISION**

**AUTHORITY:** In compliance with Section 39-3611, Idaho Code, notice is hereby given that this agency has issued a final decision on the Salt River Subbasin Assessment and Total Maximum Daily Load (TMDL): 2018.

**DESCRIPTIVE SUMMARY:** The Department of Environmental Quality (DEQ) hereby gives notice of the final decision on the Salt River Watershed Assessment and TMDL: 2018. The final decision may be appealed to the Board of Environmental Quality by initiating a contested case in accordance with Sections 39-107(5), 67-5240 et seq., Idaho Code, and IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality.” The petition initiating a contested case must be filed with the undersigned hearing coordinator within thirty-five (35) days of the publication date of this notice in the Idaho Administrative Bulletin.

The area covered by the Salt River Watershed Assessment and TMDL: 2018 (Hydrologic Unit Code 17040105) establishes sixteen (16) sediment TMDLs on water quality impaired stream reaches (assessment units). DEQ has submitted this TMDL to the U.S. Environmental Protection Agency for approval under the Clean Water Act.

**AVAILABILITY OF THE TMDL:** Electronic copy of the TMDL can be obtained at <http://www.deq.idaho.gov/media/60177199/salt-river-sba-tmdls-0818.pdf> or by contacting Graham Freeman, TMDL Program Coordinator, (208) 373-0461, [graham.freeman@deq.idaho.gov](mailto:graham.freeman@deq.idaho.gov)

Dated this 3rd day of October, 2018.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706-1255  
Phone: (208) 373-0418  
Fax: (208) 373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

# **IDAPA 59 – PUBLIC EMPLOYEES RETIREMENT SYSTEM OF IDAHO**

## **59.01.06 – PERSI RETIREMENT RULES**

### **DOCKET NO. 59-0106-1802**

#### **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) 59-1314 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 17, 2018.

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

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

IDAPA 59.01.06.576 would be amended to require an employer who not is eligible to participate in other statutorily created sick leave pools and wants to voluntarily participate in the unused sick leave pool established by the state (see Section 59-1365, Idaho Code) to annually update and submit an application for participation in the subdivision unused sick leave fund. A new section IDAPA 59.01.06.579 would be added to terminate employers failing to meet the participation or funding requirements. It also allows an employer to withdraw. Any terminated employer or withdrawn employer would not be allowed to rejoin.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because negotiated rulemaking is not feasible because it would be inconsistent with the PERSI Board's exclusive fiduciary responsibility for plan operations.

**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 Cheryl George, (208) 287-9231.

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 24, 2018.

Dated this 21st day of August, 2018.

Don Drum  
Executive Director  
Public Employee Retirement System of Idaho  
607 N. 8th Street, Boise, ID 83702  
P.O. Box 83720, Boise, ID 83720-0078  
Phone: (208) 287-9230 / Fax: 208-334-3408

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 59-0106-1802**  
**(Only Those Sections With Amendments Are Shown.)**

**576. PARTICIPATION IN SUBDIVISION UNUSED SICK LEAVE POOL (RULE 576).**

Any PERSI employer meeting the following requirements may elect to participate in the unused sick leave pool authorized by Section 59-1365, Idaho Code: (3-30-01)

**01. No Current Plan.** The employer does not participate in any other statutorily created plan that offers benefits for unused sick leave, including but not limited to, those plans created under Sections 33-1228, 33-2109, and 67-5333, Idaho Code. (3-29-10)

**02. All Inclusive Participation.** All of a participating employer's employees who are PERSI members and who accrue sick leave must be participants in the plan, except that employers may exclude certain distinctive classes of employees for legitimate business reasons. For example, a city could exclude employees covered by a collective bargaining agreement, or a county may choose to exclude elected officials. (3-30-01)

**03. No Other Options for Unused Sick Leave.** No employee may be given any option to receive benefits from unused sick leave other than through this plan. For example, no employee, other than those properly excluded under Subsection 576.02, may be given the option of exchanging sick leave for cash or other forms of payment or leave. (3-30-01)

**04. Fixed Annual Accrual of Sick Leave.** Employer must comply with a policy that offers a fixed amount of sick leave annually that is applicable to all employees or employee groups. A "personal leave" option that fails to distinguish between sick, vacation, or other forms of leave is not permitted. (3-30-01)

**05. Medicare Eligible Retirees.** Employer's plan must provide coverage to all retired employees eligible for unused sick leave credits, including retirees that become Medicare eligible. (3-29-10)

**06. Annual Application.** Employer must annually update and submit an application for participation in the Subdivision Unused Sick Leave Pool on the form prescribed by PERSI. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**579. TERMINATION, WITHDRAWAL, OR REMOVAL FROM SUBDIVISION POOL (RULE 579).**

Any employer failing to meet the requirements of participation provided by IDAPA 59.01.06.576 shall be terminated from participation in the Subdivision Pool. Any employer failing to meet the funding requirements provided by IDAPA 59.01.06.578 shall be terminated from participation in the Subdivision Pool, provided however, an employer may submit a detailed explanation for its failure to meet the funding requirements as required in IDAPA 59.01.06.578 and subject to PERSI approval. Employers that have withdrawn or have been terminated shall not be allowed to rejoin. ( )

~~579~~**80. -- 599. (RESERVED)**

**IDAPA 60 – IDAHO STATE SOIL AND WATER CONSERVATION COMMISSION**

**60.05.01 – RESOURCE CONSERVATION AND RANGELAND DEVELOPMENT PROGRAM**

**DOCKET NO. 60-0501-1801**

**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221, Idaho Code, and IDAPA 04.11.01, the Idaho Rules of Administrative Procedure of the Attorney General, Section 830, notice is hereby given that this agency has initiated proposed rulemaking procedures. This rulemaking action is authorized by Section 22-2718, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing on the proposed rule will be held as follows:

<b>PUBLIC HEARING (LIVE)</b>
<b>Thursday, October 25, 2018 - 9:00 a.m. (MDT)</b>
<b>Idaho Water Center 322 E. Front Street, Boise, Idaho 5th Floor, Suite 560 Conference Room</b>
<b>TELECONFERENCE CALL-IN</b>
<b>Toll Free: 1-877-820-7831 Participant Code: 922837</b>

The hearing location will be accessible to persons with disabilities, and language translators will be made available upon request. Requests for these accommodations must be made no later than five (5) days prior to the hearing date. For arrangements, contact the undersigned.

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

ISWCC initiated this rulemaking to resolve inconsistencies between Title 22, Chapter 27, Idaho Code and the Resource Conservation and Rangeland Development Program (RCRDP) Rules, remove outdated references, resolve internal inconsistencies, and correct typographical errors. The revisions also include adding or changing provisions to streamline the loan application process, update credit guidelines, and give more flexibility to set maximum loan amounts.

The proposed changes include: Adding sections to the rules as required by the Office of Administrative Rules Coordinator. Update Section 10 (Definitions) to resolve inconsistencies with Title 22, Chapter 27, Idaho Code and other rule provisions, and/or clarify ambiguous terms. Update various sections in order to streamline the application process, incorporate more comprehensive and adaptable credit standards, and give ISWCC more flexibility to set loan limits. ISWCC also intends to make changes throughout other Sections of the rules as needed for internal consistency, to correct typographical errors, or to remove outdated references.

**FEE SUMMARY:** N/A

**FISCAL IMPACT:** 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 May 2, 2018, and the July 4, 2018, Idaho Administrative Bulletins, [Vol. 18-5, pages 158-159](#), and [Vol. 18-7, pages 211-212](#).

**INCORPORATION BY REFERENCE:** N/A

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning the proposed rule, contact Terry Hoebelheinrich at [terry.hoebelheinrich@swc.idaho.gov](mailto:terry.hoebelheinrich@swc.idaho.gov), (208) 332-1793.

Anyone may submit written comments regarding this proposed rule. All written comments must be directed to the undersigned and must be delivered on or before 5:00 PM MDT on October 24, 2018.

Dated this 30th Day of August, 2018.

Terry Hoebelheinrich  
Loan Officer  
Idaho Soil and Water Conservation Commission  
P.O. Box 83720  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 60-0501-1801**  
**(The entire chapter is being printed, as changes are present in the every section.)**

**60.05.01 – RULES FOR ADMINISTRATION OF THE IDAHO RESOURCE CONSERVATION  
AND RANGELAND DEVELOPMENT PROGRAM**

**000. LEGAL AUTHORITY.**

The Idaho State Soil and Water Conservation Commission, pursuant to the authority granted in Section 22-2718, Idaho Code, has been granted the authority to adopt the following rules for the administration of ~~the~~ Resource Conservation and Rangeland Development Program (RCRDP) ~~in~~ for Idaho. ~~(3-29-10)~~( )

**001. TITLE AND SCOPE.**

**01. Title.** ~~These rules shall be known and cited as Rules of the Idaho State Soil and Water Conservation Commission.~~ The title of this chapter is IDAPA 60.05.01, "Rules for Administration of the Idaho Resource Conservation and Rangeland Development Program." ~~(4-1-94)~~( )

**02. Scope.** The provisions of these rules set forth procedures and requirements for establishing, implementing, and administering a state loan ~~for resource conservation and rangeland development~~ from the RCRDP fund as provided in Sections 22-2730, through 22-2732, Idaho Code. ~~(3-29-10)~~( )

**002. WRITTEN INTERPRETATIONS — AGENCY GUIDELINES.**

Written interpretations and agency guidance on these rules are available at the Idaho Soil and Water Conservation Commission, 322 E. Front St., Suite 560, Boise, ID 83702. ( )

**0023. ADMINISTRATIVE APPEALS.**

Reconsideration of loan disapproval or any matter affecting the amount of loan funds ~~shall~~ must be done in accordance with ~~RCRDP Rule Subsection Paragraph~~ 056.02.d. of these rules. Persons may be entitled to appeal final agency actions authorized under this chapter pursuant to Title 67, Chapter 52, Idaho Code. ~~(4-1-94)~~( )

**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 office of the Idaho Soil and Water Conservation Commission is in Boise, Idaho. This office is open from 8:00 a.m. to 5:00 p.m. except Saturdays, Sundays and legal holidays. The Commission's mailing address is P.O. Box 83720, Boise, ID 83720-0083. The Commission's street address is 322 E. Front St., Suite 560, Boise, ID 83702.

( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

All records relating to this chapter are public records except to the extent such records are exempt from disclosure by law. ( )

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

**010. DEFINITIONS.**

For the purpose of these rules, unless the context indicates otherwise, the terms and phrases are used as defined herein: (9-9-86)( )

~~01. Account. The account established pursuant to Section 22-2730, Idaho Code, as amended, which contains the receipts allocated in Section 14-413(3)(a), Idaho Code, and all monies appropriated to it by the legislature or made available from federal, private, or other sources. (4-1-94)~~

~~021. Applicant. Any individual, partnership, association, trust, estate, private corporation, or any other private legal entity that is recognized by law as the subject of rights and duties who files an application with the appropriate local District for a loan under the provisions of the act An eligible applicant as defined in Section 22-2717, Idaho Code. (3-29-10)( )~~

~~032. Application. The loan request document submitted to a local District that sets forth the information required by Section 22-2732, Idaho Code and Subsection 057.03 of these rules, including a conservation plan. (3-29-10)( )~~

~~043. Commission. The Idaho State Soil and Water Conservation Commission as defined in Section 22-2718, Idaho Code. (9-9-86)~~

~~04. Conservation Plan. A conservation plan as defined in Sections 22-2717 and 22-2732, Idaho Code that sets forth the information required by Paragraph 057.03.i of these rules. ( )~~

~~05. Contractee. The applicant when the loan has been closed and recorded. (9-9-86)~~

~~06. Coordinated Resource Planning Process. A process that considers all the resources and resource users within a geographical area and encourages active involvement and input from all interested parties. (9-9-86)~~

~~07. District. A Conservation District, Soil Conservation District (SCD), or Soil and Water Conservation District as defined in Section 22-2717, Idaho Code. (9-9-86)( )~~

~~08. Eligible Land. Private, state, county, or federal lands within the state of Idaho. (9-9-86)( )~~

~~09. Field Office. The principal headquarters of the District; it is usually co-located with the local United States Department of Agriculture Natural Resources Conservation Service (NRCS) office usually located with the principal headquarters of the local District. (3-29-10)( )~~

~~10. Field Office Technical Guide. The primary technical reference used by NRCS and the Districts The primary scientific reference for NRCS that contains technical information about the conservation of soil, water, air, and related plant and animal resources. Technical guides used in each field office are localized so that they apply specifically to the geographic area for which they are prepared. Copies of the field office technical guides may be obtained from a local District or field office. (3-29-10)( )~~

**11. Five (5) Year Plan.** The plan prepared by each District as defined in Section 025 of IDAPA 60.05.02, “Rules of the Antidegradation Plan for Agriculture for the Idaho Soil Conservation Commission and Soil Conservation Districts.” ( )

**12. Fund.** The RCRDP fund established pursuant to Section 22-2730, Idaho Code. ( )

**13. Other Funds.** ~~Federal, state, or private~~ Funds to be dedicated to conservation practice implementation costs; ~~which are not from the RCRDP fund or provided by the applicant.~~ (3-29-10)( )

**14. Practice or Eligible Practice for Loans.** A practice listed in the field office technical guide ~~or a special practice approved under Section 058 of these rules.~~ (3-29-10)( )

**15. Practice Life.** The number of years, with proper maintenance and operation, that a practice is expected to last, as shown in the field office technical guide. (3-29-10)

**16. Program Year.** The state fiscal year ~~as provided in Section 67-2201, Idaho Code.~~ (9-9-86)( )

**17. Project.** One (1) or more practices to be installed with a RCRDP loan. (3-29-10)

**18. Rangeland.** Land used primarily for the grazing of domestic livestock and wildlife. (9-9-86)

**19. RCRDP.** ~~The Idaho Resource Conservation and Rangeland Development Program.~~ (9-9-86)

**20. Resource Conservation Plan for Loans.** ~~A plan for loans, developed by the applicant and approved by the local District, that identifies the resource problems and needed conservation improvements, together with engineering and economic feasibility data and estimated costs.~~ (3-29-10)

**21. Riparian Areas.** Riparian areas are sites directly influenced by free water. They have visible vegetation or physical characteristics that reflect free water influence. Lake shores and stream banks are typical riparian areas. Excluded are sites such as ephemeral streams or washes that do not exhibit the presence of vegetation dependent upon free water in the soil. (4-1-94)

**22. Security.** Collateral provided by an approved applicant to secure requested RCRDP funds. ~~This may include mortgage note, promissory note, security agreement, water rights, or other asset.~~ (3-29-10)( )

**23. Special Practice.** A practice (not listed in the field office technical guide) that includes a proven, modern technique that is necessary to solve a resource problem and meet program objectives ~~as determined by the local District.~~ (3-29-10)( )

**011. ABBREVIATIONS.**

**01. RCRDP.** ~~The Idaho Resource Conservation and Rangeland Development Program.~~ ( )

**02. NRCS.** ~~United States Department of Agriculture Natural Resources Conservation Service.~~ ( )

**012. PROGRAM POLICY.**

**01. Administration.** It is the policy of the Idaho State Soil and Water Conservation Commission to administer the Resource Conservation and Rangeland Development Program to provide the greatest benefits to all concerned from the agricultural lands and rangelands within the state. (4-1-94)

**02. Equal Opportunity.** Each applicant regardless of handicap, race, age, sex, creed, color or national origin, ~~shall~~ **must** be given the opportunity to apply for a loan. (3-29-10)( )

**03. Filing Applications.** An application may be filed at anytime during the program year. (4-1-94)

04. Use of Loan Money in Conjunction with State or Federal Programs. Requests for state or federal cost-share assistance and for loan approval are handled by different governmental agencies and approval for one does not guarantee approval for the other. ( )

**0123. PROGRAM OBJECTIVES.**

are to: **01. Objectives.** The objectives of the Resource Conservation and Rangeland Development Program (9-9-86)

- a. Conserve soil resources. (9-9-86)
- b. Conserve water resources. (9-9-86)
- c. Improve riparian areas for multiple use benefits. (9-9-86)
- d. Protect or improve existing beneficial uses of the state's waters. (9-9-86)
- e. Conserve and improve fish and wildlife habitat. (9-9-86)
- f. Increase agricultural productivity of: (9-9-86)
  - i. Cropland. (9-9-86)
  - ii. Orchards. (9-9-86)
  - iii. Pasture and Hayland. (9-9-86)
  - iv. Rangeland. (9-9-86)
  - v. Woodland. (9-9-86)

**02. Achieving Program Objectives.** Decisions concerning the use of program funds *shall must* be based on achievement of program objectives. The administration of the program *shall must* emphasize coordinated resource management planning and decision-making to ensure maximum benefit of funds. Program objectives *shall must* be achieved when the *resource* conservation plan *or rangeland and riparian area improvement plan* is implemented. (4-1-94)( )

**0134. -- 055. (RESERVED)**

**056. RESPONSIBILITIES.**

- 01. District.** The local District *shall must*: (3-29-10)
  - a. Receive *applications the conservation plan* for program participation. (9-9-86)( )
  - b. Within sixty (60) days of receipt, review and evaluate the *application for loans conservation plan* to determine if the project is consistent with the District's program goals and objectives. (3-29-10)( )
  - c. Assign a priority of high, medium, or low to the *applications project*. (4-1-94)( )
  - d. Forward *applications conservation plans* to the Commission with a recommendation for funding. (4-1-94)( )
  - e. Prepare and forward to the Commission special practice requests. (9-9-86)

f. The local District may assign a priority to practices in the field office technical guide and have that priority ranking apply to all future projects seeking to implement the pre-ranked practices. The local District Board

must consider pre-ranking practices at a scheduled Board meeting. The Board's decision including the name and identification number of the practice(s), the assigned ranking and the recommendation for funding must be reflected in the meeting minutes and be forwarded to the Commission. ( )

g. If the local District does not review and evaluate a conservation plan within sixty (60) days of receipt, the Commission may review and evaluate the conservation plan and assign a priority ranking for the project based on the District's five (5) year plan. ( )

02. **Commission.** The Idaho State Soil and Water Conservation Commission ~~shall~~ must: ~~(9-9-86)~~( )

a. Review and evaluate applications. (4-1-94)

b. Approve loans, if: (9-9-86)

i. The applicant has adequate assets for security to protect the state from risk ~~and of~~ loss. ~~(9-9-86)~~( )

ii. There is reasonable assurance that the borrower can repay the loan. (9-9-86)

iii. Money is available in the ~~loan account~~ RCRDP fund. ~~(9-9-86)~~( )

c. Disapprove loans for reasons including but not limited to: (4-1-94)

i. The purpose of the loan is to pay for resource conservation plan practices that have been applied implemented prior to Commission approval. ~~(4-1-94)~~( )

ii. If all the requirements in Rule Subsection Paragraph 056.02.b. of these rules are not met. ~~(4-1-94)~~( )

d. Reconsider loan disapproval if the applicant, within fifteen (15) business days after notice of disapproval, requests the Soil Conservation Commission, in writing, to reconsider its determination in any matter affecting the loan or the amount of loan funds. Reconsideration of the determination shall must take place within ninety (90) business days from the date the written request is received. The time, place, and date shall must be determined by the Commission. The applicant shall must be notified of the time, place, and date and shall must have the right to appear. ~~(3-29-10)~~( )

e. Upon After loan approval, execute a promissory note and other security documents with the applicant for loan repayment. ~~(4-1-94)~~( )

f. Not less than once per year, determine the loan interest rate not to exceed six percent (6%) annually. (9-9-86)

g. Prepare an annual report showing RCRDP accomplishments and benefits resulting from use of loan and grant funds. (4-1-94)

h. Administer and monitor loan proceeds to assure that the intent of the law is met. (9-9-86)

i. Approve or disapprove special practice requests. (9-9-86)

057. APPLICATION FOR LOAN.

01. **How to Apply.** Any applicant desiring a loan from the RCRDP account fund must: apply through the local District. ~~(3-29-10)~~( )

a. Prepare and submit a conservation plan. The conservation plan must be presented by the applicant (or representative appointed by the applicant) to the local District Board at a scheduled meeting unless the project

includes only practices that have been pre-ranked by the local District in accordance with Paragraph 56.01.f. of these rules. If the project includes only pre-ranked practices, the applicant must submit the conservation plan to the Commission. ( )

b. Prepare and submit a completed application. The application including all information required under Subsection 57.03 of these rules must be submitted to the Commission. ( )

**02. Two or More Applicants.** Two (2) or more applicants may install a practice(s) as a group providing the loan can be adequately collateralized and all parties agree to joint and several liability. (4-1-94)

**03. Application Form.** The application ~~shall~~ **must** be on a form prescribed by the Commission and must include: ~~(4-1-94)~~( )

**a.** Name of applicant, and the location, size, and type of agricultural enterprise. (9-9-86)

~~**b.** Applicant's status (full-time farmer/rancher, part-time farmer/rancher or owner of agricultural lands leased to another operator).~~ ~~(9-9-86)~~

~~**eb.** Identification and extent of the resource problem (erosion, plant community deterioration, water loss, water quality, low production, etc.).~~ (9-9-86)

~~**ec.** Statement of applicant's objectives and expected benefits.~~ (9-9-86)

~~**e.** Proposed practices, implementation schedule, and estimated costs.~~ ~~(9-9-86)~~

~~**fd.** Estimate of costs of implementing the project and~~ of total loan funds needed. ~~(9-9-86)~~( )

i. Applicant ~~shall~~ **must** be required to supply at least five percent (5%) of the total project costs through personal funds or in-kind services. (3-29-10)

ii. Total RCRDP loan funds combined with other funds cannot exceed ninety-five percent (95%) of total project costs. (3-29-10)

~~**ge.** Applicant's statement of security offered.~~ (4-1-94)

~~**hf.** Applicant's statement of willingness to allow continued monitoring and evaluation of impacts resulting from applied land treatment and management practices.~~ (9-9-86)

**g.** All documentation required under Subsection 101.03. of these rules and any other documentation requested by the Commission needed to determine whether there is reasonable assurance that the applicant can repay the loan. ( )

~~**ih.** A copy of the applicant's resource conservation plan which becomes a part of the application for assistance. The resource conservation plan shall must include:~~ ~~(4-1-94)~~( )

i. A map showing project location and extent of the resource problem. (4-1-94)

ii. The eligible practices to be installed. (4-1-94)

iii. Estimated costs of applying the practices. (4-1-94)

iv. An implementation schedule. (4-1-94)

v. A statement whereby the applicant agrees to properly maintain and operate installed practices. (4-1-94)

vi. Needed clearances, easements and rights of way. (4-1-94)

vii. Any other appropriate documentation needed to complete the implementation of the *resource* conservation plan as requested by the local District or Commission. (3-29-10)(\_\_\_\_)

~~04. Presenting the Application. The completed application must be presented by the applicant (or representative) to the local District Board at a scheduled meeting. (3-29-10)~~

**058. SPECIAL PRACTICE(S) APPROVAL FOR LOANS.**

**01. Special Practice Approval.** A special practice must be approved by the Commission before it becomes an eligible practice. (9-9-86)

**02. Special Practice Requests.** Special practice requests *shall may* be prepared by the local District *for or* the Commission and *shall must* include: (3-29-10)(\_\_\_\_)

a. A description of the proposed practice. (9-9-86)

b. A justification of need for the special practice. (9-9-86)

c. Standards and specifications for the proposed practice. (9-9-86)

d. A statement from the appropriate agency as to the technical adequacy of the special practice in solving the resource problem. (9-9-86)

**059. -- 080. (RESERVED)**

**081. ENCOURAGING PUBLIC BENEFITS WHEN INSTALLING PRACTICES.**

District Boards *shall must* encourage persons responsible for any aspect of performing practices to promote public benefit by improving or preserving environmental quality and ecological balance when the practices are being installed. Multiple objective achievement and total resource evaluation and treatment *shall must* receive high priority consideration for loan funds. When reviewing loan requests the following considerations *shall must* be made: (1-1-94)(\_\_\_\_)

**01. Preventing Degradation.** Preventing or abating pollution and other environmental degradation. (9-9-86)

**02. Benefiting the Community.** Benefiting the community by means such as outdoor recreational opportunities or enhancing the appearance of the area. (9-9-86)

**03. Benefiting Habitat.** Benefiting fish and wildlife habitat. (9-9-86)

**082. -- 100. (RESERVED)**

**101. CREDIT GUIDELINES FOR LOANS.**

~~These credit guidelines are established to reduce the risk of the state. Even though these loans are made at a low interest rate for the purpose of encouraging conservation and resource development, they must be repaid. This rule sets forth the requirements for determining the eligibility of an operator for a loan. (1-1-94)~~

**01. Standards for Acceptable Loans.** There *shall must* be adequate assets and collateral for security to protect the state from risk *and of* loss. (9-9-86)(\_\_\_\_)

**02. Credit Information Required Documentation.** ~~The Commission must obtain and the applicant must provide~~ Documentation ~~shall be~~ sufficient ~~and verified to support to determine the applicant's ability and willingness to repay~~ the loan ~~offered~~. Such documentation ~~it must may~~ include: financial and operating statements, balance sheets, profit and loss statements, driver's license, income tax returns, budgets, credit reports, estimates/quotes, deeds, leases, and other supporting documents as deemed necessary relative to the size, complexity, and financial responsibility of the individual or entity being financed. ~~A credit report will be ordered from at least three~~

~~(3) credit repositories for each applicant. (3-29-10)( )~~

**03. Information Needed Prior to Loan Commitment Duty to Inform.** Documents and forms required for all loans: After submitting the application and before funds are dispersed, the applicant must inform and provide documentation to the Commission of any significant change of circumstance that may impact their financial standing or ability to repay the loan. (9-9-86)( )

~~a. Loan application. (9-9-86)~~

~~b. Financial statements. (9-9-86)~~

~~i. A current balance sheet will be required from all parties who will be responsible for repayment of the loan and may be required from other relevant parties. (4-1-94)~~

~~ii. Applicant may be questioned about any major changes that may have occurred on the financial statements submitted. (9-9-86)~~

~~iii. Income and expense statements. The most recent three (3) year series of accountant prepared statements, if available, or federal tax returns are desired. (3-29-10)~~

~~e. Copy of drivers license or other photo identification. (3-29-10)~~

~~d. Documentation of water rights. (3-29-10)~~

~~e. Current tax assessments for all parcels referenced in the conservation plan. (3-29-10)~~

~~f. Copy of land lease agreement, if the applicant is not the owner of the parcel(s) referenced in the conservation plan. (3-29-10)~~

**04. Field Inspections.** The Commission may require a Ffield inspections may be used in order to: (4-1-94)( )

a. Determine loan and security positions, provide repayment estimates and verify agricultural assets. (4-1-94)( )

b. Indicate the applicant's management ability. (4-1-94)

c. Secure a complete and accurate description of collateral for the security agreement. (4-1-94)

**05. Other Information Needed Prior to Additional Information Required for Loans Commitment Secured with Real Estate.** Real estate secured loans Where real estate is offered as collateral the following information must be provided: (9-9-86)( )

a. A legal description of the offered collateral. (4-1-94)

b. Real estate appraisal, ~~if necessary, should~~ consisting of at least one (1) of the following: (9-9-86)( )

i. Copy of appraisal made by a licensed professional appraiser ~~deemed acceptable to the state~~ approved by the Commission. (9-9-86)( )

ii. Copy of the most recent property tax assessment. ( )

iii. Evaluation made by Commission or the local District Board according to their its knowledge of the estimated average value of the property in the area in which the project is to be implemented. (3-29-10)( )

~~c. Other Collateral. Any item having tangible value may be accepted as security for these loans.~~

~~Condition of the collateral shall be updated periodically and additions to the security agreement may be required over time~~ A map designating the location of the real estate. (4-1-94)( )

~~d. If the state is not a primary lien holder, a request for notice of default shall be recorded and a letter written to primary lien holders notifying them of the security interests of the state.~~ (9-9-86)

~~e. Must include a map designating location of subject property.~~ (9-9-86)

**06. Other Collateral.** Any item having tangible value may be accepted as security for these loans. Condition of the collateral must be updated periodically and additions to the security agreement may be required over time. ( )

## 102. LOAN CLOSURE AND ADMINISTRATION.

**01. Servicing and Documentation.** All loans ~~shall~~ must be assigned to a loan officer (Commission employee) who ~~shall~~ must be responsible for servicing the loan. (4-1-94)( )

**02. Loan Securing Documents.** Following approval of the application, the Commission, ~~shall~~ must prepare all necessary loan securing documents. (4-1-94)( )

**03. Loan Note and Security Agreement.** The loan ~~shall~~ must be secured by utilizing a ~~loan promissory~~ note and security document listing the parties and the collateral, as well as terms and conditions of the loan. A mortgage or deed of trust ~~shall~~ must be executed and recorded with the county recorder where the collateral is located if the collateral is real property. A security agreement and any other necessary documents shall must be executed if the collateral is not real property. Appropriate financing statements ~~shall~~ must be executed and filed with the Secretary of State on all collateral consisting of personal property. (4-1-94)( )

**04. Fund Obligation.** Funds ~~shall~~ must be obligated when all loan conditions established by the Commission have been met and when all necessary loan securing documents are in order and appropriately signed by the applicant. Funds will then be obligated. Upon notification of fund obligation, the applicant who is now the contractee, may ~~proceed with the~~ complete implementation of the ~~resource conservation plan~~ project. (4-1-94)( )

**05. Cost Incurred.** The applicant is required to cover all costs incurred for loan closure, title insurance, and recording fees. (9-9-86)

## 103. IMPLEMENTATION OF AGREED TO PRACTICES.

~~Once the loan has been approved and the conditions of approval have been met, the~~ The applicant/contractee may, at their own risk, begin installing practices but must not complete the project until the loan has been approved. The applicant/contractee may must install practices as identified and scheduled in the resource conservation plan. The applicant/contractee has the responsibility to obtain the appropriate technical assistance. Technical personnel ~~shall~~ must assist the applicant/contractee in implementation activities to ensure that practices are properly designed, constructed, and managed. The applicant/contractee may install practices or subcontract work out to a subcontractor. Whatever method is used, the applicant/contractee ~~shall~~ must be responsible to ensure that the quality of materials and workmanship in the installation of practices meets the approved standards and specifications for each practice. (4-1-94)( )

**01. Practice Completion.** Upon completion of the scheduled practice the applicant/contractee ~~shall~~ must notify the ~~local District and the~~ provider of technical assistance. ~~And~~ The provider of technical assistance ~~shall~~ must inspect and document the amount and extent of the installed practice and certify its completion if it meets the quality standards and construction specifications of the practice and notify the ~~local District and~~ applicant/contractee. If the practice does not meet practice standards and specifications the applicant/contractee ~~and the local District shall~~ must be notified by the provider of technical assistance, in writing, of the deficiencies and what needs to be done so the practice ~~shall~~ meets standards and specifications. (3-29-10)( )

**02. Submitting Vouchers and Bills.** (3-29-10)

~~a. When practices are certified complete by the provider of technical assistance,~~ The provider of

~~technical assistance must provide a written certification of completion of the project to the Commission. The applicant/contractee must submit to the Commission signed invoices, vouchers and bills along with the certification of completion report for the project to the Commission.~~ (3-29-10)( )

b. Up to ninety-five percent (95%) of loan funds can be disbursed toward submitted bills during the loan installment period. The remaining loan funds will be disbursed upon receipt of written certification of project completion from the provider of technical assistance. (3-29-10)

03. **Warrant Requests.** The Commission staff ~~shall~~ **must** prepare warrant request(s). ~~made out~~ **The warrant(s) are paid** to the **order of the** contractee(s) and the vendor, and ~~are~~ **mailed** ~~it~~ to the contractee. (4-1-94)( )

04. **Drawing Loan Funds.** The ~~applicant/contractee~~ **shall** **must** implement the practices as scheduled and ~~upon certification the contractee~~ may draw ~~on the~~ loan funds ~~throughout the installment term of the loan contract in multiple disbursements during installation of the project.~~ (3-29-10)( )

104. -- 125. (RESERVED)

126. **REPAYMENT OF LOAN.**

01. **Repayment of the Loan.** Repayment of the loan, together with interest, ~~shall~~ **must** commence no later than two (2) full years from the date the note is signed. (4-1-94)( )

02. **Repayment Schedule.** The repayment schedule ~~shall~~ **must** be identified in the loan documents with a fifteen (15) year maximum loan period. One (1) month before payment is due, the commission will mail the contractee a notice of payment due. (4-1-94)( )

03. **First Payment.** The first payment ~~shall~~ **must** be due as required on the signed loan documents as prepared by the ~~ISCC Commission~~. Any additional interest incurred during the installment period of the loan will be added to the first payment notice. (3-29-10)( )

127. **FORECLOSURE.**

In the event of a contractee not adhering to the payment terms and conditions of the mortgage, promissory note, or security agreement, the Commission may seek foreclosure ~~procedures~~ according to the laws of the state of Idaho. (3-29-10)( )

~~128. -- 150. (RESERVED)~~

~~151. **LOAN POLICIES.**~~

~~01. **Maximum Amount of Any One Loan.** The maximum amount of any one (1) loan shall must be two hundred thousand dollars (\$200,000).~~ (3-29-10)

~~02. **Total Maximum Program Obligation.** The total maximum program liability of any individual borrower is three hundred thousand dollars (\$300,000).~~ (3-29-10)

~~03. **Use of Loan Money in Conjunction with State or Federal Programs.** Requests for state or federal cost share assistance and for loan approval are handled by different governmental agencies and approval for one does not guarantee approval for the other.~~ (4-1-94)

~~152. -- 999. (RESERVED)~~

## **IDAPA 61 – STATE PUBLIC DEFENSE COMMISSION**

### **61.01.04 – RULES GOVERNING PROCEDURES AND FORMS FOR THE APPLICATION AND DISBURSEMENT OF INDIGENT DEFENSE GRANTS**

**DOCKET NO. 61-0104-1801 (NEW CHAPTER)**

#### **NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 19-850(1)(a)(iv), 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 17, 2018.

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 PDC has been appropriated funds to disburse to the counties for compliance with Indigent Defense Standards. Idaho Code provides that the Counties must apply for these grants and mandates the PDC to promulgate a rule for that process. This rule sets forth the process and requirements for counties to apply for these funds.

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

There is no fee being imposed.

**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 will be no negative fiscal impact on the state general fund as the funds have already been appropriated.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because Idaho Code provided the PDC with the authority to create temporary procedures for this process so that the funds could be disbursed immediately.

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

There are no documents incorporated by reference into this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Kimberly Simmons at (208) 332-1735.

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 24, 2018.

Dated this 31st day of August, 2018.

Kimberly Simmons, Executive Director  
State Public Defense Commission  
816 W. Bannock St., Suite 201  
Boise, Idaho 83702  
Phone: (208) 332-1735  
Fax: (208) 364-6147

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 61-0104-1801**  
**(New Chapter)**

**IDAPA 61**  
**TITLE 01**  
**CHAPTER 04**

**61.01.04 – RULES GOVERNING PROCEDURES AND FORMS FOR THE APPLICATION**  
**AND DISBURSEMENT OF INDIGENT DEFENSE GRANTS**

**000. LEGAL AUTHORITY.**

Section 19-850 (1)(a)(iv), Idaho Code, gives the State Public Defense Commission (PDC) authority to promulgate rules regarding procedures and forms by which counties may apply to the commission, pursuant to section 19-862A, Idaho Code, for funds to be used to bring their delivery of indigent defense services into compliance with applicable indigent defense standards. ( )

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited as IDAPA 61, Title 01, Chapter 04, “Rules Governing Procedures and Forms for the Application and Disbursement of Indigent Defense Grants.” ( )

**02. Scope.** These rules establish the procedures by which counties may apply for Indigent Defense Grants to improve the delivery of indigent defense services and come into compliance with Indigent Defense Standards. ( )

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at the PDC’s office. ( )

**003. ADMINISTRATIVE APPEALS.**

The PDC’s determination to create procedures for the application and disbursement of Indigent Defense Grants is an exercise of its duty to responsibly and prudently implement a system to improve the delivery of trial-level indigent defense services. Nevertheless, unless otherwise stated, determinations made by the PDC are subject to administrative appeal under IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General.” ( )

**004. INCORPORATION BY REFERENCE.**

IDAPA 61.01.08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions” is incorporated into this Chapter. ( )

**005. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS – TELEPHONE – INTERNET WEBSITE.**

The location and mailing address of the PDC is 816 West Bannock Street, Suite 201, Boise, Idaho 83702. The offices are open daily from 9 a.m. to 5 p.m., except Saturday, Sunday, legal holidays, and when closed because staffing levels do not permit operation. The PDC’s telephone number is (208) 332-1735 and the facsimile number is (208) 364-6147. The PDC’s official website is: <https://pdc.idaho.gov>. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

The records relative to any IDG application are public records and are controlled pursuant to the Idaho Public

Records Act, Title 74, Chapter 1, Idaho Code. ( )

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

**010. DEFINITIONS.**

Refer to IDAPA 61.01.08, “Rules Governing the Administration of Idaho’s Indigent Defense Delivery Systems – Rule Definitions” for definitions of the terms and abbreviations used in this Rule. ( )

**011. ABBREVIATIONS.**

**01. PDC.** The State Public Defense Commission. ( )

**02. IPIDDS.** Idaho’s Principles of an Indigent Defense Delivery System. ( )

**03. IDG.** Indigent Defense Grant. ( )

**012. -- 019. (RESERVED)**

**020. GENERAL PROVISIONS OF THE INDIGENT DEFENSE GRANT PROGRAM.**

It is the intent of the PDC, through the Indigent Defense Grant Program, to provide funds and planning assistance to counties of Idaho for the improvement of their trial-level indigent defense delivery systems to promote and meet the mandates of the Sixth Amendment to the U.S. Constitution and Article I, sec. 13 of the Idaho Constitution. Indigent Defense Grant funds are subject to availability, as appropriated by the Idaho Legislature. ( )

**021. APPLICATION OF INDIGENT DEFENSE STANDARDS.**

The established standards shall apply to all Indigent Defense Providers, defending attorneys, members of the Public Defense Roster, or any attorney who represents at least one indigent defendant or an adult or juvenile at public expense in state courts in a fiscal year. Additionally, as section 19-859, Idaho Code, establishes that the board of county commissioners of each county shall provide for the representation of indigent persons and other individuals who are entitled to be represented by an attorney, these standards also apply to the delivery of such services by the county, section 19-862A(9), Idaho Code. ( )

**022. GRANT CYCLE.**

The PDC shall conduct the grant process in accordance to section 19-862A, Idaho Code and the following schedule so far as it does not conflict with Idaho Code: ( )

**01. Application Availability.** The PDC shall make an application and guidance available no later than February 28 of each year, which shall initiate the grant cycle. ( )

**02. Application Purpose.** The grant application and any attachments submitted by the applicant shall be the primary source of information for awarding a grant. The PDC may review prior grant applications submitted by the County, as well as other relevant information related to the provision of indigent defense services. The PDC may also review reports of county indigent defense services provided by staff, including a county’s assigned Regional Coordinator. ( )

**03. Application Period.** The applicant shall have through May 1 of that grant cycle to complete and submit the application to the PDC. ( )

**04. Award Notification.** The PDC shall issue notification to every applicant regarding the disposition of their grant request within sixty (60) days of submission. ( )

**05. Grant Approval.** Grant disbursement shall occur on or about October 1 of that grant cycle. ( )

**06. Grant Disapproval.** If the PDC disapproves an application, the county shall consult with the PDC and submit a revised application within thirty (30) days of the mailing date of the official notification of the PDC’s disapproval. A county may submit two revisions. ( )

**a.** If after two revisions, an application is not approved by the PDC, a resolution shall be pursued through the Idaho Administrative Procedure Act, pursuant to section 67-5201 et seq., Idaho Code. ( )

**b.** The PDC will review and issue notification of the disposition of a revised application within thirty (30) days of submission. ( )

**07. Award Amount.** Based upon the criteria in section 026 of this chapter, the PDC shall determine the amount that is needed by the Applicant to meet or improve upon indigent defense standards. The PDC shall award that amount to an eligible Applicant, subject to the availability of funds and the priority rating of the Applicant. ( )

**08. Priority Rating.** If funds are not available to fund all of the approved applications, the PDC shall prioritize the disbursement of funds to: ( )

**a.** Eligible Applicants not in compliance with any indigent defense standards; ( )

**b.** Eligible Applicants in compliance with some indigent defense standards; then ( )

**c.** Eligible Applicants in compliance who submit a compliance proposal with a plan to use their IDG award to improve its indigent defense delivery system in other ways pursuant to section 19-862A, Idaho Code. ( )

**023. APPLICATION PROCEDURE.**

All forms and documents required by these rules and the PDC shall be completed and submitted according to these rules in order for an IDG application to be considered for approval. ( )

**01. Forms.** To be considered for a grant, an applicant must file with the PDC a completed IDG application form, compliance checklist and other documentation requested in the application, all of which shall have original or digital signatures. An applicant must file with the PDC a completed grant agreement form, with original or digital signatures, within sixty (60) days of written notification of grant approval. The application and grant agreement forms shall be provided to the applicant by the PDC. ( )

**02. Review.** The applicant or applicant's representative may review the compliance proposal and all associated documentation with the PDC staff prior to submitting the application to ensure it meets the criteria for the Indigent Defense Grant program. When possible, PDC staff may perform an on-site visit to the county for preliminary fact finding regarding compliance with indigent defense standards. ( )

**03. Incomplete Application.** An application which is missing required information shall be excluded from consideration for an award. ( )

**04. Deadline.** The deadline for grant applications shall be established pursuant to section 19-862A, Idaho Code. Applications for the upcoming fiscal year are due by May 1. The PDC shall announce the availability of funds to potential applicants as soon as practically reasonable after appropriated by the Idaho Legislature. ( )

**024. AWARD ELIGIBILITY REQUIREMENTS.**

To be considered for an award, an Applicant must meet all of the following requirements: ( )

**01. Compliance with Indigent Defense Standards.** To be eligible for any grant award from the PDC, a county must comply with indigent defense standards or provide a suitable plan to comply in their IDG application. Pursuant to section 19-862A, Idaho Code, compliance must occur by March 31 of each year for any standards in place by May 1 of the prior year. ( )

**02. Annual Report(s) Submitted.** Each defending attorney within an applicant's county must have submitted an annual report pursuant to section 19-864, Idaho Code, in order for a county to be eligible to receive any grant award from the PDC. ( )

**03. Completed Application.** To be eligible, the county must file, to the satisfaction of the PDC, a

completed application for an Indigent Defense Grant. ( )

**04. Curing of Deficiencies.** To be eligible, the Applicant must have cured, to the satisfaction of the PDC, any material breach of the terms of a previously approved state IDG. The PDC may approve an application for an IDG, even if deficiencies have not been cured, if the application includes a compliance proposal showing how an IDG is necessary to meet or improve upon indigent defense standards and that the requested amount is imperative to such compliance proposal. ( )

**05. Use of Funds.** The Applicant must agree to use any grant funds towards compliance with the applicable indigent defense standards and/or for the improvement of the Applicant indigent defense delivery system pursuant to section 19-862A, Idaho Code. ( )

**025. AWARD RECOMMENDATION.**

If the PDC uses a grant subcommittee, the PDC shall request a recommendation from the grant subcommittee regarding the distribution of grant funds. ( )

**01. Assessment and Validation of Need.** The grant subcommittee, if used, shall review grant applications prior to making a recommendation about awards. The subcommittee shall carefully review the compliance proposal and cost analysis to determine eligibility and the amount needed for the applicant to meet the plan contained within the compliance proposal. ( )

**02. Commission Approval.** Whether or not a grant subcommittee is used, all awards must be approved by the PDC. If no grant subcommittee is used, the PDC shall review the applications as set forth above. ( )

**026. CRITERIA.**

The following criteria shall be used to evaluate applications for IDG awards: ( )

**01. IDG Award Eligibility.** The PDC shall review the information provided in the application to determine the maximum allowable IDG award pursuant to section 19-862A(3). ( )

**02. Compliance Proposal Provided.** The PDC shall approve an application if it includes a plan that is necessary to meet or improve upon indigent defense standards. ( )

**03. Cost Analysis Provided.** The PDC shall approve an application if it demonstrates that the amount of the requested state indigent defense grant is necessary to meet or improve upon indigent defense standards. ( )

**04. Annual Report(s) Submitted.** Disbursement of IDG award funds will occur if each defending attorney has submitted, to the satisfaction of the PDC, an annual report pursuant to section 19-864, Idaho Code. ( )

**05. Deficiencies Cured.** The PDC shall determine whether the Applicant has cured, to the satisfaction of the PDC, any material breach of the terms of a previously approved IDG. In the event the PDC determines that a county has failed to materially comply with indigent defense standards, the PDC shall require that the application specifically address how the noncompliance will be cured in the upcoming fiscal year with the IDG award. In these cases, the PDC may approve an application for an IDG award if, to the satisfaction of the PDC, the application compliance proposal includes a plan to cure such deficiencies. ( )

**06. IDG Funds Accounting.** The PDC may review the use, misuse or non-use of prior IDG awards by an Applicant and consider such use when determining how much an eligible applicant should receive upon approval of an IDG application. ( )

**027. UNUSED IDFG FUNDS.**

All funds not expended for costs associated with the applicant's award shall be maintained in the Applicant's fund for indigent defense and be specifically earmarked to meet or improve upon indigent defense standards that are in place or might be in place in the future. Unused grant funds may be taken into consideration by the PDC in future IDG award requests by the applicant. ( )

**028. WITHDRAWAL OF GRANT APPLICATION.**

**01. Withdrawal.** Any applicant may withdraw or forfeit an application at any time. ( )

**02. Ability to Apply.** The withdrawal of an application does not affect the applicant's ability to reapply in a subsequent grant cycle. ( )

**029. FRAUDULENT INFORMATION ON GRANT APPLICATION.**

Providing false information on any application or document submitted under these rules is grounds for declaring the applicant ineligible. Any and all funds determined to have been acquired on the basis of fraudulent information must be returned to the PDC. ( )

**030. -- 999. (RESERVED)**

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# LEGAL NOTICE

## Summary of Proposed Rulemakings

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### 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 proposed rule public hearing request deadline is October 17, 2018, unless otherwise posted.  
The proposed rule written comment submission deadline is October 24, 2018, unless otherwise posted.  
(Temp & Prop) indicates the rulemaking is both Temporary and Proposed.  
(\*PH) indicates that a public hearing has been scheduled.*

#### **IDAPA 07 – DIVISION OF BUILDING SAFETY PO Box 83720, Meridian, ID 83642**

**07-0301-1801, Rules of Building Safety.** Removes obsolete provisions regarding energy conservation; increases maximum hot water piping length in public lavatories.

#### **IDAPA 08 – STATE BOARD OF EDUCATION/DEPT OF EDUCATION PO Box 83720, Boise, ID 83720-0037**

**08-0104-1801, Residency.** Amends residency requirements for determining in-state eligibility.

**08-0113-1802, Rules Governing the Opportunity Scholarship Program.** Amends student eligibility and application requirements to allow for a portion of the Opportunity Scholarship awards to be used for individuals who have earned 24 or more postsecondary credits.

#### **08-0202 - Rules Governing Uniformity:**

**08-0202-1802,** Creates an alternate route to certification for non-traditional educators to earn an administrator certificate.

**08-0202-1803,** Updates terminology and makes technical corrections to the educator credential requirements.

**08-0202-1804,** Clarifies types of “additional evidence demonstrating effective teaching” that are authorized as evidence for the Professional Endorsement pursuant to Section 33-1201A, Idaho Code.

**08-0202-1805,** Establishes Occupational Specialist Certificate endorsement requirements.

#### **08.02.03 – Rules Governing Thoroughness:**

**08-0203-1803,** Provides an exemption for qualified students from taking senior math; updates reference to Algebra to add integrated math; removes restrictions on computer science courses; clarifies and expand senior project.

**08-0203-1804,** Updates the content standards for secondary career technical programs by adding several content subcategories and amends current Collision Repair standards.

**08-0501-1801, Rules Governing Seed and Plant Certification.** Updates the Idaho Potato Certification Standards that are incorporated by reference to the 2018 version.

#### **IDAPA 11 – IDAHO STATE POLICE / IDAHO STATE BRAND BOARD PO Box 1177, Meridian, ID 83680-1177**

**11-0201-1801, Rules of the Idaho State Brand Board.** Increases cattle brand inspection fees by \$.25 cents and the minimum brand inspection fee to \$20.

**IDAPA 13 – DEPARTMENT OF FISH AND GAME  
PO Box 25, Boise, ID 83707****13.01.08 - Rules Governing the Taking of Big Game Animals in the State of Idaho:**

**13-0108-1802**, Excludes any moose, bighorn sheep, mountain goat, or grizzly bear controlled hunt tag drawn by a parent or grandparent from designation to their child or grandchild.

**13-0108-1803**, Allows hunters 65 years of age or older or hunters with a senior combination hunting, disabled combination license or nonresident disabled American Veteran hunting license to be eligible to participate in any second application period for youth only controlled hunts.

**13-0108-1804**, Allows certain caliber airguns using pre-charged pneumatic power as a method of take for big game, including in short-range weapon seasons.

**13-0108-1805**, (Temp & Prop) Would no longer allow regular controlled hunt applications to be submitted by mail.

**13-0109-1805, Rules Governing the Taking of Game Birds in the State of Idaho.** Creates the administrative framework for the Fish and Game Commission to adopt Landowner Permission Hunt (LPH) seasons for turkeys in areas of the state to manage turkey depredation on private lands and to provide landowners with turkey hunting opportunities where turkey hunting is controlled.

**13-0110-1802, Rules Governing the Importation, Possession, Release, Sale, or Salvage of Wildlife.** (Temp & Prop) Prohibits, with certain exceptions, the importation of carcasses or other parts of wild deer, elk, or moose from another state, province of Canada, or country with any documented case of Chronic Wasting Disease (CWD) and to create additional transport prohibitions if the Commission designates any part of Idaho as a CWD Management Zone.

**13-0116-1802, The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals.** Revises the distance that ground sets for trapping furbearing animals or predatory or unprotected wildlife may be placed from maintained public trails that are paved or unpaved.

**13-0117-1801, Rules Governing the Use of Bait and Trapping for Taking Big Game Animals.** Revises the distance that ground sets for trapping gray wolves may be placed from maintained public trails that are paved or unpaved.

**IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE  
PO Box 83720, Boise, ID 83720-0036**

**16-0201-1801, Rules of the Idaho Time Sensitive Emergency System Council.** Incorporates by reference the 2019-1 Edition of the Time Sensitive Emergency Standards Manual; clarifies the designation fee structure and enforcement procedures for failure to make annual payments for facilities choosing to pay designation fees on a yearly basis.

**16-0202-1801, Rules of the Idaho Emergency Medical Services (EMS) Physician Commission.** Incorporates by reference the Idaho Emergency Medical Services (EMS) Physician Commission Standards Manual, 2019 Edition.

**16-0303-1801, Rules Governing Child Support Services.** Increases federally-mandated annual child support services fee from \$25 to \$35 and increases the threshold for imposing the fee to \$550.

**16-0304-1801, Rules Governing the Food Stamp Program in Idaho.** Defines self-employment and includes a referral process for the state's mandatory employment and training program; updates participation in the Workforce Investment Act (WIA), now known as the Workforce Innovation and Opportunity Act (WIOA) programs.

**16-0308-1801, Rules Governing the Temporary Assistance for Families in Idaho (TAFI) Program.** Excludes children under age 18 who receive SSI from household when determining eligibility and grant amount.

**16.03.09 - Medicaid Basic Plan Benefits:**

**\*16-0309-1801, (\*PH)** Allows eligible Critical Access Hospitals to designate additional acute care beds as swings beds to provide necessary care for individuals.

**\*16-0309-1804, (\*PH)** Updates and establishes standards for laboratory and radiology services, coverages and limitations, provider reimbursement and quality assurance.

**\*16-0309-1805, (\*PH)** Adds new definitions, participant safeguards, quality assurance, and procedural requirements to implement a fixed participant enrollment process and support the value-based model through the existing Healthy Connections Program.

*\*16-0309-1806, (\*PH)* Clarifies that drugs acquired through the federal 340B drug pricing program and dispensed by 340B contract pharmacies are not covered, including investigational drugs.

*\*16-0309-1807, (\*PH)* Implements processes to improve the Non-Emergency Medical Transportation (NEMT) program.

*\*16-0309-1808, (\*PH)* Updates definitions and clarifies qualifications for providers of Skills Building/Community Based Rehabilitation Services (CBRS) in schools and in the community.

*\*16-0309-1810, (\*PH)* Removes the prenatal exemption language from the third-party liability rules to align with changes in the federal Balanced Budget Act of 2018.

*\*16-0310-1807, Medicaid Enhanced Plan Benefits. (\*PH)* (Temp & Prop) Requires termination of enrollment when participant no longer meets HCBS eligibility criteria, as required by the Social Security Act.

*16-0504-1801, Rules of the Idaho Council on Domestic Violence and Victim Assistance Grant Funding.* Incorporates by reference the 2019-1 edition (revision effective July 1, 2019) of the “Minimum Standards for Domestic Violence Offender Intervention Programs.”

**IDAPA 17 – IDAHO INDUSTRIAL COMMISSION  
PO Box 83720, Boise, ID 83720-0041**

*17-0206-1801, Employer’s Reports.* Clarifies the requirements for submission of Summaries of Payment and filing of closing documents to reflect Electronic Data Interchange (EDI) filing.

*17-0207-1801, Procedures to Obtain Compensation.* Removes documents previously incorporated by reference and instead references them in rule guidelines to be used for the proper reporting of claims electronically.

*17.02.10 - Administrative Rules of the Industrial Commission Under the Workers’ Compensation Law – Security for Compensation – Insurance Carriers:*

*17-0210-1801,* Clarifies requirements for electronic submissions by insurance carriers of First Reports of Injury and Claims for Benefits, notices of occupational illness, and fatalities; eliminates the need to submit paper documentation in support of electronically-filed initial payments.

*\*17-0210-1802, (\*PH)* Establishes conditions and procedures for the use of electronic fund transfers and access cards to pay benefits due to injured workers by insurance carriers.

*17.02.11 - Administrative Rules of the Industrial Commission Under the Workers’ Compensation Law – Security for Compensation – Self-Insured Employers:*

*17-0211-1801,* Clarifies requirements for electronic submissions by self-insured employers of First Reports of Injury and Claims for Benefits, notices of occupational illness, and fatalities; eliminates the need to submit paper documentation in support of electronically-filed initial payments.

*\*17-0211-1802, (\*PH)* Establishes conditions and procedures for the use of electronic fund transfers and access cards to pay benefits due to injured workers by self-insured employers.

**IDAPA 18 – DEPARTMENT OF INSURANCE  
PO Box 83720, Boise, ID 83720-0043**

*18-0130-1801, Individual Disability and Group Supplemental Disability Insurance Minimum Standards Rule.* Aligns rule to HCR 45 (2018) by revising language related to exclusions for hearing aids so that hearing loss interventions will be covered by health insures with certain parameters.

*18-0170-1801, Rules Governing Small Employer Health Insurance Availability Act Plan Design.* Aligns rule to HCR 45 (2018) by revising language related to exclusions for hearing aids so that hearing loss interventions will be covered by health insures with certain parameters.

**IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES  
PO Box 83720, Boise, ID 83720-0063**

*24-0301-1801, Rules of the State Board of Chiropractic Physicians.* Allows Board to consider current qualifications for applicants by endorsement, applicant would not be required to take and pass SPEC exam; clarifies procedure and sets fee for active status licensure; includes procedure for clinical nutritional certification; addresses continuing education options; removes obsolete provisions.

**24-0501-1801, Rules of the Board of Drinking Water and Wastewater Professionals.** Allows the Board to approve apprenticeship programs for individuals to obtain experience and education to qualify for a Class II or Class III license in less time; clarifies one year experience requirement; deletes obsolete provisions.

**24-0601-1801, Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants.** Clarifies rule regarding supervision of occupational therapy assistants, limited permit holders, and aides; removes outdated language; clarifies supervision and recordkeeping requirements; updates Code of Ethics; specifies factors Board considers for criminal or disciplinary action.

**24-0801-1801, Rules of the State Board of Morticians.** Establishes that a licensee's certificate of authority expires when their license goes inactive, and provides that it may be reissued when their licensed is returned to active status.

**24-0901-1802, Rules of the Board of Examiners of Nursing Home Administrators.** Allows Board to review applications received less than 7 days prior to a board meeting and provide clear notice of the denial of an application for lack of activity; improves continuing education options; clarifies expiration of a temporary permit; removes outdated language.

**24-1101-1801, Rules of the State Board of Podiatry.** Removes obsolete language; removes limit of continuing education that can be obtained online; expands CE options to include variety of formats.

**24.12.01 - Rules of the Idaho State Board of Psychologist Examiners:**

**24-1201-1801,** Board has adopted the National Examination for Professional Practice in Psychology (EPPP) as the national competency exam that applicants for licensure must pass.

**24-1201-1802,** Establishes the qualifications for provisional certification of prescriptive authority and certification of prescriptive authority and fees for certification.

**24-1301-1801, Rules Governing the Physical Therapy Licensure Board.** Per HB 505 (2018) implements the practice of dry needling, including establishing education and training requirements, as well as informed consent requirements.

**24-1401-1801, Rules of the State Board of Social Work Examiners.** Allows Board to use the Social Work Registry administered by ASWB as a reliable source of credentialing information; waives exam requirement for applicants for licensure by endorsement who have actively practiced in another state but were not required to pass an exam at the time they obtained a social work license.

**24-1501-1802, Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists.** Clarifies rules regarding group supervision and informed consent requirements for patients; increases portability of licenses; increases flexibility for obtaining continuing education requirements.

**24-1701-1801, Rules of the State Board of Acupuncture.** Clarifies requirements and qualifications for an acupuncture trainee permit; establishes supervision standards for licensed and certified acupuncturists who provide supervision to trainees and technicians.

**24-1801-1802, Rules of the Real Estate Appraiser Board.** Reduces application, registration, licensure and temporary permit fees.

**24-1901-1801, Rules of the Board of Examiners of Residential Care Facility Administrators.** Qualifies work experience in a nursing home facility by a licensed nursing home administrator for licensure as a residential care facility administrator.

**24-2501-1801, Rules of the Idaho Driving Businesses Licensure Board.** Allows Board to consider applications received less than 7 days before a board meeting; provides a waiver for the Instructor Apprenticeship Training Program and expands requirement that instructor be licensed for 5 years to qualify; eliminates 5 year continuous driver education experience requirement to teach in private driving school; addresses continuing education requirements.

**24-2601-1801, Rules of the Idaho Board of Midwifery.** Updates two documents incorporated by reference to reflect the most current publications; deletes obsolete waiver language; clarifies current cardiopulmonary resuscitation certification for licensure renewal.

**24-2801-1802, Rules of the Barber and Cosmetology Services Licensing Board.** New chapter implements SB 1324 (2018) by combining Boards of Cosmetology and Barber Examiners; sets fees; reduces minimum hours of instruction for cosmetology, barber-stylist, and electrology licenses; creates new certificate for make-up artistry only; creates a registration for retail thermal styling equipment dealers to do limited demonstration on potential customers; specifies what services a licensee may perform outside a licensed establishment; provides for the transfer of instructional hours between professions; and modernizes safety and disinfection requirements.

**IDAPA 27 – IDAHO BOARD OF PHARMACY  
PO Box 83720, Boise, ID 83720-0067**

**27-0101-1801, General Provisions.** Adds definition for “DME Outlet” and removes definition for “MPJE”; addresses unprofessional conduct regarding misbranded or adulterated products.

**27-0102-1802, Rules Governing Licensure and Registration.** Adds pharmaceutical manufacturer registration requirements; eliminates the Multistate Pharmacy Jurisprudence Exam (MPJE) as a precondition to pharmacist licensure; makes technical corrections.

**27-0103-1801,** Includes rules from IDAPA 27.01.06, which is being repealed.

**27-0104-1802, Rules Governing Pharmacist Prescriptive Authority.** Implements HB 191 regarding prescribing certain drugs approved by the FDA for mild conditions or when providing care due to clinical gaps or to supplement an infusion order.

**27-0105-1801, Rules Governing Drug Compounding.** Minor changes conform rule to federal law and current practice.

**27-0106-1801, Rules Governing DME, Manufacturing, and Distribution.** Chapter repeal.

**IDAPA 28 – IDAHO DEPARTMENT OF COMMERCE  
PO Box 83720, Boise, ID 83720-0093**

**28-0203-1802, Rules of the Idaho Regional Travel and Convention Grant Program.** Defines and clarifies allowable costs of the Idaho Regional Travel and Convention Grant Program.

**IDAPA 31 – IDAHO PUBLIC UTILITIES COMMISSION  
PO Box 83720, Boise, ID 83720-0074**

**31-1101-1801, Safety and Accident Reporting Rules for Utilities Regulated by the Idaho Public Utilities Commission.** Updates the National Electrical Safety Code, incorporated by reference, to the 2017 edition.

**31-71-03-1801, Railroad Safety and Accident Reporting Rules.** Adds commercially bottled water as source of drinking water for employees.

**IDAPA 35 – IDAHO STATE TAX COMMISSION  
PO Box 36, Boise, ID 83722-0410**

**35-0101-1804, Income Tax Administrative Rules.** Deletes the reference to a partnership interest as nonqualifying property for the Idaho capital gains deduction.

**35.01.02 - Idaho Sales and Use Tax Administrative Rules:**

**35-0102-1802,** Provides guidance to taxpayers on the administrative appeals process; addresses motor vehicles including gifts, military personnel and exemptions; directs financial institutions to obtain a permit if they are collecting sales tax for proper reporting.

**35-0102-1803,** Adds “out-of-state” seller to list of entities that are retailers; exempts food and beverages donated to individuals or nonprofit organizations; adds to exemptions for research and development at INL; changes standards for valuing a vehicle in absence of bill of sale and creates subcategories; clarifies the process for requesting refund of sales tax paid in error or related to bad debt; provides direction on proper execution of approved exemption claim form.

**35-0103-1801, Property Tax Administrative Rules.** Corrects a transcription error to this docket.

**35-0201-1801, Tax Commission Administration and Enforcement Rules.** Adds the interest rate for calendar year 2018 and the Revenue Ruling where the federal rate for the calculation can be found.

**IDAPA 38 – DEPARTMENT OF ADMINISTRATION  
PO Box 83720, Boise, ID 83720-0075**

**38-0501-1801, Rules of the Division of Purchasing.** Addresses the format for preserving purchasing records within the purchasing authority; adds a solicitation method to allow for competitive negotiations, when justified; clarifies the use of electronic communications during the solicitation process; identifies additional examples of potentially exempt acquisitions; adds a provision concerning information technology purchased through a reseller.

**IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT  
PO Box 7129, Boise ID 83707-1129**

**39-0301-1801, Rules Governing Definitions Regarding Overlegal Permits.** Chapter repeal.

**39-0301-1802, Rules Governing Definitions Regarding Special Permits.** New chapter provides definitions related to the permitting of commercial motor vehicles and/or combinations.

**39-0302-1801, Rules Governing Movement of Disabled Vehicles.** New chapter provides the safety conditions, weight limits and time of travel requirements for the movement of disabled vehicles by special permit.

**39-0303-1801, Rules Governing Special Permits – General Conditions and Requirements.** New chapter provides the general safety conditions and travel requirements for special permitted vehicles and/or loads; gives the Department and local highway jurisdictions permit issuing authority; imposes fees for various special permits; provides the permittee general responsibilities when operating under any special permit.

**39-0304-1801, Rules Governing Movement of Disabled Vehicles.** Chapter repeal.

**39-0304-1802, Rules Governing Special Permits – Overweight Non-Reducible.** Provides specific safety conditions and travel requirements for the movement of overweight non-reducible permitted vehicles and/or loads; provides engineering analysis procedures for special permitting of vehicles and/or loads that exceed various bridge ratings.

**39-0305-1801, Rule Governing Variable Load Suspension Axles.** Chapter repeal.

**39-0305-1802, Rules Governing Special Permits – Oversize Non-Reducible.** New chapter provides specific safety conditions and travel requirements of non-reducible (size only) permitted vehicles and/or loads provides specific safety requirements for escort vehicles for oversize vehicles and/or loads.

**39-0306-1801, Rules Governing Allowable Vehicle Size.** Chapter repeal.

**39-0306-1802, Rules Governing Special Permits for Extra-Length/Excess Weight, Up to 129,000 Pound Vehicle Combinations.** Establishes the specific safety conditions, travel requirements and the designated routes for extra-length/excess weight, over 80,000 pounds, and up to 129,000 pounds vehicle combinations; provides the requirements for the request of additional 129,000 pound designated routes.

**39-0307-1801, Rules Governing Restricted Routes for Semitrailers.** Chapter repeal.

**39-0307-1802, Rules Governing Special Permits for Reducible Loads.** New chapter provides the maximum sizes allowed by special permits for specific Department-approved reducible loads.

**39-0308-1801, Rules Governing Self-Propelled Snowplows.** New chapter establishes safety requirements and standardizes the lighting systems for overwidth or overweight, or both, snowplows operating under special permits.

The following chapters are being repealed as part of the consolidation and re-promulgation of the commercial vehicle permitting rules:

- 39-0309-1801, Rules Governing Overlegal Permits – General Conditions and Requirements
- 39-0310-1801, Rules Governing When an Overlegal Permit is Required
- 39-0311-1801, Rules Governing Overlegal Permittee Responsibility and Travel Restrictions
- 39-0312-1801, Rules Governing Safety Requirements of Overlegal Permits
- 39-0313-1801, Rules Governing Overweight Permits
- 39-0314-1801, Rules Governing Policy During Spring Breakup Season
- 39-0315-1801, Rules Governing Excess Weight Permits for Reducible Loads
- 39-0316-1801, Rules Governing Oversize Permits for Non-Reducible Vehicles and/or Loads
- 39-0317-1801, Rules Governing Permits for Manufactured Homes, Modular Buildings, and Office Trailers
- 39-0318-1801, Rules Governing Overlegal Permits for Relocation of Buildings or Houses
- 39-0319-1801, Rules Governing Annual Overlegal Permits
- 39-0320-1801, Rules Governing Application for Special Permits
- 39-0321-1801, Rules Governing Overlegal Permit Fees
- 39-0322-1801, Rules Governing Overlegal Permits for Extra-Length, Excess Weight, and Up to 129,000 Pound Vehicle Combinations
- 39-0323-1801, Rules Governing Revocation of Overlegal Permits
- 39-0324-1801, Rules Governing Self-Propelled Snowplows
- 39-0325-1801, Rules Governing Lights on Snow Removal Equipment

#### IDAPA 47 – DIVISION OF VOCATIONAL REHABILITATION

PO Box 83720, Boise, ID 83720-0037

*47-0102-1801, Rules and Minimum Standards Governing Extended Employment Services.* Adds and amends definitions; updates and clarifies the application process, evaluation of the eligibility requirements, process for payment services and submission of individual program plans, and record retention requirements.

#### IDAPA 49 - CERTIFIED SHORTHAND REPORTERS BOARD

PO Box 83720, Boise, ID 83720-0063

*49-0101-1801, Rules of Procedure of the Idaho Certified Shorthand Reporters Board.* Removes references to “executive secretary” position; allows Board to consider certain factors when reviewing an applicant with criminal or disciplinary history.

#### IDAPA 55 - DIVISION OF CAREER TECHNICAL EDUCATION

PO Box 83720, Boise, ID 83720-0037

*55-0103-1801, Rules of Career Technical Schools.* Changes the model used for career technical school funding; adds definitions; removes outdated terms.

#### IDAPA 59 – PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

PO Box 83720, Boise, ID 83720-0078

*59-0106-1802, PERSI Retirement Rules.* Requires an employer who not is eligible to participate in other sick leave pools and wants to voluntarily participate in the subdivision unused sick leave pool, as established by state law, to annually update and submit an application for participation in the pool; new section terminates employers failing to meet the participation or funding requirements and allows an employer to withdraw from pool but not rejoin.

#### IDAPA 60 - IDAHO STATE SOIL AND WATER CONSERVATION COMMISSION

PO Box 83720, Boise, ID 83720-0083

*\*60-0501-1801, Resource Conservation and Rangeland Development Program.* (\*PH) Removes outdated references; adds or changes provisions to streamline the loan application process; updates credit guidelines; give mores flexibility to set maximum loan amounts.

#### IDAPA 61 - STATE PUBLIC DEFENSE COMMISSION

816 W. Bannock St., Suite 201, Boise, ID 83702

*61-0104-1801, Rules Governing Procedures and Forms for the Application and Disbursement of Indigent Defense Grants.* Establishes the process and requirements for counties to apply for grants to comply with the Indigent Defense Standards.

**NOTICE OF ADOPTION OF TEMPORARY RULE ONLY**

**IDAPA 18 – DEPARTMENT OF INSURANCE**

**18-0154-1802**, Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act (eff. 10-1-18)T

**IDAPA 27 – BOARD OF PHARMACY**

**27-0103-1802**, Rules Governing Pharmacy Practice (eff. 9-28-18)T

**IDAPA 29 – IDAHO POTATO COMMISSION**

**29-0103-1802**, Rules Governing Nominations for Appointment as a Commissioner to the Idaho Potato Commission (eff. 8-29-18)T

**NOTICES OF PROCLAMATION**

**IDAPA 13 – IDAHO FISH AND GAME COMMISSION / DEPT OF FISH AND GAME****13.01.07 – Rules Governing the Taking of Upland Game Animals**

**13-0107-1801AP** – Notice of Amended Proclamation

**13.01.09 – Rules Governing the Taking of Big Game Animals in the State of Idaho**

**13-0109-1804P** – Notice of Proclamation

**NOTICES OF INTENT TO PROMULGATE – NEGOTIATED RULEMAKING**

**IDAPA 02 – DEPARTMENT OF AGRICULTURE**

**02-0414-1801**, Rules Governing Dairy Products (2<sup>ND</sup> Notice) (See Bulletin for meeting info)

Please refer to the Idaho Administrative Bulletin, **October 3, 2018, Volume 18-10**, for the notices and text of all rulemakings, public hearings schedules, information on negotiated rulemakings, executive orders of the Governor, and agency contact information.

*Issues of the Idaho Administrative Bulletin can be viewed at [adminrules.idaho.gov](http://adminrules.idaho.gov).*

Office of the Administrative Rules Coordinator, Dept. of Administration, P.O. Box 83720, Boise, ID 83720-0306  
Phone: 208-332-1820; Email: [rulescoordinator@adm.idaho.gov](mailto:rulescoordinator@adm.idaho.gov)

# **CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES**

*Office of the Administrative Rules Coordinator  
Idaho Department of Administration*

*July 1, 1993 – Present*

## **CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES**

This online index provides a history of all agency rulemakings beginning with the first Administrative Bulletin in July 1993 to the most recent Bulletin publication. It tracks all rulemaking activities on each chapter of rules by the rulemaking docket numbers and includes negotiated, temporary, proposed, pending and final rules, public hearing notices, vacated rulemaking notices, notice of legislative actions taken on rules, and executive orders of the Governor.

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## **ABRIDGED RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES**

**(Index of Current and Active Rulemakings)**

*Office of the Administrative Rules Coordinator  
Idaho Department of Administration*

*March 28, 2018 – October 3, 2018*

*(PLR) – Final Effective Date Is Pending Legislative Review  
(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 all active rulemakings.)*

***IDAPA 01 – IDAHO BOARD OF ACCOUNTANCY***

***01.01.01, Idaho Accountancy Rules***

- 01-0101-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7
- 01-0101-1802** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7
- 01-0101-1801** Proposed Rulemaking, Bulletin Vol. 18-9
- 01-0101-1802** Proposed Rulemaking, Bulletin Vol. 18-9

***IDAPA 02 – IDAHO DEPARTMENT OF AGRICULTURE***

***02.01.04, Rules Governing the Idaho Preferred<sup>®</sup> Promotion Program***

- 02-0104-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6

***02.02.14, Rules for Weights and Measures***

- 02-0214-1801** Proposed Rulemaking, Bulletin Vol. 18-6
- 02-0214-1801** Notice of Adoption of Pending Rule, Bulletin Vol. 18-9 (PLR 2019)

***02.04.08, Rules Governing Grade A Milk and Milk Products***

- 02-0408-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7
- 02-0408-1801** Proposed Rulemaking, Bulletin Vol. 18-9

***02.04.09, Rules Governing Milk and Cream Procurement and Testing***

- 02-0409-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6
- 02-0409-1801** Proposed Rulemaking, Bulletin Vol. 18-9

***02.04.13, Rules Governing Raw Milk***

- 02-0413-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7
- 02-0413-1801** Proposed Rulemaking, Bulletin Vol. 18-9

***02.04.14, Rules Governing Dairy Byproduct***

- 02-0414-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6
- 02-0414-1801** 2nd Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-10

***02.04.29, Rules Governing Trichomoniasis***

- 02-0429-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7
- 02-0429-1801** Proposed Rulemaking, Bulletin Vol. 18-9

***02.05.01, Rules Governing Produce Safety***

- 02-0501-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking (New Chapter), Bulletin Vol. 18-5
- 02-0501-1801** Proposed Rulemaking (New Chapter), Bulletin Vol. 18-7
- 02-0501-1801** Notice of Adoption of Pending Rule (New Chapter), Bulletin Vol. 18-9 (PLR 2019)

***02.06.01, Rules Governing the Pure Seed Law***

- 02-0601-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7
- 02-0601-1801** Proposed Rulemaking (Fee Rule), Bulletin Vol. 18-9

***02.06.02, Rules Pertaining to the Idaho Commercial Feed Law***

- 02-0602-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6
- 02-0602-1801** Proposed Rulemaking, Bulletin Vol. 18-9

***02.06.12, Rules Pertaining to the Idaho Fertilizer Law***

- 02-0612-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6

02-0612-1801 Proposed Rulemaking, Bulletin Vol. 18-9

**02.06.41, Rules Pertaining to the Idaho Soil and Plant Amendment Act of 2001**

02-0641-1801 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6

02-0641-1801 Proposed Rulemaking, Bulletin Vol. 18-9

**02.08.01, Sheep and Goat Rules of the Idaho Sheep and Goat Health Board**

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- 18-0170-1801 Proposed Rulemaking, Bulletin Vol. 18-10

***IDAPA 19 – BOARD OF DENTISTRY***

***19.01.01, Rules of the Idaho State Board of Dentistry***

- 19-0101-1801 Adoption of Temporary Rule, Bulletin Vol. 18-3 (eff. 3-30-18)T

- 19-0101-1801 Proposed Rulemaking, Bulletin Vol. 18-5
- 19-0101-1802\* Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6 (\*Rulemaking terminated by agency)
- 19-0101-1803 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6
- 19-0101-1804 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6
- 19-0101-1801 Notice of Adoption of Pending Rule, Bulletin Vol. 18-9 (PLR 2019)
- 19-0101-1803 Proposed Rulemaking, Bulletin Vol. 18-9
- 19-0101-1804 Proposed Rulemaking, Bulletin Vol. 18-9

### ***IDAPA 20 – DEPARTMENT OF LANDS***

#### ***20.03.01, Dredge and Placer Mining Operations in Idaho***

- 20-0301-1801 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6
- 20-0301-1801 Proposed Rulemaking, Bulletin Vol. 18-9

#### ***20.03.02, Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities***

- 20-0302-1801 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6
- 20-0302-1801 Proposed Rulemaking, Bulletin Vol. 18-9

#### ***20.03.04, Rules Governing the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho***

- 20-0304-1801 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6
- 20-0304-1801 Proposed Rulemaking, Bulletin Vol. 18-9

#### ***20.04.01, Rules Pertaining to Forest Fire Protection***

- 20-0401-1701 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 17-10
- 20-0401-1701 Proposed Rulemaking, Bulletin Vol. 18-8

### ***IDAPA 22 -- BOARD OF MEDICINE***

#### ***22.01.01, Rules of the Board of Medicine for Licensure to Practice Medicine and Surgery and Osteopathic Medicine and Surgery in Idaho***

- 22-0101-1801 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-9

#### ***22.01.03, Rules for the Licensure of Physician Assistants***

- 22-0103-1801 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-9

#### ***22.01.05, General Provisions for the Board of Medicine***

- 22-0105-1801 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking (New Chapter), Bulletin Vol. 18-9

### ***IDAPA 23 -- BOARD OF NURSING***

#### ***23.01.01, Rules of the Idaho Board of Nursing***

- 23-0101-1801 Proposed Rulemaking, Bulletin Vol. 18-9

### ***IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES***

- 24-0000-1800 OAR Omnibus Notice of Legislative Action - Abolishing the Board of Barber Examiners and the Board of Cosmetology and Establishing the Barber and Cosmetology Services Licensing Board (IDAPA 24.28.01) – Senate Bill No. 1324, Bulletin Vol. 18-8 (eff. 7-1-18)

#### ***24.01.01, Rules of the Board of Architectural Examiners***

- 24-0101-1801 Proposed Rulemaking, Bulletin Vol. 18-8

***(Rule Repealed) 24.02.01, Rules of the Board of Barber Examiners***

**24-0000-1800** OAR Omnibus Notice of Legislative Action - Abolishing the Board of Barber Examiners and the Board of Cosmetology and Establishing the Barber and Cosmetology Services Licensing Board (IDAPA 24.28.01)  
– Senate Bill No. 1324, Bulletin Vol. 18-8 (eff. 7-1-18)

***(Rule Repealed) 24.04.01, Rules of the Idaho Board of Cosmetology***

**24-0000-1800** OAR Omnibus Notice of Legislative Action - Abolishing the Board of Barber Examiners and the Board of Cosmetology and Establishing the Barber and Cosmetology Services Licensing Board (IDAPA 24.28.01)  
– Senate Bill No. 1324, Bulletin Vol. 18-8 (eff. 7-1-18)

***24.03.01, Rules of the State Board of Chiropractic Physicians***

**24-0301-1801** Proposed Rulemaking, Bulletin Vol. 18-10

***24.05.01, Rules of the Board of Drinking Water and Wastewater Professionals***

**24-0501-1801** Proposed Rulemaking, Bulletin Vol. 18-10

***24.06.01, Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants***

**24-0601-1801** Proposed Rulemaking, Bulletin Vol. 18-10

***24.08.01, Rules of the State Board of Morticians***

**24-0801-1801** Proposed Rulemaking, Bulletin Vol. 18-10

***24.09.01, Rules of the Board of Examiners of Nursing Home Administrators***

**24-0901-1801** Temporary and Proposed Rulemaking, Bulletin Vol. 18-7 (eff. 7-1-18)T

**24-0901-1802** Proposed Rulemaking, Bulletin Vol. 18-10

***24.11.01, Rules of the State Board of Podiatry***

**24-1101-1801** Proposed Rulemaking, Bulletin Vol. 18-10

***24.12.01, Rules of the State Board of Psychologist Examiners***

**24-1201-1801** Proposed Rulemaking, Bulletin Vol. 18-10

**24-1201-1802** Proposed Rulemaking (Fee Rule), Bulletin Vol. 18-10

***24.13.01, Rules Governing the Physical Therapy Licensure Board***

**24-1301-1801** Proposed Rulemaking, Bulletin Vol. 18-10

***24.14.01, Rules of the State Board of Social Work Examiners***

**24-1401-1801** Proposed Rulemaking, Bulletin Vol. 18-10

***24.15.01, Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists***

**24-1501-1801** Proposed Rulemaking, Bulletin Vol. 18-8

**24-1501-1802** Proposed Rulemaking, Bulletin Vol. 18-10

***24.17.01, Rules of the State Board of Acupuncture***

**24-1701-1801** Proposed Rulemaking, Bulletin Vol. 18-10

***24.18.01, Rules of the Real Estate Appraiser Board***

**24-1801-1801** Temporary and Proposed Rulemaking, Bulletin Vol. 18-6 (eff. 5-1-18)T

**24-1801-1802** Proposed Rulemaking (Fee Rule), Bulletin Vol. 18-10

***24.19.01, Rules of the Board of Residential Care Facility Administrators***

**24-1901-1801** Proposed Rulemaking, Bulletin Vol. 18-10

**24.23.01, Rules of the Speech, Hearing and Communication Services Licensure Board**

**24-2301-1801** Temporary and Proposed Rulemaking, Bulletin Vol. 18-7 (eff. 7-1-18)T

**24.25.01, Rules of the Idaho Driving Businesses Licensure Board**

**24-2501-1801** Proposed Rulemaking, Bulletin Vol. 18-10

**24.26.01, Rules of the Idaho Board of Midwifery**

**24-2601-1801** Proposed Rulemaking, Bulletin Vol. 18-10

**24.28.01, Rules of the Barber and Cosmetology Services Licensing Board**

**24-2801-1801** Notice of Adoption of Temporary Rule (New Chapter), Bulletin Vol. 18-8 (eff. 7-2-18)T

**24-2801-1802** Proposed Rulemaking (New Chapter, Fee Rule), Bulletin Vol. 18-10

***IDAPA 25 – OUTFITTERS AND GUIDES LICENSING BOARD***

**25.01.01, Rules of the Outfitters and Guides Licensing Board**

**25-0101-1801** Notice of Intent to Promulgate a Rule, Bulletin Vol. 18-6

**25-0101-1802** Notice of Adoption of Temporary Rule, Bulletin Vol. 18-6 (eff. 3-28-18)T

***IDAPA 26 – DEPARTMENT OF PARKS AND RECREATION***

**26.01.10, Rules Governing the Administration of Temporary Permits on Lands Owned by the Idaho Department of Parks and Recreation**

**26-0110-1701** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 17-10

**26-0110-1701** Proposed Rulemaking (Fee Rule), Bulletin Vol. 18-7

**26-0110-1701** Adoption of Pending Fee Rule, Bulletin Vol. 18-10 (eff. PLR 2019)

**26.01.20, Rules Governing the Administration of Park and Recreation Areas and Facilities**

**26-0120-1701** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 17-10

**26-0120-1701** Proposed Rulemaking, Bulletin Vol. 18-7

**26-0120-1701** Adoption of Pending Rule, Bulletin Vol. 18-10 (eff. PLR 2019)

**26.01.23, Rules Governing Filming Within Idaho State Parks**

**26-0123-1701** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 17-10

**26-0123-1701** Proposed Rulemaking, Bulletin Vol. 18-7

**26-0123-1701** Adoption of Pending Rule, Bulletin Vol. 18-10 (eff. PLR 2019)

***IDAPA 27 – BOARD OF PHARMACY***

**27.01.01, General Provisions**

**27-0101-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7

**27-0101-1801** Proposed Rulemaking, Bulletin Vol. 18-10

**27.01.02, Rules Governing Licensure and Registration**

**27-0102-1801** Adoption of Temporary Fee Rule, Bulletin Vol. 18-4 (eff. 7-1-18)T

**27-0102-1802** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7

**27-0102-1802** Proposed Rulemaking (Fee Rule), Bulletin Vol. 18-10

**27.01.03, Rules Governing Pharmacy Practice**

**27-0103-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7

**27-0103-1801** Proposed Rulemaking, Bulletin Vol. 18-10

**27-0103-1802** Adoption of Temporary Rule, Bulletin Vol. 18-10 (eff. 9-28-18)T

**27.01.04, Rules Governing Pharmacist Prescriptive Authority**

- 27-0104-1801 Adoption of Temporary Rule, Bulletin Vol. 18-6 (eff. 7-1-18)T
- 27-0104-1802 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7
- 27-0104-1802 Proposed Rulemaking, Bulletin Vol. 18-10

**27.01.05, Rules Governing Drug Compounding**

- 27-0105-1801 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7
- 27-0105-1801 Proposed Rulemaking, Bulletin Vol. 18-10

**27.01.06, Rules Governing DME, Manufacturing, and Distribution**

- 27-0106-1801 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7
- 27-0106-1801 Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 18-10

***IDAPA 28 – DEPARTMENT OF COMMERCE***

**28.02.03, Rules of the Idaho Regional Travel and Convention Grant Program**

- 28-0203-1801 Adoption of Temporary Rule, Bulletin Vol. 18-5 (eff. 3-2-18)T
- 28-0203-1802 Proposed Rulemaking, Bulletin Vol. 18-10

***IDAPA 29 -- IDAHO POTATO COMMISSION***

**29.01.03, Rules Governing Nominations and Elections for Candidates to Be Selected for Commissioner**

- 29-0103-1801 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking (New Chapter), Bulletin Vol. 18-7
- 29-0103-1802 Adoption of Temporary Rule (New Chapter), Bulletin Vol. 18-10 (eff. 8-29-18)T

***IDAPA 30 -- IDAHO COMMISSION FOR LIBRARIES***

**30.01.01, Rules of the Idaho Commission for Libraries Governing the Use of Commission Services**

- 30-0101-1801 Proposed Rulemaking, Bulletin Vol. 18-7
- 30-0101-1801 Notice of Adoption of Pending Rule, Bulletin Vol. 18-9 (PLR 2019)

***IDAPA 31 -- PUBLIC UTILITIES COMMISSION***

**31.11.01, Safety and Accident Reporting Rules for Utilities Regulated by Idaho Public Utilities Commission**

- 31-1101-1801 Proposed Rulemaking, Bulletin Vol. 18-10

**31.71.03, Railroad Safety and Accident Reporting Rules**

- 31-7103-1801 Proposed Rulemaking, Bulletin Vol. 18-10

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**34.06.02, Rules Governing the Electronic Recording of Plats, Records of Survey, and Corner Records**

- 34-0602-1801 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking (New Chapter), Bulletin Vol. 18-6
- 34-0602-1801 Proposed Rulemaking, Bulletin Vol. 18-8

***IDAPA 35 – STATE TAX COMMISSION***

**35.01.01, Income Tax Administrative Rules**

- 35-0101-1801 Proposed Rulemaking, Bulletin Vol. 18-8
- 35-0101-1802 Notice of Adoption of Temporary Rule, Bulletin Vol. 18-8 (eff. 1-1-18)T
- 35-0101-1803 Notice of Adoption of Temporary Rule, Bulletin Vol. 18-9 (eff. 1-1-18)T
- 35-0101-1804 Proposed Rulemaking, Bulletin Vol. 18-10

**35.01.02, Idaho Sales and Use Tax Administrative Rules**

- 35-0102-1801 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-5
- 35-0102-1802 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6
- 35-0102-1803 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7
- 35-0102-1801 Proposed Rulemaking, Bulletin Vol. 18-8
- 35-0102-1802 Proposed Rulemaking, Bulletin Vol. 18-10
- 35-0102-1803 Proposed Rulemaking, Bulletin Vol. 18-10

**35.01.03, Property Tax Administrative Rules**

- 35-0103-1801 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-5
- 35-0103-1802 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6
- 35-0103-1803 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7
- 35-0103-1804 Adoption of Temporary Rule, Bulletin Vol. 18-7 (eff. 5-23-18)T
- 35-0103-1805 Adoption of Temporary Rule, Bulletin Vol. 18-7 (eff. 1-1-18)T
- 35-0103-1801 Proposed Rulemaking, Bulletin Vol. 18-9
- 35-0103-1802 Proposed Rulemaking, Bulletin Vol. 18-9
- 35-0103-1803 Proposed Rulemaking, Bulletin Vol. 18-9
- 35-0103-1803 Correction to Notice of Proposed Rulemaking, Bulletin Vol. 18-10

**35.01.05, Motor Fuels Tax Administrative Rules**

- 35-0105-1801 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6
- 35-0105-1801 Proposed Rulemaking, Bulletin Vol. 18-8

**35.01.06, Hotel/Motel Room and Campground Sales Tax Administrative Rules**

- 35-0106-1801 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6
- 35-0106-1801 Proposed Rulemaking, Bulletin Vol. 18-9

**35.01.09, Idaho County Option Kitchen and Table Wine Tax Administrative Rules**

- 35-0109-1801 Proposed Rulemaking, Bulletin Vol. 18-6

**35.01.10, Idaho Cigarette and Tobacco Products Tax Administrative Rules**

- 35-0110-1801 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6
- 35-0110-1802 Proposed Rulemaking, Bulletin Vol. 18-6
- 35-0110-1801 Proposed Rulemaking, Bulletin Vol. 18-9

**35.01.14, Prepaid Wireless E911 Fee Administrative Rules**

- 35-0114-1801 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7
- 35-0114-1801 Proposed Rulemaking, Bulletin Vol. 18-9

**35.02.01, Tax Commission Administration and Enforcement Rules**

- 35-0201-1801 Proposed Rulemaking, Bulletin Vol. 18-10

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**37.03.13, The Water Management Rules**

- 37-0313-9701 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 97-12
- 37-0313-9701 Proposed Rulemaking, Bulletin Vol. 98-10
- 37-0313-9701 Notice of Intent to Promulgate Rules – Negotiated Rulemaking (2nd Notice), Bulletin Vol. 00-11

***IDAPA 38 – IDAHO DEPARTMENT OF ADMINISTRATION***

***38.04.09, Rules Governing Use of the Chinden Office Complex***

- 38-0409-1801** Adoption of Temporary Rule (New Chapter), Bulletin Vol. 18-2 (eff. 12-21-17)T
- 38-0409-1801** OARC Omnibus Notice of Legislative Action – Extension of Temporary Rule by SCR 150, Bulletin Vol. 18-5 (eff. 12-21-17)T
- 38-0409-1801** Notice of Amendment to Temporary Rule (New Chapter), Bulletin Vol. 18-9 (eff. 9-5-18)AT
- 38-0409-1802** Proposed Rulemaking (New Chapter), Bulletin Vol. 18-9

***38.05.01, Rules of the Division of Purchasing***

- 38-0501-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6
- 38-0501-1801** Proposed Rulemaking, Bulletin Vol. 18-10

***38.06.01, Rules of the Department of Administration Governing Billing Procedures of the Office of the Chief Information Officer (Rule Transferred to IDAPA 15.07.01 – eff. 7-1-18))***

- 38-0601-1800** Notice of Legislative Action Creating the Office of Information Technology Service (ITS) and Transferring Rulemaking Authority from the Department of Administration’s Office of the Chief Information Officer to ITS – House Bill 607 (2018), Bulletin Vol. 18-6 (eff. 7-1-18)

***IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT***

***39.02.46, Rules Governing Temporary Motor Vehicle Registration Permit***

- 39-0246-1801** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7
- 39-0246-1801** Proposed Rulemaking, Bulletin Vol. 18-9

***39.02.61, Rules Governing License Plates for Governmental Agencies and Taxing Districts***

- 39-0261-1801** Temporary and Proposed Rulemaking, Bulletin Vol. 18-7 (eff. 6-21-18)T
- 39-0261-1801** Notice of Adoption of Pending Rule, Bulletin Vol. 18-9 (PLR 2019)

***OMNIBUS RULEMAKING – 39.03.01 through 39.03.25:***

***Rules that Regulate Vehicles and/or Loads that are Required to Operate Under an Overlegal Permit***

- 39-0300-1801** Notice of Intent to Promulgate Rules – Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5

***39.03.01, Rules Governing Definitions Regarding Overlegal Permits***

- 39-0300-1801** Notice of Intent to Promulgate Rules - Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5
- 39-0301-1801** Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 18-10

***39.03.01, Rules Governing Definitions Regarding Special Permits (New Chapter)***

- 39-0300-1801** Notice of Intent to Promulgate Rules - Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5
- 39-0301-1802** Proposed Rulemaking (New Chapter), Bulletin Vol. 18-10

***39.03.02, Rules Governing Movement of Disabled Vehicles (New Chapter)***

- 39-0300-1801** Notice of Intent to Promulgate Rules - Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5
- 39-0302-1801** Proposed Rulemaking (New Chapter), Bulletin Vol. 18-10

***39.03.03, Rules Governing Special Permits - General Conditions and Requirements (New Chapter)***

- 39-0300-1801** Notice of Intent to Promulgate Rules - Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5
- 39-0303-1801** Proposed Rulemaking (New Chapter, Fee Rule), Bulletin Vol. 18-10

***39.03.04, Rules Governing Movement of Disabled Vehicles***

- 39-0300-1801** Notice of Intent to Promulgate Rules - Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5

[39-0304-1801](#) Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 18-10

***39.03.04, Rules Governing Special Permits - Overweight Non-Reducible (New Chapter)***

[39-0300-1801](#) Notice of Intent to Promulgate Rules - Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5

[39-0304-1802](#) Proposed Rulemaking (New Chapter), Bulletin Vol. 18-10

***39.03.05, Rules Governing Variable Load Suspension Axles***

[39-0300-1801](#) Notice of Intent to Promulgate Rules - Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5

[39-0305-1801](#) Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 18-10

***39.03.05, Rules Governing Special Permits - Oversize Non-Reducible (New Chapter)***

[39-0300-1801](#) Notice of Intent to Promulgate Rules - Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5

[39-0305-1802](#) Proposed Rulemaking (New Chapter), Bulletin Vol. 18-10

***39.03.06, Rules Governing Allowable Vehicle Size***

[39-0300-1801](#) Notice of Intent to Promulgate Rules - Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5

[39-0306-1801](#) Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 18-10

***39.03.06, Rules Governing Special Permits for Extra-Length/Excess Weight, Up to 129,000 Pound Vehicle Combinations (New Chapter)***

[39-0300-1801](#) Notice of Intent to Promulgate Rules - Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5

[39-0306-1802](#) Proposed Rulemaking (New Chapter), Bulletin Vol. 18-10

***39.03.07, Rules Governing Restricted Routes for Semitrailers***

[39-0300-1801](#) Notice of Intent to Promulgate Rules - Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5

[39-0307-1801](#) Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 18-10

***39.03.07, Rules Governing Special Permits for Reducible Loads (New Chapter)***

[39-0300-1801](#) Notice of Intent to Promulgate Rules - Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5

[39-0307-1802](#) Proposed Rulemaking (New Chapter), Bulletin Vol. 18-10

***39.03.08, Rules Governing Self-Propelled Snowplows (New Chapter)***

[39-0300-1801](#) Notice of Intent to Promulgate Rules - Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5

[39-0308-1801](#) Proposed Rulemaking (New Chapter), Bulletin Vol. 18-10

***39.03.09, Rules Governing Overlegal Permits - General Conditions and Requirements***

[39-0300-1801](#) Notice of Intent to Promulgate Rules - Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5

[39-0309-1801](#) Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 18-10

***39.03.10, Rules Governing When An Overlegal Permit Is Required***

[39-0300-1801](#) Notice of Intent to Promulgate Rules - Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5

[39-0310-1801](#) Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 18-10

***39.03.11, Rules Governing Overlegal Permittee Responsibility and Travel Restrictions***

[39-0300-1801](#) Notice of Intent to Promulgate Rules - Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5

[39-0311-1801](#) Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 18-10

***39.03.12, Rules Governing Safety Requirements of Overlegal Permits***

[39-0300-1801](#) Notice of Intent to Promulgate Rules - Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5

[39-0312-1801](#) Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 18-10

***39.03.13, Rules Governing Overweight Permits***

[39-0300-1801](#) Notice of Intent to Promulgate Rules - Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5

[39-0313-1801](#) Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 18-10

**39.03.14, Rules Governing Policy During Spring Breakup Season**

- 39-0300-1801** Notice of Intent to Promulgate Rules - Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5  
**39-0314-1801** Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 18-10

**39.03.15, Rules Governing Excess Weight Permits for Reducible Loads**

- 39-0300-1801** Notice of Intent to Promulgate Rules - Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5  
**39-0315-1801** Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 18-10

**39.03.16, Rules Governing Oversize Permits For Non-Reducible Vehicles And/Or Loads**

- 39-0300-1801** Notice of Intent to Promulgate Rules - Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5  
**39-0316-1801** Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 18-10

**39.03.17, Rules Governing Permits For Manufactured Homes, Modular Buildings, And Office Trailers**

- 39-0300-1801** Notice of Intent to Promulgate Rules - Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5  
**39-0317-1801** Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 18-10

**39.03.18, Rules Governing Overlegal Permits for Relocation of Buildings or Houses**

- 39-0300-1801** Notice of Intent to Promulgate Rules - Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5  
**39-0318-1801** Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 18-10

**39.03.19, Rules Governing Annual Overlegal Permits**

- 39-0300-1801** Notice of Intent to Promulgate Rules - Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5  
**39-0319-1801** Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 18-10

**39.03.20, Rules Governing Application for Special Permits**

- 39-0300-1801** Notice of Intent to Promulgate Rules - Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5  
**39-0320-1801** Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 18-10

**39.03.21, Rules Governing Overlegal Permit Fees**

- 39-0300-1801** Notice of Intent to Promulgate Rules - Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5  
**39-0321-1801** Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 18-10

**39.03.22, Rules Governing Overlegal Permits for Extra-Length, Excess Weight, and Up To 129,000 Pound Vehicle Combinations**

- 39-0300-1801** Notice of Intent to Promulgate Rules - Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5  
**39-0322-1801** Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 18-10

**39.03.23, Rules Governing Revocation of Overlegal Permits**

- 39-0300-1801** Notice of Intent to Promulgate Rules - Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5  
**39-0323-1801** Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 18-10

**39.03.24, Rules Governing Self-Propelled Snowplows**

- 39-0300-1801** Notice of Intent to Promulgate Rules - Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5  
**39-0324-1801** Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 18-10

**39.03.25, Rules Governing Lights on Snow Removal Equipment**

- 39-0300-1801** Notice of Intent to Promulgate Rules - Negotiated Rulemaking (Multiple Chapter Rulemaking), Bulletin Vol. 18-5  
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