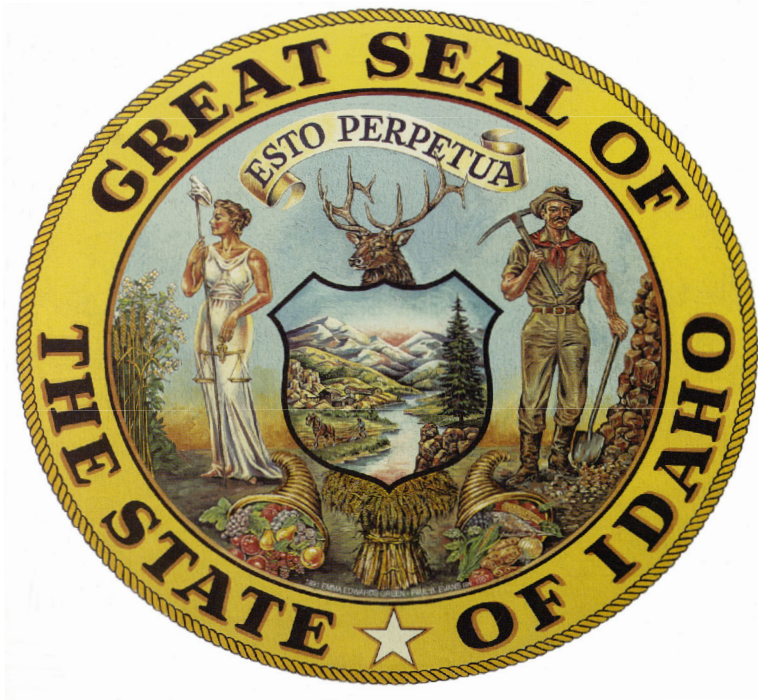


IDAHO ADMINISTRATIVE BULLETIN

October 4, 2023 – Vol. 23-10

Office of the Governor
Division of Financial Management
Office of the Administrative Rules Coordinator



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PREFACE

The Idaho Administrative Bulletin is an electronic-only, online monthly publication of the Office of the Administrative Rules Coordinator, Division of Financial Management, 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 **19-1** refers to the first Bulletin issued in calendar year **2019**; Bulletin **20-1** refers to the first Bulletin issued in calendar year **2020**. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. **19-1** refers to January 2019; Volume No. **20-2** refers to February 2020; and so forth. Example: The Bulletin published in January 2019 is cited as Volume **19-1**. The December 2019 Bulletin is cited as Volume **19-12**.

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 Bulletin publication. 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.

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 sections 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.

“**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. 38-0501-1901”

“**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**).

“**1901**” 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 2019**. A subsequent rulemaking on this same rule chapter in calendar year 2019 would be designated as “**1902**”. The docket number in this scenario would be 38-0501-**1902**.

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 YEAR 2023

Vol. No.	Monthly Issue of Bulletin	ARRF Due to DFM	Closing Date for Agency Filing	Bulletin Publication Date	21-day Comment Period End Date
23-2	February 2023	December 23, 2023	January 6, 2023	February 1, 2023	February 22, 2023
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24-1	January 2024	November 13, 2023	**November 27, 2023	January 3, 2024	January 24, 2024

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25-1	January 2025	November 15, 2024	**November 29, 2024	January 1, 2025	January 22, 2025

***Last day to submit a proposed rule for the rulemaking to remain on course for review by the upcoming legislature.**

****Last day to submit a pending rule to be reviewed by the upcoming legislature.**

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IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.02.13 – COMMODITY DEALERS’ RULES

DOCKET NO. 02-0213-2301 (ZBR CHAPTER REWRITE, FEE RULE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 69-524, 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 18, 2023.

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

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

This rule is being presented for authorization as part of the ISDA’s plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor’s [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

These rules clarify the procedure for licensing, collection and remittance of assessments, determining claim value, maintaining electronic records, use of electronic scales and remedies of the Department for non-compliance.

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

A rate of assessment of two-tenths of one percent (.2%) gross dollar amount, without deductions, due the producer pursuant to Section 69-257(2), Idaho Code. The Director may establish a lower rate of assessment whenever he deems it advisable or as recommended by the advisory committee established by Section 69-261, Idaho Code.

Additional license fees are included in statute at 69-508, Idaho Code, but are not included in this rule.

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

No fiscal impact is anticipated from 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 May 3, 2023 Idaho Administrative Bulletin, [Vol. 23-5, Page 11](#).

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

There are no documents incorporated by reference.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), for any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, the director shall identify the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal government. The following sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

The federal government does not regulate warehouses or commodity dealers. This activity is defined in Idaho Code.

The detailed 22-101A analysis can be found on the agency's website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

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 25, 2023.

DATED this 4th day of October, 2023.

Lloyd B. Knight
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THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 02-0213-2301
(ZBR Chapter Rewrite)

02.02.13 – COMMODITY DEALERS' RULES

000. LEGAL AUTHORITY.

~~This chapter is adopted under the legal authority of~~ Section 69-524, Idaho Code. (3-15-22)()

001. ~~TITLE AND SCOPE.~~

~~01. Title.~~ The title of this chapter is IDAPA 02.02.13, "Commodity Dealers' Rules." (3-15-22)

~~02. Scope.~~ These rules clarify the procedure for licensing, collection and remittance of assessments, determining claim value, maintaining electronic records, use of electronic scales and remedies of the Department for non-compliance. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

~~The Idaho State Department of Agriculture adopts the definitions set forth in Section 69-502, Idaho Code.~~ In addition to the definitions set forth in Section 69-502, Idaho Code, the following definitions apply to the interpretation and enforcement of this chapter. (3-15-22)()

01. Cash Sale. Payment to the producer by the warehouse or dealer contemporaneously with the transfer of commodity to the warehouse or dealer. ()

- 02. Commodity Indemnity Fund.** Commodity Indemnity Fund is a trust fund. ()
- ~~**03. Credit Sale Contract.** An agreement in writing containing the provisions of Section 69-514, Idaho Code, and where the producer transfers a specific quantity of commodity to a warehouse or dealer with a price or payment to the producer by the warehouse or dealer to be made at a later date or on the occurrence of a specific event expressed in the agreement. (3-15-22)~~
- ~~**04. Dealer.** Is limited to dealers licensed by the state of Idaho. (3-15-22)~~
- ~~**053. Seed Crops.** Means any seed crop regulated by Title 22, Chapter 4, Idaho Code. ()~~
- ~~**064. NPE.** (No price established contract) A contract containing no readily calculable sale value of the commodity for the producer. ()~~
- ~~**07. Warehouse.** Is limited to warehouses licensed by the state of Idaho. (3-15-22)~~
- 011. ABBREVIATIONS.**
- 01. CIF.** Commodity Indemnity Fund. ()
- 02. NPE.** No price established contract. ()
- 03. SIF.** Seed Indemnity Fund. ()
- 012. LICENSING.**
- ~~**01. Posting of License.** Immediately upon receipt of the license or any renewal, extension or modification thereof under Title 69, Chapter 5, Idaho Code, the licensed commodity dealer shall post the license in a conspicuous place in each place of business or in any other place as the director may determine. The Department will issue a duplicate license for each additional facility as needed. (3-15-22)~~
- 021. Return of Suspended or Terminated License.** If a license issued to a commodity dealer has lapsed or is suspended, revoked or cancelled by the Director, the license shall be returned to the Department. At the expiration of any period of suspension, revocation or cancellation the license will be returned to the commodity dealer to whom it was originally issued and be posted as prescribed by these rules. ()
- 032. Loss of License.** Upon satisfactory proof of the loss or destruction of a license issued to a commodity dealer, a duplicate may be issued under the same number or a new number at the discretion of the Director. ()
- 013. -- 099. (RESERVED)**
- 100. OFFICE RECORDS.**
A commodity dealer shall maintain complete and sufficient records to show all purchases and sales, including all contracts relating to these transactions. A warehouse licensed as a commodity dealer under Title 69, Chapter 5, Idaho Code, must maintain complete and sufficient records to show all deposits, purchases, sales contracts, storage obligations and loadouts of the warehouse in this State. Office records as set forth in Title 69, Chapter 5, Idaho Code, include, but not be limited to, the following: ()
- 01. Daily Position Record.** Record which shows the total quantity of each kind and class of agricultural commodity received and loaded out, the amount remaining in storage at the close of each business day and the warehouseman's total storage obligation for each kind and class of agricultural commodity at the close of each business day. ()
- 02. Settlement Sheets/Storage Ledgers.** Every commodity dealer shall use settlement sheets showing the dealer's name and location in making settlement with the seller, unless otherwise approved by the Director. All settlement sheets/storage ledgers include, but are not limited to, the following information: ()

- a. The seller's name and address. ()
- b. The date of deliveries. ()
- c. The scale ticket numbers. ()
- d. The amount, kind and grade of commodity delivered. ()
- e. The price per bushel or unit. ()
- f. The date and amount of payment. ()
- g. The contract number if a deferred payment, deferred pricing or other sale contract is used. A copy of each settlement sheet shall be maintained in alphabetical order by the commodity dealer as part of the pay records. ()
- h. Electronic Records. If any electronic records are maintained outside of the state of Idaho, the Department must be allowed to examine them at any reasonable time and place as determined by the Department. ()

03. Scale Weight Tickets. Scale weight tickets, except tickets for electronic scales that are recorded and maintained electronically, shall be pre-numbered with one (1) copy of each ticket maintained in numerical order. All scale weight tickets shall show the time when the commodities were delivered, the quantities delivered, who delivered the commodities, the ownership of the commodities and the condition of the commodities upon delivery. ()

- a. Tickets in the commodity dealer's possession that have not been issued. ()
- b. Tickets issued by the commodity dealer. ()
- c. Tickets returned to and canceled by the commodity dealer. ()

04. Separate Records. All records and accounts required under Title 69, Chapter 5, Idaho Code, shall be kept separate and distinct from all records and accounts of any other business and are subject to inspection by the Director at any time. ()

101. -- 149. (RESERVED)

150. INSPECTION.

For the purpose of inspection the hours of 8 a.m. to 5 p.m., Monday through Friday, except holidays, are considered as ordinary business hours. All financial records, commodity records and payment records shall be available for inspection by the Department during ordinary business hours and any other reasonable time specified by the Department in writing. All records shall be made available within the state of Idaho upon request. ()

151. -- 199. (RESERVED)

200. LICENSING ~~APPLICATION FORMAT~~ MODIFICATION.

~~**01. License Application.** Application for a license to operate as a commodity dealer under the provisions of Title 69, Chapter 5, Idaho Code, shall be on a form prescribed by the Department and include:~~ (3-15-22)

- ~~a. The full name of the person applying for the license and whether the applicant is an individual, partnership, association, corporation or other entity. (3-15-22)~~
- ~~b. The full name of each member of the firm or partnership, or the names of the officers and directors~~

~~of the company or limited liability company, association, or corporation. (3-15-22)~~

~~e. The address of the principal place of business. (3-15-22)~~

~~d. The names of any businesses previously owned or operated by the applicant or any members, officers or directors if the applicant is a corporation, partnership or association. (3-15-22)~~

~~e. Information relating to any prior adjudication of bankruptcy relating to the business or any members, officers or directors thereof. (3-15-22)~~

~~f. Information relating to any judgments against the applicants. (3-15-22)~~

~~g. The location of each office the applicant intends to operate. (3-15-22)~~

~~h. Any other reasonable information the Department finds necessary to carry out the purpose and provisions of Title 69, Chapter 5, Idaho Code. (3-15-22)~~

~~**02. License Conditions of Issuance.** An application for license under Title 69, Chapter 5, Idaho Code, shall include: (3-15-22)~~

~~a. Application on a form prescribed by the Director. (3-15-22)~~

~~b. A current financial statement as specified by Section 69-503 and 69-521, Idaho Code. (3-15-22)~~

~~e. A bond or bonds as required by Section 69-506, Idaho Code. (3-15-22)~~

~~d. The license fee as prescribed by Section 69-508, Idaho Code. (3-15-22)~~

~~e. Compliance with all rules adopted pursuant to Title 69, Chapter 5, Idaho Code. (3-15-22)~~

~~f. Any other reasonable information the Department finds necessary to carry out the purpose and provisions of Title 69, Chapter 5, Idaho Code. (3-15-22)~~

~~**03. License Modification.** At the request of the license holder a license may be modified to change existing license classification, providing all requirements of Section 69-508, Idaho Code, are met. (3-15-22)()~~

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

~~**250. RECORDS—SEPARATE.**~~

~~All records and accounts required under Title 69, Chapter 5, Idaho Code, shall be kept separate and distinct from all records and accounts of any other business and are subject to inspection by the Director at any reasonable time. (3-15-22)~~

~~**251.—299. (RESERVED)**~~

300. FINANCIAL STATEMENT EXTENSION.

01. Financial Statements. In order to obtain a commodity dealer's license, the applicant shall submit a current financial statement prepared not more than ninety (90) days prior to the date of application and conform to the applicable requirements of Title 69, Chapter 5, Idaho Code, as to annual financial statements. (3-15-22)

02. Statement Compliance. Each licensed commodity dealer shall submit to the Department an annual financial statement that has been audited or reviewed by an independent certified public accountant or independent licensed public accountant. The statement shall be submitted to the Department no later than ninety (90) days after the end of the commodity dealer's fiscal year. The commodity dealer license may be suspended or revoked for failure to comply with licensing requirements stated in Subsection 300.01 of these rules and Section(s) 69-503(6) and 69-521, Idaho Code. (3-15-22)

~~01.~~ **Extension Request.** The Department may grant an extension of no more than sixty (60) days, provided cause of an exceptional nature is provided, in writing, to the Department. ()

~~ba.~~ The request must be made by a certified public accountant or a licensed public accountant. ()

~~eb.~~ The request is made prior to the date the financial statement is due. **If the request is not received before the financial statement due date, suspension or revocation of license may occur.** (3-15-22)()

~~ec.~~ The director may make exceptions to the financial statement requirements provided sufficient cause is provided and to do so would be in the best interest of the state. ()

~~032.~~ **Statement Content.** The statement shall include: ()

a. A balance sheet. ()

b. An income statement that includes annual gross sales of commodities purchased from producers covered under the act. ()

c. A statement of cash flows. ()

d. All accompanying notes to the financial statement. ()

301. -- 349. (RESERVED)

350. SHIPPING RECORDS.

Every dealer who ships by truck shall maintain a truck shipping record and every dealer who ships by rail must maintain a rail or car shipping record. Each shipping record includes, but is not limited to, the following: ()

01. **Name and Address.** The name and address of the seller or shipper. ()

02. **Buyer and Destination.** The buyer and destination of the commodity shipped. ()

03. **Date.** The date the agricultural commodities were shipped. ()

04. **Amount and Type.** The amount and type of agricultural commodities shipped. ()

05. **Identification Number.** The truck identification or car number. ()

351. -- 399. (RESERVED)

400. SCALE TICKETS.

If a dealer has access to a scale that can be used for weighing commodity, that dealer shall use pre-numbered scale tickets showing the dealer's name and location. A copy of each ticket shall be maintained in numerical order as part of the commodity records. If a dealer does not have access to a scale and purchases commodity by having it custom weighed at various locations or at destination, the dealer shall maintain a copy of the scale ticket in chronological order as part of the commodity records. If agricultural commodities are settled on destination weights, copies of the destination weights are to be kept as part of the records. ()

401. -- 450. (RESERVED)

~~451. AMOUNT OF BOND, IRREVOCABLE LETTER OF CREDIT, CERTIFICATE OF DEPOSIT, OR SINGLE BOND~~ **ADDITIONAL BONDING REQUIREMENTS.**

~~01. Bonding Requirement. The amount of bond to be furnished for each class 1 dealer and each class 2 dealer is fixed at a rate pursuant to Section 69-506, Idaho Code.~~ (3-15-22)

~~02. Single Bond, Irrevocable Letter of Credit or Certificate of Deposit.~~ For the purposes of licensing as a commodity dealer pursuant to Title 69, Chapter 5, Idaho Code, and a seed buyer pursuant to Title 22, Chapter 51, Idaho Code, a single bond, irrevocable letter of credit or certificate of deposit shall be fixed at whichever of the following amounts is greater: (3-15-22)

~~a. Combined total indebtedness paid and owed to producers for agricultural commodity and seed crop, without any deductions, for the previous license year; or (3-15-22)~~

~~b. The indebtedness owed and estimated to be owed to producers for agricultural commodity and seed crop, without any deductions, for the current license year. (3-15-22)~~

~~03. Additional Bonding Requirements.~~ If in addition to Section 69-506, Idaho Code, if it appears the licensee does not have the ability to pay producers for commodities purchased, or when it appears the licensee does not have a sufficient net worth to outstanding financial obligations ratio, the licensee may be required to post a bond or other additional acceptable security in the amount of two thousand dollars (\$2,000) for each one thousand dollars (\$1,000) or fraction thereof of deficiency. (3-15-22)()

452. -- 499. (RESERVED)

500. COMMODITY INDEMNITY FUND ASSESSMENTS.

~~The Commodity Indemnity Fund applies to entities governed by Chapter 2, Title 69, Idaho Code, and Chapter 5, Title 69, Idaho Code, warehouses and dealers, respectively, unless otherwise specified. (3-15-22)~~

01. Rate of Assessment. The rate of assessment is two-tenths of one percent (.2%) gross dollar amount, without deductions, due the producer pursuant to Section 69-257(2), Idaho Code. The Director may establish a lower rate of assessment whenever he deems it advisable or as recommended by the advisory committee established by Section 69-261, Idaho Code. ()

02. Exemptions to Assessment. Producers are not eligible to participate in CIF and no assessments will be collected according to Idaho Code and in the following cases. (3-15-22)()

~~a. If a producer has a financial or management interest in a licensed warehouse or licensed commodity dealer, except members of a cooperative marketing association qualified under Title 22, Chapter 26, Idaho Code. (3-15-22)~~

~~b. If a producer sells to another producer, none of which are a licensed warehouseman or a licensed commodity dealer. (3-15-22)~~

~~c. If a producer deposits or delivers commodity to an unlicensed entity pursuant to Title 69, Chapters 2 or 5, Idaho Code. (3-15-22)~~

~~d. Non-producers or producers delivering commodity that was grown on land not situated within the borders of the state of Idaho are exempt from paying assessments. (3-15-22)()~~

501. NPE CONTRACT CLAIMS ON THE FUND.

NPE contracts shall be executed in writing, dated, and signed by all parties to the contract. ()

01. NPE Clause. An NPE contract shall have the following statement: "No claim shall be paid from the CIF pursuant to Section 69-263, Idaho Code, if a producer files his claim more than one hundred eighty (180) days from the date the contract is executed." ()

02. NPE Contract List. A commodity dealer shall maintain a list of all NPE contracts written in a calendar year that reflects the producers name, contract number, agricultural commodity and date of the contract. ()

03. NPE Contract Renewal Period. A producer may renew an NPE contract; but no claim shall be paid from the CIF if a producer files his claim more than three hundred sixty-five (365) days from the date the

original NPE contract was executed. ()

502. HOW ASSESSMENTS ARE TO BE CALCULATED.

Assessments shall be collected by all warehouses licensed as commodity dealers from all producers who deposit commodities for storage or sale. Assessments are calculated as follows: ()

01. Cash Sale or Credit Sale Contract. ~~In a cash sale or credit sale c~~Contract on the contract price of the commodity at the time of sale. (3-15-22)()

02. Unpaid Assessments. If any assessment is unpaid and a failure occurs, the amount of the unpaid assessment will be deducted from any CIF recovery paid to the producer. ()

03. Incidental Costs and Expenses. All incidental costs and expenses including, but not limited to, transportation, cleaning, in and out charges, insurance, taxes or additional services or charges are not included in the calculation to determine the assessment. ()

503. RECORDKEEPING AND PAYMENT SCHEDULE.

01. Permanent Record. Each warehouse and dealer shall maintain a permanent record showing producer's name and address, lot or identification number, date assessment collected, amount of assessment, commodity assessed, quantity of commodity, gross dollars of settlement and check number issued to producer. ()

02. Payment Due Dates. On or before the twentieth day of the month following the close of the quarter, on a form prescribed by the Department, the assessments imposed by Title 69, Chapters 2 and 5, Idaho Code, collected by warehouses and dealers, are due and payable to the Department. A quarter will consist of three (3) months beginning on the first day of January, April, July, and October. If assessment is paid by mail the payment must be postmarked not later than the twentieth day of the month following the close of the quarter to avoid interest and penalty charges. ()

03. Notice. The notice and rate of assessment or a copy of the official notice of suspension of assessment shall be posted in a conspicuous place in the warehouse or dealer facility. ()

504. TRUST FUNDS.

~~All assessments collected by warehouses and dealers in compliance with Title 69, Chapters 2 and 5, Idaho Code, immediately upon payment to and collection by the warehouse or dealer, are trust fund money held for payment to the Department for the CIF. Such m~~Money shall not, for any purpose, be considered to be a part of the proceeds of any transaction between a depositor and warehouse or dealer for which the collection and payment of the assessment was related and shall not be subject to an encumbrance, security interest, execution or seizure on account of any debt owed by the warehouse or dealer to any of their creditors. (3-15-22)()

505. PENALTIES FOR FAILURE TO COLLECT, ACCOUNT FOR, OR REMIT ASSESSMENTS -- OTHER VIOLATIONS.

Failure to collect, account for, or remit assessments, or violations of the statutory requirements of Title 69, Chapters 2 and 5, Idaho Code, as it relates to the CIF are grounds for the immediate demand on the warehouse, dealer bond, or certificate of deposit, and the undertaking by the Director of any other remedy provided by law. ()

506. RETURN OF COMMODITY DUE TO FAILURE.

In the event of failure the Department may: ()

01. Identifiable Commodity. Return specifically identifiable commodity or as much as is available to its producer in full or partial satisfaction of indebtedness; or ()

02. Fungible Commodity. If the commodity is fungible, an amount equal to the producer's original deposit or if insufficient fungible commodity is available, a pro-rata share to all producers of the commodity; and ()

03. Shortfall in Commodity Distribution. Any shortfall in commodity distribution may be submitted as a claim against the CIF. ()

507. -- ~~599.~~ (RESERVED)

~~600. UNLAWFUL PRACTICES.~~

~~It is unlawful for a commodity dealer to alter, falsify or withhold records from the warehouse examiner. (3-15-22)~~

~~601. -- 999. (RESERVED)~~

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.02.14 – RULES FOR WEIGHTS AND MEASURES

DOCKET NO. 02-0214-2301

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 71-111, 71-121, 71-232, 71-233, 71-236, 71-241, and 71-408, 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 18, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 the publication date for the document Incorporated by Reference at Section 004.01. The publication edition is updated to 2023 for the National Institute of Standards and Technology, Handbook No. 44. This handbook contains the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices.

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

No changes have been made to fees for these rules.

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

There is no fiscal impact due to these changes.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these changes are to the publication dates of documents that were already incorporated into these 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:

National Institute of Standards and Technology Handbook 44 – the common standard for specifications, tolerances, and other technical requirements for weighing and measuring devices.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), for any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, the director shall identify the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal government. The following sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

This rule regulates an activity that is not regulated by the federal government; therefore the entire rule is broader in scope or more stringent than federal law.

The detailed 22-101A analysis can be found on the agency's website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

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 25, 2023.

DATED this 4th day of October, 2023.

Lloyd B. Knight
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0214-2301
(Only Those Sections With Amendments Are Shown.)

004. INCORPORATION BY REFERENCE.

01. Required Reference Materials. The ~~2020~~ 2023 edition of Handbook No. 44 of the National Institute of Standards and Technology, United States Department of Commerce, “Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices,” hereby incorporated by reference, is the specifications, tolerances and other technical requirements for commercial weighing and measuring devices, unless otherwise stated in these rules. ~~(3-15-22)~~ ()

02. Required Reference Materials for Checking Prepackaged Commodities. The 2020 edition of Handbook No. 133 of the National Institute of Standards and Technology, United States Department of Commerce, “Checking the Net Contents of Packaged Goods,” hereby incorporated by reference, is the authority in checking packaged commodities, unless otherwise stated in these rules. (3-15-22)

03. Specifications for Diesel Fuel and Biodiesel Fuel. American Society of Testing and Materials (ASTM) D975-20c, “Standard Specification for Diesel Fuel Oils,” and ASTM D6751-20a, “Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels,” intended for blending with diesel fuel are hereby incorporated by reference and are the specifications for diesel fuel and biodiesel fuel blend stock (B100 biodiesel). (3-15-22)

04. Specifications for Gasoline. American Society of Testing and Materials (ASTM) D4814-21, “Standard Specification for Automotive Spark-Ignition Engine Fuel”, dated November 15, 2016, is hereby incorporated by reference and is the specification for gasoline. (3-15-22)

05. Local Availability. Copies of the incorporated documents are on file with the Idaho State Department of Agriculture, 2216 Kellogg Lane, Boise, Idaho 83712. Copies of NIST documents may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Copies are available for downloading at <https://www.nist.gov/pml/weights-and-measures/publications>. Copies of ASTM specifications are on file with the Idaho State Department of Agriculture or may be purchased from <http://www.astm.org>, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA, 19428. (3-15-22)

06. Three Year Tier Fee Table. Copy may be found online at <https://agri.idaho.gov/main/i-need-to-see-lawsrules/ag-inspections-law-and-rules>. (3-15-22)

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.02.15 – RULES GOVERNING THE SEED INDEMNITY FUND
DOCKET NO. 02-0215-2301 (ZBR CHAPTER REWRITE, FEE RULE)
NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-5129, 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 18, 2023.

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

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

This rule is being presented for authorization as part of the ISDA’s plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor’s [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

These rules clarify the procedure for licensing, collection and remittance of assessments, determining claim value, maintaining electronic records, use of electronic scales and remedies of the ISDA for non-compliance.

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

If an applicant is not licensed pursuant to the “Pure Seed Law,” Title 22, Chapter 4, Idaho Code, the license fee is equal to the out-of-state license fees, pursuant to Title 22, Chapter 4, and will be deposited to the state treasury and credited to the SIF.

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

There is no fiscal impact 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 May 3, 2023 Idaho Administrative Bulletin, [Vol. 23-5, Page 11](#).

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

There are no materials incorporated by reference.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), for any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, the director shall identify the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal government. The following sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

The entire rule regulates activity not regulated by the federal government. This activity is defined in Idaho Code.

The detailed 22-101A analysis can be found on the agency’s website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

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 25, 2023.

DATED this 4th day of October, 2023.

Lloyd B. Knight
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, ID 83707
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Email: lloyd.knight@isda.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 02-0215-2301
(ZBR Chapter Rewrite)

02.02.15 – RULES GOVERNING THE SEED INDEMNITY FUND

000. LEGAL AUTHORITY.

~~This chapter is adopted under the legal authority of~~ Section 22-5129, Idaho Code. (3-15-22)()

001. ~~TITLE AND SCOPE.~~

01. ~~Title.~~ The title of this chapter is IDAPA 02.02.15, “Rules Governing the Seed Indemnity Fund.” (3-15-22)

02. ~~Scope.~~ These rules clarify the procedure for licensing, collection and remittance of assessments, determining claim value, maintaining electronic records, use of electronic scales and remedies of the ISDA for non-compliance. (3-15-22)()

002. -- 009. (RESERVED)

010. DEFINITIONS.

~~The Idaho State Department of Agriculture adopts the definitions set forth in Section 22-5102, Idaho Code.~~ In addition to the definitions set forth in Section 22-5102, Idaho Code, and as used in this chapter, “type” means the class of seed (i.e. foundation, certified, registered, noncertified). (3-15-22)()

011. ABBREVIATIONS.

01. GAAP. Generally Accepted Accounting Principles. ()

02. ISDA. Idaho State Department of Agriculture. ()

- 03. SIF. The Idaho Seed Indemnity Fund. ()
- 04. USPS. United States Postal Service. ()

012. DELIVERY VOUCHER.

If there are no receipts or scale weight tickets issued at the time of seed crop delivery, a delivery voucher may be issued. ~~A delivery voucher is a document that may be used as written evidence of transfer in accordance with Section 22-5102(16), Idaho Code, evidencing delivery of producer's seed crop to seed buyer and includes, but is not limited to:~~ Delivery vouchers shall include at least the following: (3-15-22)()

- 01. **Producer.** The full name, address and phone number of the producer. ()
- 02. **Seed Buyer.** The full name, address and phone number of the seed buyer. ()
- 03. **Ship To.** The full name, address and phone number of the seed facility that the seed crop is to be transferred. ()
- 04. **Transportation Company.** The name, address and phone number of the transportation company delivering the seed crop to the seed facility. The truck, trailer and seal number, if applicable, driver name (printed), signature and date of transfer. ()
- 05. **Seed Crop Shipped.** For each seed crop delivery, the type, kind, variety, estimated volume or weight and date of shipment and container identification markings. ()

013. WAREHOUSE RECEIPTS.

The following information is required on each warehouse receipt: ()

- 01. **Name of Producer.** ()
- 02. **Name and Address of Seed Buyer.** ()
- 03. **Kind of Seed Crop.** ()
- 04. **Date of Delivery.** ()
- 05. **Weight of Seed Crop Delivered.** ()
- 06. **Lot Identification.** ()

014. SCALE WEIGHT TICKETS.

Scale weight tickets for electronic scales that are recorded and maintained electronically are exempt from the sequentially numbered and in triplicate requirement. ()

- 01. **Pre-Numbered Scale Tickets.** If a seed buyer has access to a scale that can be used for weighing seed, the seed buyer is to use pre-numbered scale tickets. ()
- 02. **Numerical Order Requirement.** A copy of each ticket must be maintained in numerical order. ()
- 03. **Custom Scale Requirement.** If a seed buyer does not have access to a scale and has seed crop custom weighed at various locations, the seed buyer must maintain a copy of the scale ticket in chronological order as part of the seed crop records. ()

015. -- 025. (RESERVED)

026. LICENSING FEES.

~~01. Posting of License. Immediately upon receipt of the license or any renewal, extension or modification thereof under Title 22, Chapter 51, Idaho Code, the licensed seed buyer must post the license in a conspicuous place in each place of business or in any other place as the director may determine. The ISDA will issue a duplicate license for each additional seed facility. (3-15-22)~~

~~02.01. License Fee. If an applicant is not licensed pursuant to the "Pure Seed Law," Title 22, Chapter 4, Idaho Code, the license fee is equal to the out-of-state license fees, pursuant to Title 22, Chapter 4, and will be deposited to the state treasury and credited to the SIF. ()~~

~~03.2. Return of Suspended or Terminated License. If a license issued to a seed buyer has lapsed or is suspended, revoked or canceled by the director, the license and all duplicates shall be returned to the ISDA. At the expiration of any period of suspension, revocation or cancellation, the license will be returned to the seed buyer to whom it was originally issued and be posted as prescribed by these rules. ()~~

~~04.3. Loss of License. Upon satisfactory proof of the loss or destruction of a license issued to a seed buyer, a duplicate may be issued under the same number or a new number at the discretion of the director. ()~~

~~05.4. License Reinstatement Fee. If license renewal material is received by the ISDA after the current license has expired, but no later than thirty (30) days past due, a reinstatement fee of one hundred dollars (\$100) will be assessed. If license renewal material is received after the thirty (30) day late period it will be considered an original license application and will be assessed a license fee equal to the requirements of Section 026. The exemption for license fees in Section 22-5103(3)(a), Idaho Code, will not apply to license renewals that have been received by the ISDA later than thirty (30) days. Fees collected by this subsection will be deposited in the state treasury and credited to the SIF account. ()~~

~~06. Additional License Application Information. The ISDA may request additional license information including, but not limited to: (3-15-22)~~

- ~~a. Names of officers of corporations or limited liability companies. (3-15-22)~~
- ~~b. Company information as required in the application form. (3-15-22)~~
- ~~c. Outstanding producer financial obligations. (3-15-22)~~
- ~~d. Name and address of banks that handle business accounts. (3-15-22)~~

~~07. License Duration. Licenses issued under the provisions of Title 22, Chapter 51, Idaho Code, expire on the 30th day of June of each year. (3-15-22)~~

027. -- 035. (RESERVED)

036. AMOUNT OF BOND FOR SEED STORED FOR WITHDRAWAL.
For the purpose of calculating the bond required pursuant to Section 22-5105, Idaho Code, the value for seed stored for withdrawal is calculated by either using the commonly accepted market price of similar seed crops within the same geographic location or equal to the average value of the same kind of seed crop owned by the seed buyer, whichever is greater, as determined by ISDA. ()

~~**037. AMOUNT OF BOND, IRREVOCABLE LETTER OF CREDIT, CERTIFICATE OF DEPOSIT, OR SINGLE BOND.**~~

~~01. Bonding Requirement. The amount of bond to be furnished will be fixed at a rate pursuant to Section 22-5105, Idaho Code. (3-15-22)~~

~~02. Single Bond, Irrevocable Letter of Credit or Certificate of Deposit. For the purposes of licensing as a seed buyer pursuant to Title 22, Chapter 51, Idaho Code, and as a warehouseman pursuant to Title 69, Chapter 2, Idaho Code, or as a commodity dealer pursuant to Title 69, Chapter 5, Idaho Code, a single bond, irrevocable letter of credit or certificate of deposit will be fixed at whichever of the following amounts is greater:~~

(3-15-22)

~~a. Combined total indebtedness paid and owed to producers for seed crop and agricultural commodity, without any deductions, for the previous license year; or (3-15-22)~~

~~b. The indebtedness owed and estimated to be owed to producers for seed crop and agricultural commodity, without any deductions, for the current license year. (3-15-22)~~

0387. -- 046. (RESERVED)

047. MAINTENANCE OF RECORDS.

All records and accounts required under Title 22, Chapter 51, Idaho Code, are kept separate and distinct from all records and accounts of any other business of the seed buyer and be subject to inspection by the Director at any reasonable time. Electronic records may be maintained outside of Idaho provided they are available for examination by the ISDA within the state at any reasonable time. ()

048. -- 049. (RESERVED)

050. INSURANCE REQUIREMENTS.

01. Insurance Coverage. Pursuant to Section 22-5114, Idaho Code, the seed buyer must maintain a commercial property policy for loss against, but not limited to: ()

- a. Loss from fire; ()
- b. Loss from internal explosion; ()
- c. Loss from lightning; ()
- d. Loss from tornado. ()

02. Insurance Deductible. The maximum deductible allowed for insurance required by Section 22-5114, Idaho Code, is fifty thousand dollars (\$50,000). However, a larger deductible may be allowed at the discretion of the director. The request must be submitted in writing and kept on file. ()

03. Seed Stored for Withdrawal. The amount of insurance coverage must be sufficient to cover the full replacement value of similar or better kind and quality of seed crop. ()

~~**04. Self-Insurance.** A request for self insurance must be submitted to the ISDA in writing and signed by the seed buyer or his representative. Supporting evidence of ability to pay seed crop obligations, in the event of a loss due to fire, internal explosions, lightning, or tornadoes, must be attached to the self insurance request. (3-15-22)~~

~~a. The director may accept or reject the self insurance request. The director's findings will be in writing and kept on file. (3-15-22)~~

~~b. If a seed buyer is self-insured and the seed crop within the licensed seed buyer's facility has been damaged or destroyed, the seed buyer must make complete settlement to all producers within thirty (30) days of the loss. Failure of the seed buyer to make such settlement is cause to revoke the seed buyer's license. If the seed buyer and producer agree to other terms, set out in writing, the settlement does not need to be made within the thirty (30) day time period. If only a portion of the seed crop is damaged, settlement may be made on a pro-rata basis to the producer. (3-15-22)()~~

05. Insurance Settlement. When the seed crop within a licensed seed buyer's facility has been damaged or destroyed, the seed buyer must make complete settlement to all producers having seed crops transferred to the seed buyer or stored for withdrawal within ten (10) days after settlement with the insurance company. Failure of the seed buyer to make such settlement is cause to revoke the seed buyer's license. If the seed buyer and producer agree to other terms, set out in writing, the settlement does not need to be made within the ten (10) day time period. If

only a portion of the seed crop is damaged, settlement may be made on a pro-rata basis to the producer. ()

051. -- 059. (RESERVED)

060. NONCOMPLIANCE -- REQUIREMENTS.

If a seed buyer is not meeting its obligations to producers, does not have the ability to pay producers, or refuses to submit records and papers for lawful inspection, the ISDA will give written notice to the seed buyer and direct the seed buyer to comply with all of the following requirements within ten (10) working days or as agreed to by the ISDA. ()

01. Additional Security Requirements. If it appears the licensee does not have the ability to pay producers for seed crops transferred, or when it appears the licensee does not have a sufficient net worth to outstanding financial obligations ratio, the ISDA may require the licensee to post a bond or other additional acceptable security in the amount of two thousand dollars (\$2,000) for each one thousand dollars (\$1,000) or fraction thereof of deficiency. ()

02. ~~Provide an Audited or Reviewed Financial Statement.~~ In addition to Section 22-5113, Idaho Code. ~~The ISDA may require the licensee to submit an audited or reviewed financial statement prepared for the current financial accounting year by an independent certified public accountant or licensed public accountant. The audited or reviewed financial statement is to be prepared in accordance with GAAP. The ISDA may request a follow-up review of the submitted financial statement.~~ (3-15-22)()

061. -- 069. (RESERVED)

070. HOW ASSESSMENTS ARE TO BE CALCULATED.

~~Pursuant to Section 22-5121, Idaho Code, a~~ All seed buyers must collect assessments from producers who transfer seed crop or store for withdrawal. Assessments are calculated as follows: (3-15-22)()

01. Contract. Assessments are collected on the gross dollar amount, without any deduction, owed to, or paid, or to be paid, on behalf of the producer of the seed crop. ()

02. Seed Stored for Withdrawal. On the clean or estimated clean weight at the time the seed crop is withdrawn from the seed facility: ()

a. The initial rate of assessment for cereal grain, lentil, pea, and dry edible bean and oil seed stored for withdrawal is not to exceed one hundredth (1/100) cent per pound. ()

b. The initial rate of assessment for all seed crops stored for withdrawal other than seed crops pursuant to Section 070, is not to exceed one half (1/2) cent per pound. ()

c. The SIF advisory ~~board will~~ committee may review the assessment rate annually and make recommendations for change, as necessary, to the director. (3-15-22)()

d. If the amount of assessment for a producer on all seed stored for withdrawal made in a calendar year is calculated to be less than fifty cents (\$.50), no assessment will be collected. ()

03. Incidental Costs and Expenses. All incidental costs and expenses including, but not limited to, transportation, cleaning, in and out charges, insurance, taxes and additional services or charges are not be included in the calculation to determine the assessment. ()

04. Unpaid Assessments. If any assessment is unpaid and a failure occurs, the amount of the unpaid assessment will be deducted from any SIF recovery paid to the producer. ()

071. -- 079. (RESERVED)

080. COLLECTION AND REMITTANCE OF SIF ASSESSMENTS.

SIF assessments are collected from obligations owed to the producer or at the time of withdrawal by the seed buyer

and remitted to the ISDA. If assessment is paid by mail the payment must be postmarked no later than the twentieth day of the month following the close of the quarter to avoid interest and penalty charges. ()

081. -- 089. (RESERVED)

090. CLAIM FORMS AND PAYMENT FROM THE FUND.

01. Claim Forms. Claim forms will be provided ~~either via the USPS, by electronic transfer by the ISDA, or other commercial means~~ by the Department. (3-15-22)()

02. Contract. If the seed crop is contracted, the value of the contract price of the seed crop, at the time of payment, may be used to determine payment from the SIF. ()

03. Not Contracted or Stored for Withdrawal. If the seed crop is not contracted or stored for withdrawal, the value for payment from the SIF will be determined by a survey of prices, for similar seed crops and similar seed facilities, within the same geographic location as the failed seed buyer. ()

091. -- ~~099.~~ (RESERVED)

~~100. EXEMPTIONS.~~

~~Producers are not eligible to participate in SIF and no assessments will be collected from:~~ (3-15-22)

~~**01. Producers With a Financial or Management Interest.** Producers that have a financial or management interest in a seed facility, except members of a cooperative marketing association qualified under Title 22, Chapter 26, Idaho Code.~~ (3-15-22)

~~**02. Producers That Sell or Transfer to Another Producer.** Producers that sell to another producer, none of which are seed buyers.~~ (3-15-22)

~~**03. Deliveries or Transfers to Unlicensed Seed Facilities.** Producers that deliver or transfer seed crops to an unlicensed facility.~~ (3-15-22)

~~101. -- 999. (RESERVED)~~

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.03.03 – RULES GOVERNING PESTICIDE AND CHEMIGATION USE AND APPLICATION

DOCKET NO. 02-0303-2301 (ZBR CHAPTER REWRITE, FEE RULE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-3421, 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 18, 2023.

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

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

This rule is being presented for authorization as part of the ISDA’s plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor’s [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

This chapter governs the use and application of pesticides; licensing of pesticide applicators; registration of pesticides; and responsibilities for chemigation in Idaho.

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

No changes are being proposed to fees already included in the existing rule. Such fees are imposed on Pesticide Registration (22-3402(6), Idaho Code), License Fees (22-3404(2)(a) and (3)(d), Idaho Code), Dealer’s Fees (22-3406(1)(a), Idaho Code), and Examination 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:

There is no fiscal impact 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 May 3, 2023 Idaho Administrative Bulletin, [Vol. 23-5, Page 11](#).

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

The documents incorporated by reference include two sections of the US Code of Federal Regulation, including Title 40, Part 165, Subpart E “Standards for Pesticide Containment Structures”, and Title 40, Chapter 1, Part 171 “Certification of Pesticide Applicators”; and a publication “Restrictions For Use of the Livestock Protection Collars (Compound 1080).

These documents are necessary to ensure technical consistency with federal regulations and guidance.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), for any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, the director shall identify the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal

government. The following sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government.

This rule does not regulate an activity regulated by the federal government.

The detailed 22-101A analysis can be found on the agency’s website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

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 25, 2023.

DATED this 4th day of October, 2023.

Lloyd B. Knight
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THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 02-0303-2301
(ZBR Chapter Rewrite)

02.03.03 – RULES GOVERNING PESTICIDE AND CHEMIGATION USE AND APPLICATION

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 22-3421, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.03.03, “Rules Governing Pesticide and Chemigation Use and Application.” ()

02. Scope. This chapter governs the use and application of pesticides; licensing of pesticide applicators; registration of pesticides; and responsibilities for chemigation in Idaho. ()

002. – 003. (RESERVED)

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference: ()

01. U.S. Code of Federal Regulations (CFR) Title 40, Part 165, Subpart E. “Standards for Pesticide Containment Structures,” Sections 165.80 through 165.97 that may be viewed at https://www.govregs.com/regulations/title40_chapterI_part165_subpartE. ()

02. U.S. Code of Federal Regulations (CFR) Title 40, Chapter 1, Part 171. “Certification of Pesticide Applicators” that may be viewed at https://www.govregs.com/regulations/title40_chapter1_part171. ()

03. Restrictions For Use Of The Livestock Protection Collars (Compound 1080). <https://agri.idaho.gov/main/wp-content/uploads/2020/06/LPC-RESTRICTIONS.pdf> ()

005. -- 009. (RESERVED)

010. DEFINITIONS.

The Idaho Department of Agriculture adopts the definitions set forth in Section 22-3401, Idaho Code, and the following definitions: ()

~~**01.** **Air Gap.** A physical separation between the free-flowing discharge end of a domestic water supply system pipeline and an open or non-pressure receiving vessel. (3-15-22)~~

~~**02.** **Basin Irrigation.** Irrigation by flooding areas of level land surrounded by dikes. (3-15-22)~~

~~**03.** **Border Irrigation.** Irrigation by flooding strips of land, rectangular in shape and cross leveled, bordered by dikes. (3-15-22)~~

01. **Antimicrobial Pesticides.** Substances or mixture of substances used to destroy or suppress the growth of harmful microorganisms such as ()

042. **Certification.** Passing one (1) or more examinations, to initially demonstrate an applicant’s competence, as required by the licensing provisions of this act, in order to use or distribute pesticides, or to act as a pesticide consultant. ()

~~**05.** **Check Valve.** A certified valve designed and constructed to close a water supply pipeline, chemical injection line, or other conduit in a chemigation system to prevent reverse flow in that line. (3-15-22)~~

063. **Chemigator.** Any person engaged in the application of chemicals through any type of irrigation system. ()

~~**07.** **Cross-Connection.** Any connection that may have chemical injected or introduced into the domestic water supply system and has the potential of or is connected to the domestic water supply system. (3-15-22)~~

~~**08.** **Demonstration and Research.** The use of restricted-use pesticides to demonstrate the action of the pesticide or conduct research. (3-15-22)~~

~~**09.** **Domestic Water Supply System.** Any system providing water for human use. (3-15-22)~~

~~**10.** **Drip Irrigation.** A method of microirrigation wherein water is applied as drops or small streams through emitters. (3-15-22)~~

~~**11.** **Flood Irrigation.** Method of irrigation where water is applied to the soil surface without flow controls, such as furrows, borders or corrugations. (3-15-22)~~

~~**12.** **Flow Rate.** The weight or volume of flowable material per unit of time. (3-15-22)~~

~~**13.** **Furrow Irrigation.** Method of surface irrigation where the water is supplied to small ditches or furrows for guiding the water across the field. (3-15-22)~~

~~**1404.** **Hazard Area.** Cities, towns, subdivisions, schools, hospitals, or densely populated areas. ()~~

~~1505.~~ **High Volatile Esters.** Formulations of 2,4-D which contain methyl, ethyl, butyl, isopropyl, octylamyl and pentyl esters. ()

~~16.~~ **Injection Pump.** A pump that uses a gear, rotary, piston or diaphragm to develop the pressures exceeding the irrigation system pressure to inject a chemical. (3-15-22)

~~17.~~ **Inspection Port.** An orifice or other viewing device from which the low pressure drain and check valve may be observed. (3-15-22)

~~18.~~ **Limited Supervision.** Pertains to the supervision of a currently licensed pesticide applicator who holds the Commercial Apprentice (CA) category. The Supervising Applicator will be currently licensed in the same category necessary for the pesticide application, and is limited to supervising a maximum of two Commercial Apprentice applicators and must maintain immediate communications (voice, radio, cellular telephone, or similar) with the supervised applicators for the duration of all pesticide applications. (3-15-22)

06. Janitorial Services. Surface cleaning or surface sanitation operations that use pesticides. Janitorial services extend to households and buildings and may include, but are not limited to; bathroom, food storage/processing, food service, retail sales, office, maintenance, educational, government and other like facilities. ()

07. Limited Supervision. The supervision of a professional commercial apprentice by a supervising applicator licensed in the categories necessary for the pesticide application. The supervising applicator is limited to supervision of two (2) professional commercial apprentice applicators at one (1) time and must maintain immediate communications (voice, radio, cellular telephone, or similar) with the supervised applicators for the duration of all pesticide applications. ()

~~1908.~~ **Low Volatile Esters.** Formulations of 2,4-D; 2,4-DP; MCPA and MCPB which contain butoxyethanol, propylene glycol, tetrahydrofurfuryl, propylene glycol butyl ether, butoxy propyl, ethylhexyl and isoctyl esters. ()

~~2009.~~ **Mixer-Loader.** Any person who works under the supervision of a professional applicator in the mixing and loading of pesticides to prepare for, but not actually make, applications. ()

~~21.~~ **On-Site Supervision.** Pertains to the application of Restricted Use Pesticides (RUP). On-Site Supervision of an unlicensed pesticide applicator or a pesticide applicator who does not hold an appropriate category for the RUP being applied. Supervising pesticide applicator must be physically at the site of application, must have visual contact with the pesticide applicator, and must be in a position to direct the actions of the pesticide applicator. The supervising applicator may not supervise more than two pesticide applicators. (3-15-22)

10. On-Site Supervision. A noncertified applicator may apply general use and restricted use pesticides under on-site supervision by a professional applicator with the required license categories. The supervising pesticide applicator must be physically at the site of application, must have visual contact with the pesticide applicator, and must be able to direct the actions of the non-certified pesticide applicator. The supervising applicator may not supervise more than two (2) non-certified pesticide applicators at one (1) time. ()

~~2211.~~ **Pesticide Drift.** Movement of pesticide dust or droplets through the air at the time of application or soon after, to any site other than the area intended. ()

~~23.~~ **Pressure Switch.** A device which will stop the chemical injection pump when the water pressure decreases to the point where chemical distribution is adversely affected. (3-15-22)

~~2412.~~ **Recertification.** The requalification of a certified person through seminar attendance over a set period of time, or taking an examination at the end of a set period of time, to ensure that the person continues to meet the requirements of changing technology and maintains competence. ()

~~25.~~ **Reduced-Pressure Principle Backflow-Prevention Assembly (RP).** An assembly containing two (2) independently acting approved check valves together with a hydraulically operating, mechanically independent pressure differential relief valve located between the check valves and at the same time below the first check valve.

~~The unit shall include properly located resilient seated test cocks and tightly closing resilient seated test cocks and tightly closing resilient seated shutoff valves at each end of the assembly. (3-15-22)~~

~~2613. Seminar. Any Department-approved meeting or activity convened for the purpose of presenting pesticide recertification information. ()~~

~~2714. Sprinkler Irrigation. Method of irrigation in which the water is sprayed, or sprinkled, through the air to the ground surface. ()~~

~~28. System Interlock. Safety equipment used to ensure that a chemical injection pump will stop if the irrigation pumping plant stops to prevent the entire chemical mixture from emptying from the supply tank into the irrigation pipeline. The safety equipment may also be used to shut down the irrigation system if the injection system fails. (3-15-22)~~

~~29. Vacuum Relief Valve. A device to automatically relieve or break a vacuum. (3-15-22)~~

~~30. Venturi. A differential pressure injector that operates on a pressure difference between the inlet and outlet of the injector and creates a vacuum inside the body, which results in suction through the suction port. (3-15-22)~~

~~31. Venturi Injection System. A chemical injection system which operates with a Venturi using the suction from the Venturi that can be used to inject and mix chemicals into the water. (3-15-22)~~

~~32. Working Pressure. The internal operating pressure of a vessel, tank or piping used to hold or transport liquid. (3-15-22)~~

~~3315. Waters of the State. Any surface waters such as canals, ditches, laterals, lakes, streams, or rivers. ()~~

011. -- 099. (RESERVED)

SUBCHAPTER A – LICENSING OF APPLICATORS AND DEALERS

100. ~~LICENSING PROFESSIONAL APPLICATORS~~ LICENSING.
To obtain a professional applicator's license an applicant must: ()

01. **Submit Application.** Submit an application prescribed by the Department with applicable fee (Section 25080). ~~(3-15-22)~~ ()

02. **Demonstrate Competence.** ()

a. All professional applicators must pass the Applicator Core Competency exam in addition to any other category. Professional applicators may only chemigate, make pesticide recommendations, the application or make pesticide applications for any purpose for which they have demonstrated competence. Competence is demonstrated by passing Department examinations and becoming licensed in categories described in the Subsection 100.04 ~~categories~~. ~~(3-15-22)~~ ()

b. An applicant will demonstrate core competency in ~~the following areas:~~ all standards outlined in 40 CFR 171.103(c). ~~(3-15-22)~~ ()

i. ~~Labels and labeling, including terminology, instructions, format, warnings and symbols.~~ (3-15-22)

ii. ~~Safety factors and procedures, including protective clothing and equipment, first aid, toxicity, symptoms of poisoning, storage, handling, transportation and disposal.~~ (3-15-22)

iii. ~~Laws, rules, and regulations governing pesticides.~~ (3-15-22)

- ~~iv. Environmental considerations, including the effect of climate and physical or geographical factors on pesticides, and the effects of pesticides on the environment, and the animals and plants living in it. (3-15-22)~~
- ~~v. Mixing and loading, including interpretation of labels, safety precautions, compatibility of mixtures, and protection of the environment. (3-15-22)~~
- ~~vi. Methods of use or application, including types of equipment, calibration, application techniques, and prevention of drift and other types of pesticide migration. (3-15-22)~~
- ~~vii. Pests to be controlled, including identification, damage characteristics, biology and habitat. (3-15-22)~~
- ~~viii. Types of pesticides, including formulations, mode of action, toxicity, persistence, and hazards of use. (3-15-22)~~
- ~~ix. Chemigation practices involving the application of chemicals through irrigation systems, calibration, management, and equipment requirements. (3-15-22)~~
- ~~x. Responsibilities of supervision of noncertified applicators. (3-15-22)~~

03. Certification and Department Examination Procedures. Be certified by passing Department examinations with a minimum score of seventy percent (70%) in the applicable pesticide categories (Subsection 100.04). ~~Examinations are~~ Examinations shall adhere to standards outlined in 40 CFR 171.103(a)(2). In addition, examinations are: (3-15-22)()

- ~~a. Presented and answered in a written or text based format; (3-15-22)~~
- ~~ba. Proctored and monitored by ISDA staff or administered by an authorized agent following approved Department procedures. (3-15-22)()~~
- ~~e. Given only to a person who presents valid government issued identification; (3-15-22)~~
- ~~d. Secure with candidates not having verbal or non-verbal communication with anyone other than the proctor during the exam and only have access to reference materials provided by and collected by the proctor; (3-15-22)~~
- ~~eb. Retaken after a minimum waiting period of one (1) week day. (3-15-22)()~~
- ~~fc. Scores valid for twelve (12) months from the date of the examination. ()~~
- ~~d. It is prohibited to: ()~~
 - ~~i. Attempt to cheat, or otherwise obtain an unfair advantage on the exam(s). ()~~
 - ~~ii. Remove or attempt to remove any test questions or responses or any notes from a testing session. ()~~
 - ~~iii. At any time, improperly access or attempt to improperly access the test site, the test (or any part of the test), an answer key, or any information about the test. ()~~
 - ~~iv. Engage in any way in: ()~~
 - ~~(1) Theft or attempted theft of test content through platform intrusion. ()~~
 - ~~(2) Post-exam manipulation of test content, responses, or test administration data. ()~~
 - ~~(3) Attempting to adversely impact the exam proctor, test center, or testing platforms through any~~

- means including cybersecurity means. ()
- v. Attempt to give or receive assistance, including by copying or through the use of an answer key. ()
 - vi. Record or copy information during the testing session including questions, answers, identifying information about the version or form of a test, or any other information that compromises the security of the test. ()
 - vii. Communicate with other test takers or other individuals in any form while testing is in session. ()
 - viii. Allow anyone to see your test questions or answers or attempt to see or copy others' test questions or answers. ()
 - ix. Consult notes, other people, electronic devices, textbooks, or any other resources during the test or during breaks. ()
 - x. Have subject-related information on your clothing, shoes, or body. ()
 - xi. Use or access any prohibited items including devices or aids such as, but not limited to, mobile phones, smartwatches, fitness trackers, other oral or written communication devices or wearable technology, cameras, notes, and reference books, etc., during or in connection with the test, including during breaks. ()
 - xii. Fail to turn in or store away a mobile/smartphone in accordance with the test site's collection process. ()
 - xiii. Use a prohibited calculator. ()
 - xiv. Deliberately attempt to and/or take the test for someone else or attempt to have someone else impersonate you to take the test. ()

04. Categories. ~~BA~~ All professional applicators must be certified and licensed in Applicator Core Competency in one (1) or more of the following categories:

Category Name	Category Description
Applicator Core Competency (CO)	Includes general knowledge of pesticides including proper use and disposal, product characteristics, first aid, labeling and laws. This category is required for all Idaho categories.
Agricultural Herbicide (AH)	For conducting herbicide applications to field crops, including rights of way, forests and rangelands.
Agricultural Insecticide/ Fungicide (AI)	For conducting insecticide and fungicide applications to field crops including in rights of way, forests, and rangelands.
Soil Fumigation (SF)	For applying soil fumigation pesticides to agricultural fields, plant nurseries, and other similar growing media for the growing of agricultural commodities, excluding rodent control.

Category Name	Category Description
Space (Area) Fumigation (AF)	For fumigating structures and spaces for pest control including buildings and similar structures, commodity storage facilities and containers, shipholds, railcars, RUP fumigant applications for burrowing rodent control, and sewer lines for root control.
Forest Environment (FE)	For application of pesticides to forests and rangelands, excluding vertebrate predator and avian control by U.S.D.A. Forest Service employees, Bureau of Land Management personnel, contractors, and private industry personnel.
Right-of-Way Herbicide (RW)	For the use of herbicides in the maintenance of rights of way, and similar terrestrial areas.
Public Health Pest (PH)	For the management and control of pests having medical and public health importance by employees of abatement districts and other public health related governmental entities.
Livestock Pest Control (LP)	For use of pesticides to control non-vertebrate pests on livestock or where livestock are confined, including the control of nuisance flying insects associated with livestock facilities.
Aerial Pest Control (AA)	For application of pesticides to all application sites by operating or flying fixed-wing or rotary aircraft.
Ornamental Herbicide (OH)	For conducting outside urban or residential herbicide applications to turfs, flowers, shrubs, trees, and associated landscapes, excluding soil applied, total vegetation control pesticides.
Ornamental Insecticide/ Fungicide (OI)	For conducting outside urban or residential insecticide or fungicide applications to turfs, flowers, shrubs, trees and associated landscapes.
General Pest Control (GP)	For conducting pesticide applications in and around residential, commercial, or other buildings, excluding those applications applicable to Structural Pest Control (SP), Ornamental Herbicide (OH), and Ornamental Insecticide/Fungicide (OI) categories.

Category Name	Category Description
Structural Destroying Pest (SP)	For application of pesticides to control pests which destroy wooden structures.
General Vertebrate Control (GV)	For controlling vertebrate pests such as large and small predators, rodents, and birds by Wildlife Services (WS) personnel of the United States Department of Agriculture Animal and Plant Health Inspection Service (APHIS).
Rodent Control (RC)	For application of outdoor use non-fumigation rodenticides to control field rodents.
Aquatic Weed and Pest Control (AP)	For application of pesticides to control weeds and other pests to aquatic sites excluding those pests pertaining to the Public Health Pest Control (PH) category by employees of irrigation districts, canal companies, contractors, and others.
Seed Treatment (ST)	For application of pesticides to protect seeds used for plant reproduction.
Commodity Pest Control (CP)	For application of non-fumigation pesticides to control pests in stored commodities.
Potato Cellar Pest Control (PC)	For application of storage-enhancing pesticides in potato cellars.
Chemigation (CH)	For application of chemicals through an irrigation system, excluding Aquatic Weed and Pest Control (AP) category.
Livestock Protection Collars (LPC)	For use of Livestock Protection Collars (LPC) containing the restricted use pesticide (RUP) Compound 1080 to control predatory coyotes by employees of the USDA/APHIS.
Wood Preservative (WP)	For application of wood preservatives.
Pest Control Consultant Statewide (SW)	For consultations or recommendations to supply technical advice concerning the use of any pesticide for agricultural purposes.

Category Name	Category Description
Demonstration and Research (DR)	For application or supervision of the use of restricted use pesticides (RUPs) at no charge to demonstrate the action of the pesticide or conduct research with restricted use pesticides. The Pest Control Consultant Statewide (SW) is required.
Commercial Apprentice (CA)	For conducting General Use Pesticide (GUP) surface applications only in situations applicable to the OI, OH, AI, AH, GP, and RW categories. Persons with this category can only perform pesticide applications under limited supervision, and cannot make any soil active Total Vegetation Control (TVC) pesticide applications or injectable applications to soil or plants. Applicators with this category cannot supervise other pesticide applicators. This license category will expire on December 31 st in the year it was obtained.

(3-15-22)

Category Name	Category Description
Applicator Core Competency (CO)	Includes general knowledge of pesticides including proper use and disposal, product characteristics, first aid, labeling and laws. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(c). This category is required for all Idaho Professional Pesticide Applicator Licenses
Agricultural Crop Pest Control (AC)	This category applies to commercial applicators who use or supervise the use of pesticides in production of agricultural commodities including grasslands, and non-crop agricultural lands. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(1)(i).
Aerial Pest Control (AA)	For application of pesticides to all application sites by operating or flying fixed-wing or rotary aircraft. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(15).
Anti-Fouling Coatings (FC)	For applicators who use or supervise the use of anti-fouling coatings to control fouling organisms on aquatic vessels, underwater structures, and other similar structures. An applicant will demonstrate practical knowledge of problems caused by fouling organisms, methods of control using fouling organisms using through anti-fouling coatings, characteristics of antifouling coatings, alternative active ingredients other than copper-based paints, and best management practices for application and removal of anti-fouling coatings.

<u>Category Name</u>	<u>Category Description</u>
<u>Agricultural Livestock Pest Control (LP)</u>	<u>For commercial applicators who use or supervise the use of pesticides on animals or to places on or in which animals are confined. Certification in this category alone is not sufficient to authorize the purchase, use, or supervision of use of products for predator control listed in the General Vertebrate category or outlined in 40 CFR 171.101(k)(l). An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(1)(ii).</u>
<u>Aquatic Weed and Pest Control (AP)</u>	<u>For commercial applicators who use or supervise the use of any pesticide purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in as specified in the Public Health (PH) category. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(5).</u>
<u>Chemigation (CH)</u>	<u>For commercial applicators who apply chemicals through an irrigation system, excluding applications made to control aquatic organisms. The application of pesticides through a chemigation system will require additional relevant professional applicator categories. An applicant will demonstrate practical knowledge of chemigation including backflow prevention, minimizing risks related to chemigation, and approved chemigation equipment.</u>
<u>Consultant and Research (CR)</u>	<u>For consultations or recommendations to supply technical advice concerning the use of agricultural pesticides and for the application or supervision of the use of restricted use pesticides (RUPs) for no compensation, to demonstrate the action of the pesticide or conduct research with restricted use pesticides. For all demonstration additional relevant professional applicator categories will be required. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(10).</u>
<u>Forest Pest Control (FP)</u>	<u>For commercial applicators who use or supervise the use of pesticides in forests, forest nurseries and forest seed production. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(2).</u>
<u>General Vertebrate Control (GV)</u>	<u>For controlling vertebrate pests such as large and small predators, rodents, and birds by Wildlife Services (WS) personnel of the United States Department of Agriculture-Animal and Plant Health Inspection Service (APHIS). This category applies to professional applicators who use or supervise the use of sodium cyanide and sodium fluoroacetate to control regulated predators. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(11-12).</u>
<u>Industrial, Institutional, and Structural Pest Control – Commodity (CP)</u>	<u>For commercial applicators who use or supervise the use of pesticides on manufactured products or commodities in the following: Food handling establishments, packing houses, and food-processing facilities; and industrial establishments, including commodity storage facilities, grain elevators, and any other similar areas, public or private, for the protection of stored, processed, manufactured products, or commodities. Applicators must demonstrate a practical knowledge of pests associated with manufactured products or commodities, including recognizing those pests and signs of their presence, their habitats, their life cycles, biology, and behavior as it may be relevant to problem identification and control. Applicators must demonstrate practical knowledge of types of formulations appropriate for control of pests associated with manufactured products or commodities, and methods of application that avoid contamination of food, minimize damage to and contamination of areas treated, minimize acute and chronic exposure of people and pets, and minimize environmental impacts.</u>

<u>Category Name</u>	<u>Category Description</u>
<u>Industrial, Institutional, and Structural Pest Control – Non-Commodity (IP)</u>	<u>For commercial applicators who use or supervise the use of pesticides in, on, or around the following: Food handling establishments, packing houses, and food-processing facilities; human dwellings; institutions, such as schools, hospitals, and prisons; and industrial establishments, including manufacturing facilities, warehouses, and any other structures and adjacent areas, public or private, for the protection of stored, processed, or manufactured products. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(7).</u>
<u>Microbial Pest Management (MP)</u>	<u>For applicators who use pesticides to manage microbial pests including but not limited to, bacteria, fungi, algae, or viruses, in cooling towers, air washers, evaporative condensers, food processing facilities, swimming pools, pulp and paper mills, sewer treatment, residential and commercial building, other applications, including but not limited to janitorial services. An applicant will demonstrate practical knowledge of microbial pests including, but not limited to principles and methods of microbial control, types of antimicrobial pesticides, and factors affecting use of antimicrobial pesticides, to, and contamination of areas treated, acute and chronic exposure of people and pets, and non-target exposures.</u>
<u>Non-Soil Fumigation (NS)</u>	<u>For commercial applicators who use or supervise the use of a pesticide to fumigate anything other than soil. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(14).</u>
<u>Ornamental Pest (OP)</u>	<u>For commercial applicators who use or supervise the use of pesticides to control pests in the maintenance and production of ornamental plants and turf. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(3).</u>
<u>Public Health Pest (PH)</u>	<u>For State, Tribal, Federal or other governmental employees and contractors who use or supervise the use of pesticides in government-sponsored public health programs for the management and control of pests having medical and public health importance. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(8).</u>
<u>Regulatory Pest Control (RP)</u>	<u>For State, Tribal, Federal, or other local governmental employees and contractors who use or supervise the use of restricted use pesticides in government-sponsored programs for the control of regulated pests. Certification in this category does not authorize the purchase, use, or supervision of use of products for predator control pesticides listed in the General Vertebrate category or outlined in 40 CFR 171.101(k)(l). An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(9).</u>
<u>Right-of-Way Herbicide (RW)</u>	<u>For commercial applicators who use or supervise the use of pesticides in the maintenance of roadsides, powerlines, pipelines, and railway rights-of-way, and similar areas. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(6).</u>
<u>Seed Treatment (ST)</u>	<u>For commercial applicators using or supervising the use of pesticides on seeds in seed treatment facilities. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(4).</u>

Category Name	Category Description
Soil Fumigation (SF)	For applying soil fumigation pesticides to agricultural fields, plant nurseries, and other similar growing media for the growing of agricultural commodities, excluding rodent control. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(13).

()

a. Professional Commercial Apprentice License. For conducting General Use Pesticide (GUP) surface applications only in situations applicable to the MP, OP, AC, IP, and RW categories. To obtain a professional commercial apprentice license the applicant must pass the Applicator Core Competency exam with a minimum score of seventy percent (70%) or better, and meet the requirements as outlined in Section 100. Persons with this license may only perform pesticide applications under limited supervision of a properly certified professional applicator. Applicators with this license cannot supervise other pesticide applicators. The professional commercial apprentice license may not be reciprocated with other participating agencies. This license will expire one (1) year from the date of issuance. The professional commercial apprentice license is non-renewable.

()

b. Professional applicators who engage in janitorial services and use pesticides for cleaning, surface sanitation, and similar activities using general use pesticides with the labeled signal words Warning or Caution, are exempt from professional applicator licensing requirements as outlined in Sections 22-3404 (2)(3)(4), Idaho Code.

()

05. Records Requirements. Maintain pesticide application records for three (3) years, ready to be inspected, duplicated, or submitted when requested by the Director. Such records shall contain:

(3-15-22)

- a.** The name and address of the owner or operator of each property treated; (3-15-22)
- b.** The specific crop, animal, or property treated; (3-15-22)
- c.** The location by the address, general legal description (township, range, and section) or latitude/longitude of the specific crop, animal, or property treated; (3-15-22)
- d.** The size or amount of specific crop, animal, or property treated; (3-15-22)
- e.** The trade name or brand name of the pesticide applied; (3-15-22)
- f.** The total amount of pesticide applied; (3-15-22)
- g.** The dilution applied or rate of application; (3-15-22)
- h.** The EPA registration number of the pesticide applied; (3-15-22)
- i.** The date of application; (3-15-22)
- j.** The time of day when the pesticide is applied; (3-15-22)
- k.** The approximate wind velocity; (3-15-22)
- l.** The approximate wind direction; (3-15-22)
- m.** The full name of the person recommending the pesticide application; (3-15-22)
- n.** The full name of the professional applicator applying the pesticide; (3-15-22)
- o.** The license number of the professional applicator applying the pesticide; (3-15-22)

~~p.~~ Full name and license number of professional applicator supervising the pesticide application of the professional applicator holding the Apprentice Category (CA). (3-15-22)

~~q.~~ Worker protection information exchange, if required, prior to pesticide application, including name of grower or operator contacted and date and time of contact. (3-15-22)

065. Financial Responsibility. Submits written proof of financial responsibility by any of the following methods: ()

a. Liability insurance with an insurance company licensed to do business in Idaho and documented on a form approved by the Director; ()

b. A bond that is approved by the Director; ()

c. A cash certificate of deposit in escrow with a bank or trust company; ()

d. An annuity issued by an insurance company, bank or other financial institution found acceptable to the Director; ()

e. An irrevocable letter of credit issued by a national bank in Idaho or by an Idaho state-chartered bank insured by the federal deposit insurance corporation. ()

f. Any certificate of deposit, annuity, or irrevocable letter of credit must be payable to the Director as trustee and remain on file with the Department until it is released, canceled or discharged by the Director. Any certificate of deposit, annuity, or irrevocable letter of credit must maintain a cash value equal to the requirements of Subsection ~~250.02~~ 100.05.h., less any penalty for early withdrawal. Accrued interest upon a certificate of deposit or annuity shall be payable to the purchaser of the certificate or annuity. (3-15-22)()

g. Exclusions. Any exclusion to liability insurance, bond, cash certificate of deposit, annuity or irrevocable letter of credit coverage shall be listed on a form approved by the Director. ()

h. Minimum Coverage Required. ()

i. Bodily injury - fifty thousand dollars (\$50,000) per person/one hundred thousand dollars (\$100,000) per occurrence. ()

ii. Property damage - fifty thousand dollars (\$50,000) per occurrence. ()

iii. Maximum deductible - five thousand dollars (\$5,000). ()

i. Target Property Not Required to Be Covered. The immediate property being treated is not required to be covered. ()

j. Cancellation or Reduction. The applicator must notify the Department in writing immediately after cancellation or reduction of the financial coverage. ()

076. Licensing Periods and Recertification. The recertification period for professional applicators will be concurrent with their two (2) year licensing period, beginning at the license issuance, and ending upon license expiration. The apprentice category (CA) will not be able to recertify. This license category will expire on the 31st of December in the year that it was issued. In order for For a professional applicator's license to be renewed, the license holder must complete the recertification provisions of this section. Licenses belonging to professional applicators with last names beginning with A through L, ~~inclusive~~, expire on December 31st in every odd-numbered year, and licenses belonging to professional applicators with last names beginning with M through Z, ~~inclusive~~, expire on December 31st in every even-numbered year. The apprentice license may not be recertified and will expire one year from the date that it was issued. Recertification requirements may be accomplished by complying with either Subsection 100.076.a. or 100.076.b. Any professional applicator with less than thirteen (13) months in the licensing

~~period is not required to obtain recertification credits during the initial licensing period. Any license holder who fails to accumulate the required recertification credits prior to the expiration date of their license will be required to pass the appropriate examination(s) before being licensed.~~ (3-15-22)()

~~a. Continuing Education: To recertify, a person an applicator must accumulate sixteen (16) recertification credits during their recertification period, by attending Department-accredited pesticide instruction seminars and which meet the following criteria:~~ (3-15-22)()

~~i. Complete a minimum of fifteen (15) credits, based upon one (1) credit is issued for each one (1) hour fifty (50) minutes of instruction for each recertification period.~~ (3-15-22)()

~~ii. To request accreditation for a seminar not provided by the Department, an applicant must submit a written request to the Department not less than thirty (30) days prior to the scheduled seminar. Under exceptional circumstances, as described in writing by the person requesting accreditation, the thirty (30) day requirement may be waived. Applications received prior to thirty (30) days shall receive preference for credit approval and have the ability to amend their application until the seminar is held. Applications received after the thirty (30) days shall be reviewed by the Department as time and workload allows.~~ (3-15-22)()

~~iii. The number of credits to be given will be decided by the Department and may be revised if it is later found that the training does not comply. Credit is given only for those parts of seminars that deal with pesticide subjects as listed in Subsection 100.02.b. No credit will be given for training given to persons to prepare them for initial certification.~~ ()

~~iv. Verification of attendance at a seminar is accomplished by validating the attendee's pesticide license, using a stamp, sticker, or other method approved by the Department. Verification of attendance must be submitted with the license renewal application.~~ (3-15-22)()

~~v. Excess credits may not be carried over to the next recertification period.~~ ()

~~vi. Upon earning the recertification credits as described above, license holder is recertified for the next recertification period corresponding with the next issuance of a license, provided that the license renewal application is submitted within twelve (12) months after the expiration date of the license.~~ ()

~~b. Recertification by Examination: A person certified applicator who passes the Department's recertification and Applicator Core Competency (CO) recertification examination plus examinations for all categories in which a person intends to license.~~ (3-15-22)()

~~i. Recertification examinations may be taken by a professional applicator beginning the thirteenth month of the recertification period. Any professional applicator with less than thirteen (13) months in the licensing period is not required to obtain recertification credits during the initial licensing period.~~ (3-15-22)()

~~ii. The examination procedures as outlined in Subsection 100.03 will be followed.~~ ()

~~iii. Excess credits may not be carried over to the next recertification period, if a person accumulates more than fifteen (15) credits during the recertification period.~~ (3-15-22)

~~iv. Upon earning the recertification credits as described above, license holder is recertified for the next recertification period corresponding with the next issuance of a license, provided that the license renewal application is submitted within twelve (12) months after the expiration date of the license.~~ (3-15-22)

~~e. Any license holder who fails to accumulate the required recertification credits prior to the expiration date of their license will be required to pass the appropriate recertification examination(s) before being licensed.~~ (3-15-22)

~~dc. The Department may grant variances in the recertification of professional applicators' and dealers' licenses. Issuance of variances will not relieve the recipient from compliance with all other responsibilities under the Pesticide and Chemigation Act and Rules. The request will be on a Department-prescribed form and state fully the~~

grounds for requesting a variance. ()

- d. Licenses are eligible for renewal no sooner than forty-five (45) days from the expiration date. ()

101. PROFESSIONAL APPLICATOR RECORD KEEPING REQUIREMENTS.

01. Records Requirements. Maintain pesticide application records for three (3) years, ready to be inspected, duplicated, or submitted when requested by the Director. Such records shall contain: ()

- a. The name of the responsible party of each property treated; ()
- b. The specific crop, animal, or property treated; ()
- c. The location by the address, general legal description (township, range, and section) or latitude/longitude of the specific crop, animal, or property treated; ()
- d. The size or amount of specific crop, animal, or property treated; ()
- e. The trade name or brand name of the pesticide applied; ()
- f. The total amount of pesticide applied; ()
- g. The dilution applied or rate of application; ()
- h. The EPA registration number of the pesticide applied; ()
- i. The date of application; ()
- j. The time of day when the pesticide is applied; ()
- k. The approximate wind velocity; ()
- l. The approximate wind direction; ()
- m. The full name of the professional applicator applying the pesticide; ()
- n. The license number of the professional applicator applying the pesticide; ()
- o. Full name and license number of professional applicator supervising the pesticide application of the professional applicator holding the Apprentice Category (CA). ()
- p. Worker protection information exchange, if required, prior to pesticide application, including name of grower or operator contacted and date and time of contact. ()

02. Restricted Use Records. Professional applicators who have made an application of a restricted use pesticide shall, within thirty (30) days of the pesticide application, provide a copy of the application records required under this rule for each application of any restricted use pesticide to the person for whom the pesticide application was made. ()

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

150. PRIVATE APPLICATOR LICENSING.

To obtain a private applicator's license, an applicant must: ()

- 01. ~~Applying for a Private Applicator's License. To obtain a private applicator's license and applicant must:~~ (3-15-22)

~~a.~~ **Submit Application.** Submit an application prescribed by the Department with applicable fee(s) (Section 250); (3-15-22)()

02. Demonstrate Competence. ()

~~ba.~~ **Pass an examination based on the Environmental Protection Agency (EPA) core manual with a minimum score of seventy percent (70%). Examination scores are valid for twelve (12) months after the date of the examination. The examination procedure is the same as for professional applicators (Subsection 100.02). Private applicators may only chemigate or make pesticide applications using RUP's in categories for which they have demonstrated competency by passing a Department examination based on a US EPA approved Core/Private Applicator manual. The examination must follow the procedures outlined in Subsection 100.03.** (3-15-22)()

~~eb.~~ **An applicant will demonstrate competency in all standards outlined in 40 CFR 171.105(a). Demonstrate competence as outlined for Professional Applicators (Subsection 100.01).** (3-15-22)()

023. License Categories. Private applicators must be certified in the Private Applicator category as a prerequisite to all other private applicator license categories: (3-15-22)

~~a.~~ Private applicators are certified and licensed in one (1) or more of the following categories:

Category Name	Category Description
Restricted Use Pesticide (RU)	For use or supervision of restricted use pesticides to produce agricultural commodities or forest crops on land owned or operated by applicator or applicator's employer.
Aerial Pest Control (AA)	For application of pesticides to all application sites owned or operated by applicator or applicator's employer by operating or flying fixed wing or rotary aircraft.
Soil Fumigation (SF)	For applying soil fumigation pesticides to agricultural fields, plant nurseries, and other similar growing media on land owned or operated by applicator or applicator's employer for the growing of agricultural commodities, excluding rodent control.
Space (Area) Fumigation (AF)	For fumigating structures and spaces for pest control with a Restricted Use Pesticide (RUP) including buildings and similar structures, commodity storage facilities and containers, shipholds, railcars owned or operated by applicator or applicator's employer and for RUP fumigant applications for burrowing rodent control.
Chemigation (CH)	For application of chemicals through irrigation systems on land owned or operated by applicator or applicator's employer.

Category Name	Category Description
Private Applicator (PA)	For use or supervision of restricted use pesticides to produce agricultural commodities on land owned or operated by applicator or applicator's employer. Certification in this category alone is not sufficient to authorize the purchase, use, or supervision of use of products for predator control listed in the predator control categories outlined in 40 CFR 171.105(b)(c). PA is prerequisite for all Idaho Private Applicator license categories. An applicant will demonstrate competency standards outlined in 40 CFR 171.105(a).
Aerial Pest Control (AA)	For application of pesticides to all sites owned or operated by an applicator or applicator's employer by operating or flying fixed-wing or rotary aircraft. An applicant will demonstrate competency standards outlined in 40 CFR 171.105(f).
Chemigation (CH)	For application of chemicals through an irrigation system, excluding pesticides to control aquatic organisms. Chemigation of pesticides will require additional relevant private applicator categories. An applicant will demonstrate practical knowledge of chemigation including backflow prevention, minimizing risks related to chemigation, and approved chemigation equipment.
Non-Soil Fumigation (NS)	For applicators who use or supervise the use of a pesticide to fumigate anything other than soil. An applicant will demonstrate competency standards outlined in 40 CFR 171.105(e).
Soil Fumigation (SF)	For applying soil fumigation pesticides to agricultural fields, plant nurseries, and other similar growing media on land owned or operated by applicator or applicator's employer for the growing of agricultural commodities, excluding rodent control. An applicant will demonstrate competency standards outlined in 40 CFR 171.105(d).

(3-15-22)()

03. **License Periods and Recertification.** ~~In order The recertification period for a private applicator's license to be renewed, the license holder must complete the recertification provisions of this section will be concurrent with their two (2) year licensing period, beginning at the license issuance, and ending upon license expiration.~~ Licenses belonging to private applicators with last names beginning with A through L, ~~inclusive,~~ expire on the last day of the month listed on the chart in Subsection 150.03.a. in every odd-numbered year, and licenses belonging to private applicators with last names beginning with M through Z, ~~inclusive,~~ shall expire on the last day of the month listed on the chart in Subsection 150.03.a., in every even-numbered year. ~~The recertification period is concurrent with the licensing period. Any person with less than thirteen (13) months in the initial licensing period is not required to obtain recertification credits for the initial period.~~ Recertification and relicensing may be accomplished by complying with either Subsection ~~0~~150.03.b. or ~~0~~150.03.c. **Any person with less than thirteen (13) months in the initial licensing period is not required to obtain recertification credits for the initial period. Any license holder who fails to accumulate the required recertification credits prior to the expiration date of their license will be required to pass the appropriate examination(s) before being licensed.** (3-15-22)()

a. Licensing schedule.

Last Name		Month to License
Odd Year	Even Year	

Last Name		Month to License
A-D	M-P	March
E-H	Q-T	July
I-L	U-Z	October

()

b. A person Continuing Education: To recertify, and applicator must accumulates ~~recertification~~ seven (7) credits during their recertification period by attending Department-accredited pesticide ~~instruction~~ seminars which meet the following criteria: (3-15-22)()

i. A minimum of six (6) credits shall be earned during each recertification period. (3-15-22)

i. One (1) credit is issued for each fifty (50) minutes of instruction. ()

ii. To request accreditation for a seminar not provided by the Department, an applicant must submit a written request to the Department not less than thirty (30) days prior to the scheduled seminar. Applications received prior to thirty (30) days shall receive preference for credit approval and have the ability to amend their application until the seminar is held. Applications received after the thirty (30) days shall be reviewed by the Department as workload allows. ()

iii. The number of credits to be given will be decided by the Department and may be revised if it is later found that the training does not comply. Credit is given only for those parts of seminars that deal with pesticide subjects as listed in Subsection 100.02.b. No credit will be given for training given to persons to prepare them for initial certification. ()

iv. Verification of attendance at an accredited seminar is accomplished by validating the attendee's pesticide license using a method approved by the Department. Verification of attendance must be submitted with the license renewal application. ()

ii.v. Guidelines for obtaining recertification credits are described in Subsections 100.06.a.ii. through 100.06.a.v. Any Excess credits accumulated beyond the required six (6) in a recertification period may not be carried over to the next recertification period. (3-15-22)()

viii. Upon earning the recertification credits as described above, a person is eligible for license renewal license holder is recertified for the next ~~licensing~~ recertification period corresponding with the next issuance of a license, provided that the license renewal application is submitted within twelve (12) months from the expiration date of the license. (3-15-22)()

c. Recertification by Examination: A person certified applicator passes the Department's private applicator ~~recertification~~ examination(s) for all categories in which they ~~person~~ intends to license ~~with a minimum score of seventy percent (70%)~~. (3-15-22)()

i. Recertification eExaminations may be taken beginning the thirteenth (13th) month of the license period. (3-15-22)()

ii. The examination procedures as outlined in Subsection 100.03 will be followed, except that examination fees are not assessed. (3-15-22)()

iii. Upon passing the recertification examinations, a person is eligible for license renewal for the next licensing period. For the purpose of becoming licensed, recertification examination scores are valid for twelve (12) months after the date of the examination. (3-15-22)()

d. The Department may issue variances for the requirements delineated in Subsection 150.03 in the recertification of private applicators' licenses. Issuance of variances do not relieve the recipient from compliance

with all other responsibilities under the Pesticide and Chemigation Act and Rules. The request will be on a Department-prescribed form and state fully the grounds for requesting a variance. ()

~~e.~~ Licenses are eligible for renewal no sooner than forty-five (45) days from the expiration date. ()

151. -- 199. (RESERVED)

~~200. LICENSING OF PESTICIDE DEALERS~~ **LICENSING.**

To obtain a pesticide dealer's license, an applicant must: ()

~~01. Obtaining Pesticide Dealer's License.~~ To obtain a pesticide dealer's license an applicant must: (3-15-22)()

~~a01.~~ **Submit Application.** Submit an application prescribed by the Department with applicable fee(s) (Section 2580); (3-15-22)()

~~ba.~~ Obtain **Must hold a valid** license ~~in with~~ the appropriate professional ~~agricultural~~ category(s) listed in Subsection 100.04 that pertains to the types of restricted use pesticides sold or distributed. (3-15-22)()

~~eb.~~ Be renewed after August 31 on even numbered years for a twenty-four (24) month duration. ()

~~c.~~ Licenses are eligible for renewal no sooner than forty-five (45) days from the expiration date. ()

~~02.~~ **Selling GUPs.** Persons selling GUPs will not be required to obtain a pesticide dealer license or maintain distribution records of these products. ()

201. RUP DEALER RECORDS REQUIREMENTS.

~~d01.~~ **Records Requirements.** Maintain, in a location designated by the pesticide dealer, restricted use pesticide distribution records for ~~three two~~ **(32)** years, ready to be inspected, duplicated, or submitted when requested by the Director. Such records must include the following: (3-15-22)()

~~ia.~~ The name and address of the person purchasing or receiving the restricted use pesticide (RUP); and ()

~~iib.~~ The certified applicator name, license number, license issuing authority, relevant certification category, and expiration date of the license for the person certified to use the RUP; or (3-15-22)()

~~iiic.~~ In the case of distribution of a RUP to another pesticide dealer, the name, license number, and expiration date of the license of the licensed pesticide dealer. ()

~~ivd.~~ The brand name and Environmental Protection Agency (EPA) Registration Number for each RUP distributed and if applicable, include any emergency exemption or State special local need registration number; and (3-15-22)()

~~v.e.~~ Date of the distribution of each RUP; and ()

~~vif.~~ The quantity and size of each RUP container distributed and the total quantity of RUP distributed; and ()

~~vii.g.~~ The pesticide dealer's name, address, and pesticide dealer license number distributing the RUP. ()

~~02.~~ **Selling GUPs.** Persons selling only GUPs will not be required to obtain a pesticide dealer license

~~or maintain distribution records of these products.~~

~~(3-15-22)~~

~~2042.~~ -- 249. (RESERVED)

250. CHANGE OF LICENSE STATUS.

01. Change Notification. Any person who is licensed by this act will immediately notify the Director, in writing, of any change of status of any person or agent so named, or of any change in the business name, organization, or any other information shown in the licensing application. ()

02. Transferability. Licenses are not transferable. ()

251. -- 279. (RESERVED)

SUBCHAPTER B – FEES

280. FEES.

01. Pesticide Registration. One hundred sixty dollars (\$160) per product. ()

02. Professional Applicator's License. One hundred twenty dollars (\$120) per licensing period of fourteen (14) months or more, sixty dollars (\$60) per licensing period of thirteen (13) months or less. ()

03. Commercial Apprentice (CA) Applicator's License. Sixty dollars (\$60) per licensing period of twelve (12) months or less. ()

04. Private Applicator's License. A Restricted Use Category, ten dollars (\$10); a Chemigation Category, twenty dollars (\$20); or thirty dollars (\$30) for both categories. ()

05. Pesticide Dealer's License. One hundred dollars (\$100) per licensing period of fourteen (14) months or more, fifty dollars (\$50) per licensing period of thirteen (13) months or less. ()

06. Examination Fee per Examination Category. Ten dollars (\$10). ()

281. -- 349. (RESERVED)

SUBCHAPTER C – REGISTRATION AND USE OF PESTICIDES

350. EXPERIMENTAL PERMITS.

Any person who wishes to obtain an experimental permit to register a pesticide ~~for a special local need~~ under Section 22-3402(5), Idaho Code, must file an application with the Department which includes: ~~(3-15-22)~~ ()

01. Name. Company name. ()

02. Applicant. Name, address, and telephone number of the applicant. ()

03. Shipment. Proposed date of shipment or proposed shipping period not to exceed one (1) year. ()

04. Active Ingredient. A statement listing the active ingredient. ()

05. Quantity Statement. A statement of the approximate quantity to be tested. ()

06. Acute Toxicity. Available data or information or reference to available data on the acute toxicity of the pesticide. ()

07. Statement of Scope. A statement of the scope of the proposed experimental program, including the

type of pests or organisms involved, the crops and animals for which the pesticide is to be used, the areas where the applicant proposes to conduct the program, and when requested by the Director, the results of previous tests. ()

08. Temporary Tolerance. ~~When~~ If the pesticide is to be used on food or feed, a temporary tolerance must be obtained from the EPA or evidence that the proposed experiment will not result in injury to humans or animals, or illegal residues entering the food chain. A temporary tolerance is not needed if the food, feed, or fiber crop to which the experimental pesticide is applied will be completely destroyed after the data is collected. (3-15-22)()

09. Proposed Labeling. Proposed labeling which must bear: ()

a. The prominent statement “For Experimental Use Only” on the container label and any labeling that accompanies the product. ()

b. An adequate caution or warning statement to protect those who may handle or be exposed to the experimental formulation. ()

c. Name and address of the applicant for the permit. ()

d. Name or designation of the formulation. ()

e. Directions for use. ()

f. A statement listing the name and percentage of each active ingredient and the total percentage of inert ingredients. ()

10. Quantity Limit. The Director may limit the quantity of pesticide covered by the permit or make such other limitations as may be determined necessary for the protection of humans or the environment. ()

11. Experimental Use. A pesticide for experimental use will not be offered for sale unless a written permit has been obtained from the Director. ()

351. -- 399. (RESERVED)

400. PESTICIDE RESTRICTIONS.

01. Application of Restricted Use Pesticides by Noncertified Applicators. An ~~uncertified non-certified~~ applicator may apply restricted use pesticides (RUPs) under on-site supervision by a professional applicator with the required license categories of the application being supervised if: (3-15-22)()

a. ~~One or both of the following conditions are met~~ Noncertified applicator has completed the following training within twelve (12) months prior to application: (3-15-22)()

i. ~~Uncertified applicator completes~~ Applicator Core Competency (CO). (3-15-22)

ii. ~~Uncertified applicator has completed~~ EPA approved Worker Protection Standard (WPS) certification for pesticide handler training or equivalent. (3-15-22)()

ii. The safe operation of any equipment they will use for mixing, loading, transferring, or applying pesticides. ()

b. The ~~un~~ noncertified application of any pesticide is prohibited for: (3-15-22)()

i. Soil or ~~area (space)~~ non-soil fumigation; (3-15-22)()

ii. Aerial application ~~of pesticides.~~ (3-15-22)()

- iii. Professional applications conducted by a person under eighteen (18) years of age. ()
- c. Maintain noncertified applicator training records for three (3) years, ready to be inspected, duplicated, or submitted when requested by the Director. Such records shall contain: ()

 - i. Noncertified applicator's printed name and signature. ()
 - ii. Date of training. ()
 - iii. Full name of the person who provided the training. ()
 - iv. Trainer's qualification to conduct training. ()
 - v. Title or a description of the training provided. ()
 - vi. If the noncertified applicator is a licensed applicator who is not certified to perform the type of application being conducted while under on-site supervision by a professional applicator, the record must include all of the following information: ()

 - (1) Noncertified applicator's name. ()
 - (2) Noncertified applicator's license number. ()
 - (3) Expiration date of the noncertified applicator's license. ()
 - (4) Certifying authority that issued the license. ()
- d. Requirements for supervisors of noncertified applicators of RUPs under on-site supervision. A certified applicator must ensure that all the following requirements are met before allowing a noncertified applicator to use a restricted use pesticide under their on-site supervision: ()

 - i. The noncertified applicator must have access to the applicable product labeling at all times during its use. ()
 - ii. Where the labeling of pesticide product requires that personal protective equipment be worn for mixing, loading, application, or any other use activities, the noncertified application has been provided clean, label required personal protective equipment in proper operating condition and the personal protective equipment is used correctly. ()
 - iii. The certified applicator must provide to each noncertified applicator before use of a restricted use pesticide instructions specific to the site and pesticide used. These instructions must include labeling directions, precautions, and requirements applicable to the specific use and site, and how the characteristics of the use site and the conditions of application might increase or decrease the risk of adverse effects. ()
 - iv. The certified applicator must ensure that before each day of use equipment used for mixing, loading, transferring, or applying pesticides is in proper operating condition as intended by the manufacturer, and can be used without risk of reasonably foreseeable adverse effects to the noncertified applicator, other persons, or the environment. ()
 - v. The certified applicator must ensure that a means to immediately communicate with the certified applicator is available to each noncertified applicator using restricted use pesticides under their direct supervision. ()
 - vi. The certified applicator must be physically present at the site of the use being supervised. ()
 - vii. The certified applicator must create or verify the existence of the records required by Subsection 400.01.c. of this rule. ()

02. Application of General Use Pesticides by Noncertified Applicators. A Professional Commercial Apprentice applicator may apply general use pesticides (GUPs) under ~~OL, OH, AI, AH, GP, MP, OP, ALIP,~~ and RW categories with limited supervision by a professional applicator that has the required license categories of the application being supervised if: (3-15-22)()

a. All of the following conditions are met: ()

i. The Professional Commercial Apprentice applicator has a valid ~~(CA)~~ license ~~category.~~ (3-15-22)()

ii. Immediate communication requirements exist between the supervising professional applicator and the Professional Commercial Apprentice applicator. (3-15-22)()

b. Applications of RUPs, ~~Total Vegetation Control pesticide, or injectables to soil or plants~~ are prohibited under the ~~CA~~ Professional Commercial Apprentice license ~~category.~~ (3-15-22)()

03. Mixer-Loaders. No person will act as a mixer-loader for a professional applicator without first obtaining annual training. ()

a. Training will be conducted and certified by the professional applicator who employs the mixer-loader. ~~Certification of training on a form prescribed by the Department must include the signatures of both the mixer loader and the professional applicator providing the training. Training recordkeeping requirements for mixer-loaders shall be the same as for non-certified applicators of restricted use pesticides under on-site supervision (see Subsection 400.01.c. of this rule.)~~ (3-15-22)()

b. Training ~~includes areas relevant to the pesticide mixing and loading operation and instruction on the interpretation of pesticide labels, safety precautions, first aid, compatibility of mixtures, and protection of the environment~~ requirements shall be the same as for noncertified applicators of restricted use pesticides under on-site supervision (see Subsection 400.01 a. of this rule.) (3-15-22)()

04. Non-Domestic Pesticides Restrictions. ()

a. Home and Garden Restrictions. The following pesticides are to be registered only when labeled, distributed, sold or held for sale and use other than home and garden use and are not be sold to home and garden users or applied by professional applicators around any home or garden. ()

i. Bidrin (Foliar applications). ()

ii. Strychnine (one percent (1%) and above). ()

iii. Zinc Phosphide (two point one percent (2.1%) and above). ()

b. Ester Restriction. Low volatile liquid ester formulations of herbicides shall not be applied around any home or garden at any time when ambient air temperature exceeds or is forecasted to exceed eighty (80) degrees Fahrenheit during the day of application. ()

05. Restrictions to Protect Pollinators. ()

a. Bee Restrictions. Any pesticide that is toxic to bees shall not be applied to any agricultural crop when such crop is in bloom or when bees are actively foraging on blooming weeds in the crop being sprayed except during the period beginning three (3) hours before sunset until three (3) hours after sunrise. ()

b. Green Pea Exception. In the counties of Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone: Green (white) pea crops may be sprayed or dusted at any time. ()

c. Other Exceptions. Pesticides may be applied at any time to sweet corn for processing, hops,

potatoes, and beans other than lima beans, subject to all other applicable regulations. ()

06. Deviations from Pesticide Labels and Labeling. Any licensed professional or private applicator may deviate from pesticide label directions for use only as EPA or state laws, rules, and regulations permit. ()

07. Wind Velocity Restrictions. No person will apply pesticides in sustained wind speeds that exceed the product label directions. If a pesticide label does not state a specific wind speed limitation, pesticides will not be applied in sustained wind conditions exceeding ten (10) miles per hour. ()

a. Exceptions. Application of pesticides by injection into application site or by impregnated granules shall be made according to label directions. ()

b. Approval for Use of Other Application Techniques. Other pesticide application techniques or methods may be approved by the Director or his agent on a case-by-case basis. ()

c. Chemigation Wind Speed Precautions. Chemicals shall not be applied when wind speed favors drift beyond the area intended for treatment or when chemical label restricts the use of a pesticide for wind speed. ()

08. Phenoxy Herbicide Restrictions. ()

a. High Volatile Ester Restrictions. No aircraft pilot will apply high volatile ester formulations of 2,4-D: ()

i. In Latah, Nez Perce, and Clearwater Counties in Idaho; or ()

ii. Within five (5) miles of a susceptible crop or hazard area in any other county in Idaho. ()

iii. Waiver of the restriction ~~is in~~ Subsections 400.058.a.i. and 400.058.a.ii. may be issued on a project-by-project basis by the Director. (3-15-22)()

b. Low Volatile Ester Restrictions. No aircraft pilot will apply low volatile ester formulations of 2,4-D; MCPA and MCPB: ()

i. In Latah, Nez Perce, and Clearwater Counties in Idaho, unless ambient air temperatures are not above or expected to exceed eighty-five (85) degrees Fahrenheit within twenty-four (24) hours of the expected application time, or ()

ii. Within one (1) mile of a hazard area in any other county in Idaho. ()

iii. Waiver of the restriction in Subsection 400.058.b.i. may be issued on a project-by-project basis by the Director. (3-15-22)()

c. A continuous smoke column or other device satisfactory to the Director will be employed to indicate to the pilot of any aircraft the direction and velocity of the airflow, and indicate a temperature inversion by layering of smoke, at the time and place of application when applying any formulation of 2,4-D; MCPA; MCPB and Dicamba. ()

09. Pesticide-Fertilizer Mix Restrictions. No person will distribute, sell, offer for sale, or hold for sale any dry pesticide incorporated in a dry blended bulk fertilizer mix. ()

10. Pesticide Drift Prohibitions. The application of pesticides that results in drift outside of the target area is prohibited. ()

401. -- 449. (RESERVED)

450. PESTICIDE USE ON SEED CROP FIELDS.

01. Nonfood and Nonfeed Site Conditions. For purposes of pesticide registration, all alfalfa seed, carrot seed, chicory seed, clover seed, collard seed, coriander/cilantro seed, dill seed, endive seed, garden beet seed, kale seed, kohlrabi seed, leek seed, lettuce seed, mustard seed, onion seed, parsnip seed, pollinator rows of hybrid canola seed, radish seed, rutabaga seed, sugar beet seed, Swiss chard seed, and turnip seed crop fields are considered nonfood and nonfeed sites for pesticide use and the following conditions will be met: ()

a. No portion of the seeds listed in Section 450.01, including but not limited to seed screenings, green chop, hay, chaff, combine tailings, pellets, meal, whole seed and cracked seed, may be grazed, used, or distributed for food or feed purposes. ()

b. The seed conditioner will keep records of individual growers' seeds listed in Section 450.01 dirt weight and clean weight for three (3) years and will furnish the records to the Director upon request. ()

c. All seed screenings will be disposed of at a sanitary landfill, incinerator, or other equivalent disposal site or by a procedure approved by the Director. ()

d. The seed conditioner will keep seed screening disposal records for three (3) years from the date of disposal and will furnish the records to the Director upon request. Disposal records will consist of documentation from the disposal site and show the total weight of disposed screenings and the date of disposal. ()

e. All seeds listed in Section 450.01 grown or conditioned in this state will bear a tag or container label which forbids the use of the seed for human consumption or animal feed. ()

f. No seeds listed in Section 450.01 grown or conditioned in this state will be distributed for human consumption or animal feed. ()

g. All portions of the seeds listed in Section 450.01, including but not limited to seed screenings, pellets, meal, whole seed and cracked seed may be composted. All composted material may be applied to agricultural crop land as approved by the Director. ()

02. Exemption. Alfalfa seed, kale seed and radish seed crops grown for human consumption are exempt from the requirements of Subsection ~~8045~~0.01 provided: (3-15-22)()

a. All pesticides used are labeled for use on alfalfa seed, kale seed, and radish seed crops and have established residue tolerances which allow food or feed use; and ()

b. All producers maintain for three (3) years complete records of all pesticides applied as specified in Pesticide Use and Application Rules Subsection ~~1500.025~~. (3-15-22)()

451. -- 499. (RESERVED)

500. UNUSABLE PESTICIDES COLLECTION AND DISPOSAL.

01. Director's Authority to Dispose. The Director or designated agent may, if deemed necessary for the protection of the environment, take possession and dispose of canceled, suspended, or otherwise unusable pesticides. (3-15-22)()

02. Prohibited Handling or Disposal. A person shall not dispose of or handle any pesticide or any pesticide containing material as follows: ()

a. In a manner that results in generating hazardous waste. ()

b. So as to violate any state or federal pollution control statute. ()

c. So as to cause or allow burying in a land site in a manner that is not in compliance with applicable state and federal solid waste regulations. ()

d. So as to cause or allow the storage of pesticides or pesticide-containing materials, including rinsate or wash water, in underground tanks. This prohibition does not apply to watertight catch basins that are used for temporary collection or other recirculating systems as approved by the Director. ()

501. -- 549. (RESERVED)

550. STORAGE OF PESTICIDE CONTAINERS.

01. **Protecting Humans and Environment.** No person will handle, transport, display, or distribute pesticides in such a manner as to endanger humans and their environment, or to contaminate food, feed, or any other product that may be transported, stored, displayed, or distributed with such pesticides. ()

02. **Storage by Professional Applicators or Restricted Use Pesticide Dealers.** Storage of pesticide containers by professional applicators and ~~pesticide~~ RUP dealers must meet the following conditions: (3-15-22)()

a. Pesticide containers ~~which contain Class 1 highly toxic pesticides (LD50 of 50 or below) and which require the skull and crossbones insignia and the words "Danger/Danger - Poison" on the label; and Class 2 (moderately toxic) pesticides (LD50 - 500) which carry a "Warning" statement on the label; and Class 3 (slightly toxic) pesticides (LD50 of 500-5000) and which carry a "Caution" statement on the label;~~ will be stored in one (1) of the following enclosures which when unattended will be locked to prevent unauthorized persons, livestock, or animals from gaining entry: (3-15-22)()

- i. Closed vehicle; ()
- ii. Closed trailer; ()
- iii. Building or room; ()
- iv. Fenced area with a fence at least six (6) feet high; ()
- v. Truck or trailer with solid sideracks and secured tailgate at least six (6) feet above ground level. ()

b. Pesticide containers ~~which contain Class 4 pesticides (LD50 over 5000)~~ will be stored in secured storage out of the reach of children in one (1) of the above enclosures. (3-15-22)()

c. Warning notices; must be posted and visible from ~~any direction;~~ all approachable sides of the pesticide storage area and ~~will be posted around all storage areas where pesticide containers which hold or have held pesticides required to be labeled with the signal words "Warning" or "Danger - Poison" are stored. Each warning notice will be of such size that it is~~ be readable at a distance of twenty-five (25) feet and must be substantially as follows:

"D A N G E R"

**"POISON STORAGE AREA
ALL UNAUTHORIZED PERSONS
KEEP OUT"**

The notice will be repeated in an appropriate language other than English when it may be reasonably anticipated that persons who do not understand the English language will come to the enclosure. The notice will also contain the name and telephone number of a person to contact in case of an emergency. (3-15-22)()

03. **Exceptions.** The provisions of Subsection 550.02 shall not apply to drums of petroleum oils, lime sulfur, and copper sulfate. ()

04. **Disposal.** Any person applying pesticides shall be responsible for the proper disposal of such

empty containers. ()

551. -- 599. (RESERVED)

SUBCHAPTER D – CHEMIGATION

600. GENERAL CHEMIGATION REQUIREMENTS.

01. **Pesticides Labeled for Chemigation.** The chemigator will use only pesticides labeled for chemigation when chemigating. ()

02. **Monitoring Chemigation.** Licensed professional applicators that start the application of chemicals through chemigation equipment do not have to be present during the entire application, but must return to monitor the proper application at least once every four (4) hours for the duration of the application. ()

03. **Chemigation Equipment Standards.** Equipment will be placed on the Department’s list of approved chemigation equipment after the manufacturers provide to the Department verification that the equipment meets the standards established in these rules. ()

04. **Chemigating Over Waters of the State.** ~~Chemigating over waters of the state s~~ shall be prohibited, except for variances allowed in Section 700. (3-15-22)()

601. -- 649. (RESERVED)

650. IRRIGATION SYSTEMS.

~~Equipment required for each type of irrigation system when chemigation is to be used includes:~~ Defined in the ISDA Chemigation System Requirement Protocol document located at the department website at www.agri.idaho.gov. (3-15-22)()

~~01. **Sprinkler or Drip Irrigation.** If chemicals are being chemigated through the sprinkler or drip irrigation system, the chemigator will verify that the system complies with either Subsection 650.01.a. or 650.01.b. plus the additionally specified equipment for each:~~ (3-15-22)

~~a. Irrigation Line Check Valve, (Section 665); with the following: (3-15-22)~~

~~i. Automatic Low Pressure Drain, (Section 695); (3-15-22)~~

~~ii. Inspection Port, (Section 690); (3-15-22)~~

~~iii. Vacuum Relief Valve or a combination Air and Vacuum Relief Valve, (Section 685); (3-15-22)~~

~~iv. Chemical Injection System, (Section 670); (3-15-22)~~

~~v. Chemical Injection Line Shut Down (System Interlock), (Section 660); (3-15-22)~~

~~b. Gooseneck Pipe Loop, Downhill and Over A Hill backflow prevention devices may be used For surface water, (Section 680); with (3-15-22)~~

~~i. Chemical Injection System, (Section 670); (3-15-22)~~

~~ii. Chemical Injection Line Shut Down (System Interlock), (Section 660); (3-15-22)~~

02. **Flood, Basin, Furrow, or Border Irrigation.** If a chemical, including anhydrous ammonia, will be applied by flood, basin, furrow, or border chemigation through a gravity flow system, the chemigator will verify that the system uses a gravity flow dispensing system that meters the chemical into the water at the head of the field and downstream of a hydraulic discontinuity such as a drop structure or weir box to decrease potential for water source contamination from backflow if water flow stops. (3-15-22)

- ~~**03. Domestic Water Supply System Cross-Connected for Chemigation.** Any irrigation system used for chemical application cross-connected to a domestic water supply system will be verified that the system contains either Subsection 650.03.a. or 650.03.b. plus all other additionally specified equipment for each; (3-15-22)~~
- ~~**a.** Reduced Pressure Principle Backflow Prevention Assembly (RP) that: (3-15-22)~~
 - ~~**i.** Is located on the irrigation pipeline between the water supply pump and the point of chemical injection, and downstream from any domestic water supply diversion point. (3-15-22)~~
 - ~~**ii.** Keep contaminated water from flowing back into a domestic water supply system when some abnormality in the system causes pressure to be temporarily higher in the contaminated part of the system than in the domestic water supply system piping. (3-15-22)~~
 - ~~**iii.** Has been manufactured in full conformance with the American National Standards Institute (ANSI)/American Water Works Association (AWWA) ANSI/WWA C511 Standard for Reduced Pressure Principle Backflow Prevention Assemblies established by the AWWA; and have met completely the laboratory and field performance specifications of the Foundation for Cross-Connection Control and Hydraulic Research of the University of Southern California (USC FCCCHR); or an equivalent, Department approved testing facility. (3-15-22)~~
 - ~~**b.** Chemical Injection System (Section 670); with either Subsection 650.03.b.i. or 650.03.b.ii. (3-15-22)~~
 - ~~**i.** Chemical Injection Line Shut Down (System Interlock), (Section 660); (3-15-22)~~
 - ~~**ii.** Air Gap (AG). The water from the domestic water supply system will be discharged into a reservoir tank prior to the chemical injection. An air gap will be at least double the diameter of the supply pipe measured vertically above the overflow rim of the vessel—in no case less than one (1) inch. Chemical injection will not occur upstream of the air gap; and (3-15-22)~~
 - ~~**(a).** Chemical Injection System, (Section 670); and (3-15-22)~~
 - ~~**(b).** Chemical Injection Line Shut Down (System Interlock), (Section 660). (3-15-22)~~

~~**651. -- 659. (RESERVED)**~~

~~**660. CHEMICAL INJECTION LINE SHUT DOWN (SYSTEM INTERLOCK).**~~

~~In every chemigation system, a functional system interlock designed and installed to shut down the chemical injection unit when chemical distribution is adversely affected will connect the water supply pump and the chemical injection unit or connect the irrigation line pressure switch and the chemical injection unit if there is no water supply pump and the system is pressurized. The chemical injection line will contain one (1) of the following interlocks found in Subsections 660.01 through 660.05, to ensure that a chemical injection pump will stop if the irrigation pump stops to prevent the entire chemical mixture from emptying from the supply tank into the irrigation pipeline: (3-15-22)~~

- ~~**01. Electrical Interlock.** Electrical interlock which contains one (1) of the four options in Subsections 660.01.a. through 660.01.d. plus all of the additionally specified equipment for each: (3-15-22)~~
- ~~**a.** Electric Motor Driven Irrigation Pump or Power Panel. The electrical controls for the irrigation pump panel or power panel at the pivot or linear will be interlocked with an electric powered chemical injection pump so that if the water pump shuts off or the pressure switch shuts off power at the panel, the chemical injection pump will shut off (it is recommended that the interlock also be provided to shut off the irrigation system if the chemical injection pump shuts off); plus (3-15-22)~~
 - ~~**i.** Injection Line Check Valve, (Section 670), will be installed; and (3-15-22)~~
 - ~~**ii.** In pressurized irrigation systems, the irrigation line or water pump will include a functional~~

~~pressure switch. (3-15-22)~~

~~**b.** Solenoid Operated Valve. A functional automatic quick-closing check valve and a functional normally closed solenoid operated valve connected to the system interlock will be: (3-15-22)~~

~~i. Normally be closed; open only when there is adequate pressure in the irrigation line to ensure uniform chemical distribution; and (3-15-22)~~

~~ii. Be located on the intake side of the injection pump; (3-15-22)~~

~~iii. Open only when there is adequate pressure in the irrigation line to insure uniform chemical distribution; and (3-15-22)~~

~~iv. In pressurized irrigation systems, include a functional pressure switch for the irrigation line or water pump. (3-15-22)~~

~~**e.** A functional automatic quick-closing check valve and a functional normally closed hydraulically operated check valve. The hydraulically operated check valve will: (3-15-22)~~

~~i. Be connected to the main water line such the way the valve only opens when the main water line is adequately pressurized; (3-15-22)~~

~~ii. In pressurized irrigation systems, include a functional pressure switch for the irrigation line or water pump; (3-15-22)~~

~~**d.** A functional automatic quick-closing check valve and a functional vacuum relief valve located in the chemical injection line between the positive displacement chemical injection pump and the chemical check valve which: (3-15-22)~~

~~i. Is appropriate only for those chemigation systems using a positive displacement chemical injection pump and is not for use with Venturi injection systems; (3-15-22)~~

~~ii. Is elevated at least twelve (12) inches above the highest fluid level in the chemical supply tank and is the highest point in the injection line; (3-15-22)~~

~~iii. Opens at six (6) inches water vacuum or less and is spring loaded or otherwise constructed such that it does not leak on closing; (3-15-22)~~

~~iv. Prevents leakage from the chemical supply tank on system shutdown; (3-15-22)~~

~~v. Is constructed of chemically resistant materials; (3-15-22)~~

~~vi. In pressurized irrigation systems, the irrigation line or water pump shall include a functional pressure switch. (3-15-22)~~

~~**02. Mechanical Interlock.** Irrigation pumps driven by an internal combustion engine will be interlocked between the chemical injection pump and the irrigation pump by either of the options in Subsections 660.02.a. or 660.01.b. plus the additionally specified equipment Subsection 660.02.e.: (3-15-22)~~

~~**a.** By operating the chemical injection equipment from the engine electrical system, or an electrical generator driven by the pumping plant power unit. (3-15-22)~~

~~**b.** By belt from the drive shaft of the irrigation pump or an accessory pulley of the engine: with (3-15-22)~~

~~i. Injection Line Check Valve, (Section 670), installed in pressurized irrigation systems, a functional pressure switch included for the irrigation line or water pump. (3-15-22)~~

~~03. **Hydraulic Interlock.** Hydraulic interlock with functional, normally closed, hydraulically operated check valve. The control line must be connected to the main water line such that the valve opens only when the main water line is adequately pressurized. This valve must prevent leakage from the chemical supply tank on system shutdown. The valve must be constructed of chemically resistant materials, such as a Venturi System. (3-15-22)~~

~~04. **Human Interlock.** A human interlock shall consist of human supervision on-site during the injection of a chemical into the irrigation system for one (1) hour or less to shut down the system in case of failure of the injection pump or irrigation system; with (3-15-22)~~

- ~~a. Injection Line Check Valve (Section 665) installed; (3-15-22)~~
- ~~b. In pressurized irrigation systems, a functional pressure switch included for the irrigation line or water pump. (3-15-22)~~

~~05. **Other Approved Options.** Any other option approved by the Director. (3-15-22)~~

~~661.—664. (RESERVED)~~

~~665. **INJECTION LINE CHECK VALVE.**
A functional, spring loaded injection line check valve. (3-15-22)~~

~~01. **Attributes:** A minimum of ten (10) pounds per square inch (psi) opening (cracking) pressure: (3-15-22)~~

~~a. Located between the chemical injection pump and the point of chemical injection into the irrigation line; (3-15-22)~~

~~b. Made of chemically resistant material; (3-15-22)~~

~~c. Designed to prevent irrigation water under operating pressure from entering the chemical injection line; and (3-15-22)~~

~~d. Designed to prevent leakage from the chemical supply tank on system shut down. (3-15-22)~~

~~02. **Substitute System.** The injection line check valve is a substitute for both the solenoid operated valve and the functional, automatic, quick closing check valve in the chemical injection line. (3-15-22)~~

~~666.—669. (RESERVED)~~

~~670. **CHEMICAL INJECTION SYSTEM.**
All chemical injection systems, except for flood, basin, furrow, or border chemigation through a gravity flow system, will use either: (3-15-22)~~

~~01. **Metering Pump.** Such as a positive displacement injection pump effectively designed and constructed of materials that are compatible with chemicals and capable of being fitted with a system interlock; or (3-15-22)~~

~~02. **Venturi System.** Including those inserted directly into the main water line, those installed in a bypass system, and those bypass systems boosted with an auxiliary water pump that meet the following criteria: (3-15-22)~~

~~a. Booster or auxiliary water pumps shall be connected with the system interlock such that they are automatically shut off when the main line irrigation pump stops, or in cases where there is no main line irrigation pump, when the water pressure decreases to the point where pesticide distribution is adversely affected; (3-15-22)~~

~~b. Venturies shall be constructed of chemically resistant materials; and (3-15-22)~~

~~e. The line from the chemical supply tank to the Venturi will contain a functional, automatic, quick closing check valve to prevent the flow of liquid back toward the chemical supply tank. This valve will be located immediately adjacent to the Venturi chemical inlet. (3-15-22)~~

~~d. This same supply line will also contain either a functional normally closed solenoid operated valve connected to the system interlock or a functional normally closed hydraulically operated valve which opens only when the main water line is adequately pressurized. (3-15-22)~~

~~e. In bypass systems as an option to placing both valves in the line from the chemical supply tank, the check valve may be installed in the bypass immediately upstream of the Venturi water inlet and either the normally closed solenoid or hydraulically operated valve may be installed immediately downstream of the Venturi water outlet. (3-15-22)~~

~~671.—674. (RESERVED)~~

~~675. IRRIGATION LINE CHECK VALVE.~~

~~01. **Construction.** Construction will: (3-15-22)~~

~~a. Consist of at least a single check valve; (3-15-22)~~

~~b. Be heavy duty with all materials resistant to corrosion or protected to resist corrosion; (3-15-22)~~

~~e. Be spring loaded with a chemically resistant and resilient seal that provides a watertight seal against reverse flow; (3-15-22)~~

~~d. Not consist of metal to metal seal surfaces; (3-15-22)~~

~~e. Be rated at a pressure equal to or greater than the system working pressure; and (3-15-22)~~

~~f. Be positioned and oriented according to manufacturer specifications to ensure proper functioning. (3-15-22)~~

~~g. Be located in the pipeline between the irrigation pump and the point of chemical injection into the irrigation pipeline, and downstream from a vacuum relief valve and automatic low pressure drain. (3-15-22)~~

~~h. Be leveled and on a horizontal plane with deviation of not more than ten (10) degrees from horizontal when installed. (3-15-22)~~

~~i. Be labeled with the following: (3-15-22)~~

~~i. Manufacturer's name and model; (3-15-22)~~

~~ii. Direction of flow. (3-15-22)~~

~~02. **Model Certification.** The manufacturer of the irrigation line check valve will provide verification to the director that the valve model has been tested and certified by an independent laboratory such as the Center For Irrigation Technology, Fresno, California and Great Plains Meter, Inc. Aurora, Nebraska, or other Department approved facility as meeting the following leakage test criteria: (3-15-22)~~

~~a. **Low Pressure Drip Test.** A check valve withstands for sixteen (16) hours without leakage at the valve seat an internal hydrostatic pressure equivalent to the head of a column of water five (5) feet (1.5m) high retained within the downstream portion of the valve body. No leakage occurs as evidenced by wetting of paper placed beneath the valve assembly. This test is to be conducted with the valve in both the horizontal and vertical position if intended for such use. (3-15-22)~~

~~b. High Pressure Test. A check valve withstands for one (1) minute, without leakage at joints or at the valve seat, an internal hydrostatic pressure of two (2) times the rate of working pressure of the valve. (3-15-22)~~

~~676.—679. (RESERVED)~~

~~680. GOOSENECK PIPE LOOP, DOWNHILL AND OVER A HILL.~~

~~01. Location. Will be located in the main water line downstream of the irrigation water pump. (3-15-22)~~

~~02. Position. The bottom side of the pipe at the loop apex will be at least twenty four (24) inches above the highest sprinkler or other type of water emitting device on the highest part of the field. (3-15-22)~~

~~03. Pipe Loop. The loop will contain either a vacuum relief or combination air and vacuum relief valve at the apex of the pipe loop, and if the water pump is portable and the apex is a straight, horizontal section of pipe, the pipe will be level. (3-15-22)~~

~~04. Location of Chemical Injection Port. The chemical injection port will be located downstream of the apex of the pipe loop and at least six (6) inches below the bottom side of the pipe at the loop apex. (3-15-22)~~

~~05. Use Restriction. Is not to be allowed when pumping from a groundwater source. (3-15-22)~~

~~681.—684. (RESERVED)~~

~~685. VACUUM RELIEF VALVE OR COMBINATION AIR AND VACUUM RELIEF VALVE.~~

~~01. Location. Will be located on top of the horizontal irrigation pipeline on the upstream side of the check valve. (3-15-22)~~

~~02. Orifice Size. Have have a total (individually or combined) orifice size of at least three fourths (3/4) inch diameter for a four (4) inch pipe, a one (1) inch diameter for a five (5) to eight (8) inch pipe, a two (2) inch diameter for a nine (9) to eighteen (18) inch pipe, and a three (3) inch diameter for a nineteen (19) inch and greater pipe. (3-15-22)~~

~~686.—689. (RESERVED)~~

~~690. INSPECTION PORT.~~

~~The inspection port can be combined with a mounting of a vacuum relief or combination air and vacuum relief valve and: (3-15-22)~~

~~01. Location. Location Be located: (3-15-22)~~

~~a. On the pipeline between the irrigation pump and the irrigation pipeline check valve directly above the low pressure drain; (3-15-22)~~

~~b. Near the irrigation line check valve to allow for inspections and check for malfunctioning of the irrigation line check valve and low pressure drain. (3-15-22)~~

~~02. Orifice Size. Have a minimum diameter opening of four (4) inches from which the check valves and low pressure drain will be visible; (3-15-22)~~

~~03. Mounting: Be mounted with quick disconnects, quick coupler, ring lock or flange fittings, dresser couplings or other fittings that allow for easy removal of the inspection port with any bolts located on the outside of the irrigation water pipe; and (3-15-22)~~

~~691.—694. (RESERVED)~~

~~695. AUTOMATIC LOW PRESSURE DRAIN.~~

- ~~01. Criteria. An automatic low pressure drain will meet the following criteria: (3-15-22)~~
- ~~a. Is installed upstream of the irrigation line check valve at the lowest point of the horizontal water supply pipeline; (3-15-22)~~
 - ~~b. Does not extend into the horizontal pipe beyond the inside surface of the bottom of the pipe; (3-15-22)~~
 - ~~c. Is at least three fourths (3/4) inch in diameter with a closing pressure of not less than five (5) psi; (3-15-22)~~
 - ~~d. If the drain is within twenty (20) feet of the water source, contains a corrosion resistant tube, pipe, hose, or similar conduit one half (1/2) inch in diameter to discharge a solution at least twenty (20) feet down slope from the irrigation water source and away from any other water sources; and (3-15-22)~~
 - ~~e. Does not have any valves located on the outlet side of the drain tube. (3-15-22)~~

~~696.—699. (RESERVED)~~

~~700. VARIANCES.~~

~~The Department may grant variances with such conditions and safeguards as it determines are necessary to prevent contamination or pollution of the waters of the state. Issuance of variances do not relieve the recipient from compliance with all other responsibilities under the Pesticide and Chemigation Act and Rules. Such variances may be granted upon a request from the owner or operator of the property affected and approval by the Director. The application will state fully the grounds of the application and the facts relied upon. Upon the Department's further investigation, if certain antipollution devices otherwise required by these rules or the Pesticide and Chemigation Act, are not necessary or consequences inconsistent with the rules or act, such variances may be granted. (3-15-22)~~

~~701.—999. (RESERVED)~~

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.04.14 – RULES GOVERNING DAIRY BYPRODUCT
DOCKET NO. 02-0414-2301 (ZBR CHAPTER REWRITE)
NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 37-603, 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 18, 2023.

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

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

This rule is being presented for authorization as part of the ISDA’s plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor’s [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

These rules govern the Department’s review, approval, and enforcement of dairy environmental management plans.

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

There are no fees included in this rule.

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

There is no fiscal impact 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 May 3, 2023 Idaho Administrative Bulletin, [Vol. 23-5, Page 11](#).

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

Documents incorporated by reference include the Idaho NRCS Nutrient Management Standard 590, and a publication entitled “The Phosphorus Site Index”. These two publications are necessary as technical standards for implementation of the statute and rule.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), for any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, the director shall identify the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal government. The following sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

This rule regulates an activity that is not regulated by the federal government; therefore the entire rule is broader in scope or more stringent than federal law.

The detailed 22-101A analysis can be found on the agency’s website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

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 25, 2023.

DATED this 4th day of October, 2023.

Lloyd B. Knight
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, ID 83707
Phone: (208) 332-8615
Email: lloyd.knight@isda.idaho.gov

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0414-2301
(ZBR Chapter Rewrite)**

02.04.14 – RULES GOVERNING DAIRY BYPRODUCT

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 37, Chapters 3, 4, and 6, Idaho Code. ()

001. SCOPE.

These rules govern the Department’s review, approval, and enforcement of dairy environmental management plans. ()

002. -- 003. (RESERVED)

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into this chapter. ()

~~01. Natural Resources Conservation Service Agricultural Waste Management Field Handbook Appendix 10D (Appendix 10D) (1997 Edition) (USDA, NRCS). This document is available online at https://agri.idaho.gov/main/wp-content/uploads/2017/08/nrcs_10d_1997.pdf. (3-31-22)~~

01. Nutrient Management Standard (NMS). ()

a. Idaho NRCS Nutrient Management Standard 590. The 1999 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590, available online at https://agri.idaho.gov/main/wp-content/uploads/2017/08/nutrient_Management_code_590.pdf, or, (3-31-22)()

~~b. The Phosphorus Site Index: A Systematic Approach to Assess the Risk of Nonpoint Source Pollution of Idaho Waters by Agricultural Phosphorus, 2023. This document is available online at <https://agri.idaho.gov/main/animals/environmental-nutrient-management/>. ()~~

~~03. Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004. This document is available online at https://agri.idaho.gov/main/wp-content/uploads/2017/10/nres_313_Dec_2004.pdf. (3-31-22)~~

~~04. American Society of Agricultural and Biological Engineers Specification ASAE EP393.3 Manure Storages February 2004. This document is part of a copyrighted publication and is available for viewing at the ISDA offices or a copy may be purchased online at <http://www.asabe.org/>. (3-31-22)~~

~~05. Natural Resources Conservation Service (NRCS) Web Soil Survey Database. This document is available online at <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>. (3-31-22)~~

~~06. Natural Resources Conservation Service (NRCS) Part 630, Hydrology National Engineering Handbook, Chapter 7, (Hydrologic Soil Groups), January 2009. This document is available online at <https://www.wcc.nrcs.usda.gov/ftpref/wntsc/H&H/NEHhydrology/ch7.pdf>. (3-31-22)~~

~~07. The Phosphorus Site Index: A Systematic Approach to Assess the Risk of Nonpoint Source Pollution of Idaho Waters by Agricultural Phosphorus, 2017. This document is available online at <https://agri.idaho.gov/main/wp-content/uploads/2018/12/Phosphorus-Site-Index-reference-2017-revised.pdf>. (3-31-22)~~

005. -- 009. (RESERVED)

010. DEFINITIONS.

In addition to Section 37-604, Idaho Code, the following definitions apply in the interpretation and enforcement of this chapter: (3-31-22)()

~~01. Approved Laboratory. A soil testing laboratory that meets the requirements and performance standards of the North American Proficiency Testing Program under the auspices of the Soil Science Society of America. (3-31-22)~~

~~02. Certified Soil Sampler. An individual qualified and approved by the Department to collect soil samples according to the 1997 University of Idaho Soil Sampling protocols or other method as approved by the Department. (3-31-22)~~

~~03. Dairy Animal. Milking cows, sheep or goats. ()~~

~~04. Dairy Byproduct. Solids and liquids associated with dairy animal rearing and milk production including, but not limited to, manure, manure compost, process water, bedding, spilled feed, and feed leachate. (3-31-22)~~

~~05. Dairy Environmental Management System. The areas and structures within a dairy farm where dairy byproducts are collected, stored, treated, or applied to land. These areas and structures may include corrals, feeding areas, collection systems, conveyance systems, storage ponds, treatment lagoons, and evaporative ponds and land application areas, but do not include pastures as defined in these rules. (3-31-22)~~

~~06. Dairy Farm. The land owned or operated by a person as an integral component of a Department-permitted grade A or manufacture grade facility where one (1) or more milking cows, sheep, or goats are kept, and from which all or a portion of the milk produced thereon is delivered, sold or offered for sale for human consumption. A dairy farm does not include those lands that contain non-dairy animals provided a physical separation exists from lands owned or operated by the dairy, byproducts remain separate, and dairy animals are not commingled with non-dairy animals. (3-31-22)~~

~~07. Dairy Storage and Containment Facilities. The areas and structures within a dairy farm where dairy byproducts are collected, stored, or treated in conformance with engineering standards and specifications~~

~~published by the USDA Natural Resources Conservation Service or by the ASABE, or other equally protective criteria approved by the Director. These areas may include corrals, feeding areas, collection systems, conveyance systems, storage ponds, treatment lagoons, evaporative ponds, and compost areas, but do not include pastures as defined in these Rules.~~ (3-31-22)

~~08. **Inspector.** A qualified, trained person employed by the Department to perform dairy farm inspections.~~ (3-31-22)

~~09. **Land Application.** Mechanical spreading on, or incorporating into the soil mantle, dairy byproduct as a soil amendment for agricultural use of nutrients and for other beneficial purposes. Land application does not include pasturing animals as defined in these rules.~~ (3-31-22)

~~10. **Modification or Modified.** Structural changes and alterations to the dairy storage and containment facility that would require increased storage or containment capacity or the function of the facility.~~ (3-31-22)

~~1102. **Pasture, Pasturing, and Pastured.** For purposes of these rules, a pasture is an irrigated or dryland field with forage plant growth covering a minimum of fifty percent (50%) of the field. Pasturing and pastured is dairy animals and other animals owned, leased, or otherwise under the control of the producer, grazing in the same dairy farm pasture. Pastures are not considered part of a dairy storage and containment facility. (3-31-22)()~~

~~1203. **Permit.** A permit issued by the Department allowing the sale of Grade A milk or manufacture grade milk.~~ ()

~~1304. **Phosphorus Site Index.** A method to evaluate the relative potential for off-site movement of phosphorus from a field or pasture based upon risk factors relating to surface transport, phosphorus loss potential and nutrient management practices.~~ ()

~~1405. **Producer.** The person who owns or operates a permitted dairy farm.~~ ()

011. ABBREVIATIONS.

~~01. **ASABE.** American Society of Agricultural and Biological Engineers.~~ (3-31-22)

~~021. **IPDES.** Idaho Pollutant Distribution Elimination System.~~ ()

~~032. **NMS.** Nutrient Management Standard~~ ()

~~043. **NRCS.** Natural Resources Conservation Service.~~ ()

~~05. **USDA.** United States Department of Agriculture.~~ (3-31-22)

012. -- 029. (RESERVED)

030. DAIRY ENVIRONMENTAL MANAGEMENT PLAN APPROVAL.

01. Dairy Storage and Containment Facility Criteria. ()

a. Dairy storage and containment facilities shall be constructed to meet a minimum of one hundred eighty (180) days of holding capacity. ~~Process water containment structures that are utilized as the secondary or final storage for effluent shall have a minimum two (2) vertical feet of freeboard. Process water and containment structures that are not the secondary or final storage for effluent shall have a minimum one (1) vertical feet of freeboard. Construction, operation and maintenance shall be in accordance with IDAPA 02.04.30, "Rules Governing Environmental and Nutrient Management."~~ (3-31-22)()

b. ~~Earthen dairy storage and containment facilities less than ten (10) vertical feet high with a maximum high water line of eight (8) vertical feet shall have a top embankment width of at least eight (8) feet. The combined embankment slopes must be at least five (5) horizontal to one (1) vertical, and shall not exceed two (2)~~

~~horizontal to one (1) vertical slope. Earthen dairy storage and containment facilities greater than ten (10) vertical feet from the naturally occurring ground level shall meet the NRCS Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004 embankment requirements. (3-31-22)~~

~~e. The inside bottom of the dairy storage and containment facility shall be a minimum of two (2) feet above the high water table, bed rock, gravel, or permeable soils. For an earthen dairy storage and containment facility, a soil liner shall be installed such that the specific discharge rate of the containment structure meet $1 \times 10^{-6} \text{ cm}^3/\text{cm}^2/\text{sec}$ or less. Concrete or synthetic liners must be constructed to ASAE and Appendix 10D specifications. (3-31-22)~~

~~d. Storage areas for dairy byproduct, including compost and solid manure storage areas, shall be appropriately protected to prevent run-on, run-off, and contamination of ground and surface water. (3-31-22)~~

~~e. Dairy environmental management systems shall be maintained in a condition that allows the producer to regularly inspect the integrity of the systems. (3-31-22)~~

02. Dairy Nutrient Management Plan (DNMP). Each dairy farm shall have a dairy nutrient management plan that is approved by the Department. ~~The DNMP shall that~~ covers the dairy farm site and other land owned and operated by the dairy farm owner or operator to which dairy byproducts are land applied. ~~In addition to the R~~requirements to comply with the provisions of a DNMP set forth in IDAPA 02.04.30, “Rules Governing Environmental and Nutrient Management,” a DNMP must also include the following: (3-31-22)()

~~a. Producer annual soil tests shall be conducted as set forth in IDAPA 02.04.30, “Rules Governing Environmental and Nutrient Management,” and tested by an approved laboratory. (3-31-22)~~

~~b. Regulatory soil tests will be conducted at frequencies sufficient to provide assurance of compliance with Section 031 and with IDAPA 02.04.30, “Rules Governing Environmental and Nutrient Management.” (3-31-22)~~

~~e. Accurate DNMP records shall be maintained. These records shall include at a minimum: (3-31-22)~~

~~i. Annual soil analysis; (3-31-22)~~

~~ii. Date and amount of dairy byproduct and commercial fertilizer applied to individual dairy owned or operated fields; (3-31-22)~~

~~iii. Date(s) of exported dairy byproduct, number of acres applied, amount of dairy byproduct exported, and to whom dairy byproduct was exported; and (3-31-22)~~

~~iv. Actual crop yields on dairy owned or operated fields. (3-31-22)~~

~~v. A nitrogen management plan worksheet shall be completed for all fields and pastures receiving land application of nutrients. ()~~

~~db. Pasturing. All pastures utilized for grazing of dairy animals, and other animals grazing within the same pasture, shall be incorporated in to the DNMP and subject to the following requirements: ()~~

~~i. Soil testing pursuant to ~~the NMS and this section~~ IDAPA 02.04.30, “Rules Governing Environmental and Nutrient Management.” (3-31-22)()~~

~~ii. Surface water access. If pastured animals have access to surface water within a pasture, the producer may be required to implement one (1) or more NRCS conservation practice standards to minimize adverse impact on surface water quality. ()~~

~~iii. Land application. If land application occurs within a pasture, annual soil tests shall be conducted. ()~~

~~iv. Confinement areas. Confinement areas shall not be considered part of a pasture. ()~~

~~e. IPDES Permits. Dairy farms governed by the IPDES program are not required to submit a DNMP to the Department. (3-31-22)~~

031. PHOSPHORUS MANAGEMENT.

Dairy farms shall utilize either Phosphorus Indexing (Section 031.01) in accordance with the Idaho Phosphorus Site Index, or ~~the~~ Phosphorus Threshold (Section 031.02) pursuant to the 1999 Idaho NRCS Nutrient Management Standard 590 to manage nutrient application. (3-31-22)()

01. Phosphorus Indexing. The dairy farm shall utilize phosphorus site indexing (PSI) for each field where dairy byproducts and/or commercial fertilizers are land applied and for each pasture utilized for grazing, in accordance with the ~~2017~~ Idaho Phosphorus Site Index Standards. The PSI shall be calculated by a Nutrient Management Planner, certified by the Department, and be included as a component of the DNMP in the dairy farm's Environmental Management Plan. It shall be the dairy farm's responsibility to provide updated information, including annual soil test results, to the Nutrient Management Planner for calculation of the PSI on all fields and pastures on an annual basis. Failure to abide by the nutrient application and management provisions of a field or pasture's PSI risk classification in the DNMP shall constitute a non-compliance and the producer may be penalized as provided in these rules. (3-31-22)()

a. Notwithstanding anything to the contrary in the ~~2017~~ Idaho Phosphorus Site Index Standards, no land application of phosphorus shall be permitted on any fields or pastures that possess a soil phosphorus level exceeding three hundred (300) parts per million, as determined by the required annual soil test (via Olsen method). Further, the dairy farm shall not receive BMP Coefficient credit for implementing any best management practice designed to reduce phosphorus loss on fields exceeding three hundred (300) parts per million, via Olsen method. (3-31-22)()

b. The Department may award zero (0) or partial BMP Coefficient credit when a dairy farm implements a best management practice designed to reduce phosphorus loss from fields that does not fully conform to NRCS standards or the standards set forth in the ~~2017~~ Idaho Phosphorus Site Index Standards BMP definition section. (3-31-22)()

c. Amendments to the Idaho Phosphorus Site Index Standards must be approved by three (3) scientists from research institutions identified as partner institutions of the USDA National Institute of Food and Agriculture (NIFA), as found at <https://www.nifa.usda.gov/land-grant-colleges-and-universities-partner-website-directory>. Amendments shall be based on a minimum of three (3) peer-reviewed research publications that are relevant to Idaho's climate, soil, cropping system and irrigation. ()

02. Phosphorus Threshold. If the regulatory or producer soil tests reveal that phosphorus thresholds on fields and pastures have exceeded the levels established in the ~~NMS~~ the 1999 Idaho NRCS Nutrient Management Standard 590, the producer shall only apply phosphorus at the appropriate phosphorus crop uptake rate. Subsequent regulatory soil test(s) on fields and pastures that were identified as exceeding the phosphorus threshold will be conducted. If two (2) out of three (3) tests reveal the phosphorus index continues to trend upward, the producer will be penalized as provided in these rules. These tests shall be taken in the top one (1) foot of soil. (3-31-22)()

032. -- 039. (RESERVED)

040. INSPECTIONS.

Each dairy farm shall be inspected at intervals sufficient to determine that dairy byproducts and process water have been managed to prevent an unauthorized discharge, unauthorized release, or contamination of surface and ground water. ()

041. -- 049. (RESERVED)

050. COMPLIANCE SCHEDULES.

01. Non-Compliance or Unauthorized Release Violations. Appropriate corrective actions will be identified and informally scheduled when items of non-compliance or unauthorized release violations are identified. The Director may develop a formal compliance schedule in the following cases: ()

- a. Failure to complete corrective actions within thirty (30) days; or ()
- b. Corrective actions require significant capital investment; or ()
- c. Informal schedules have not been followed. ()

02. Re-Inspection. Re-inspection of the dairy farm will be conducted as appropriate, to ensure compliance. An unauthorized release violation shall be corrected immediately, when at all possible. ()

051. -- 059. (RESERVED)

060. UNAUTHORIZED DISCHARGES AND UNAUTHORIZED RELEASES -- PENALTIES. Non-compliance with requirements for dairy environmental systems, the NMS, and DNMP shall be addressed through corrective actions and compliance schedules pursuant to these rules. ()

061. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.04.23 – RULES GOVERNING COMMERCIAL LIVESTOCK TRUCK WASHING FACILITIES

DOCKET NO. 02-0423-2301 (ZBR CHAPTER REWRITE)

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 22-110, 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 18, 2023.

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

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

This rule is being presented for authorization as part of the ISDA's plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor's [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

These rules govern the permitting, construction, and management of commercial livestock truck washing facilities.

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

There are no fees included in this rule.

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

There is no fiscal impact 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 May 3, 2023 Idaho Administrative Bulletin, [Vol. 23-5, Page 11](#).

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

Idaho NRCS Nutrient Management Standard 590. The 1999 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590.

This document is necessary to ensure consistency with standards for nutrient management when required.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), for any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, the director shall identify the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal government. The following sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

This rule regulates activity and provides requirements beyond those required by the federal government, per the direction and authorization of Idaho Code.

The detailed 22-101A analysis can be found on the agency’s website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

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 25, 2023.

DATED this 4th day of October, 2023.

Lloyd B. Knight
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, ID 83707
Phone: (208) 332-8615
Email: lloyd.knight@isda.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0423-2301
(ZBR Chapter Rewrite)

02.04.23 – RULES GOVERNING COMMERCIAL LIVESTOCK TRUCK WASHING FACILITIES

000. LEGAL AUTHORITY.

~~This chapter is adopted under the legal authority of Sections 22-103(15) and 22-110, Idaho Code. (3-31-22)()~~

001. ~~TITLE AND SCOPE.~~

~~**01. Title.** The title of this chapter is IDAPA 02.04.23, “Rules Governing Commercial Livestock Truck Washing Facilities.” (3-31-22)~~

~~**02. Scope.** These rules govern the permitting, construction, and management of commercial livestock truck washing facilities. (3-31-22)()~~

002. ~~WRITTEN INTERPRETATIONS.~~

~~There are no written interpretations of these rules. (3-31-22)~~

003. ~~ADMINISTRATIVE APPEAL.~~

~~Persons may be entitled to appeal agency actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. (3-31-22)~~

004. INCORPORATION BY REFERENCE.

Copies of these documents may be obtained from the Idaho State Department of Agriculture central office and the State Law Library. ()

~~01. The 1997 United States Department of Agriculture Natural Resources Conservation Service Agricultural Waste Management Field Handbook, Appendix 10 D. (3-31-22)~~

~~02. The 2000 American Society of Agricultural Engineers Standard EP393.3. (3-31-22)~~

~~03. The 1999 Publication by the United States Department Of Agriculture, Natural Resource Conservation Service, Conservation Practice Standard, Nutrient Management Code 590. Idaho NRCS Nutrient Management Standard 590. The 1999 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590, available online at https://agri.idaho.gov/main/wp-content/uploads/2017/08/nutrient_Management_code_590.pdf. (3-31-22)()~~

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

The Idaho State Department of Agriculture central office is located at 2270 Old Penitentiary Road, Boise, ID 83712-8298. The office is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The mailing address is PO Box 7249, Boise, Idaho 83707. The phone number is (208) 332-8500 and the fax number is (208) 334-2170. The Department web address is <https://agri.idaho.gov/>. (3-31-22)

006. IDAHO PUBLIC RECORDS ACT.

These rules are public records available for inspection and copying at the central office of ISDA and the State Law Library. (3-31-22)

~~007.3.~~ -- 009. (RESERVED)

010. DEFINITIONS.

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

01. Commercial Livestock Truck Washing Facilities. Livestock truck washing facilities that charge a fee to wash livestock trucks and trailers, or those facilities where the process wastewater is not regulated pursuant IDAPA 02.04.14 “Rules Governing Dairy ~~Waste~~ Byproduct,” or 02.04.15 “Rules ~~of the Department of Agriculture~~ Governing Beef Cattle Animal Feeding Operations.” (3-31-22)()

~~02. **Compost.** A biologically stable material derived from the biological decomposition of organic matter. (3-31-22)~~

~~03. **Discharge.** Release of process wastewater or manure from a commercial livestock truck washing facility to waters of the state. (3-31-22)~~

~~04. **Land Application.** The spreading on, or incorporation of manure or process wastewater into the soil. (3-31-22)~~

05. Livestock. Bovidae, ovidae, suidae, and equidae. ()

06.3. Livestock Truck Washing Facilities. Those facilities utilized primarily for washing and cleaning trucks and trailers that haul livestock. ()

~~07. **Modified.** Structural or management changes, or alterations to the livestock truck washing facility which would require increased storage or containment capacity or such changes, which would alter the function of the wastewater storage or containment facility. (3-31-22)~~

~~08. **Non-Compliance.** A practice or condition that causes an unauthorized discharge or a practice or condition that if left uncorrected will cause an unauthorized discharge. (3-31-22)~~

~~09. **Non-Land Application Season.** The portion of the year during which land application is not allowed pursuant to an approved NMP. (3-31-22)~~

~~10. Nutrient Management Plan. A plan prepared in conformance with the nutrient management standard or other equally protective standard for managing the amount, source, placement, form, and timing of the land application of nutrients or soil amendments. (3-31-22)~~

~~11. Operate. Washing or cleaning livestock trucks. (3-31-22)~~

~~12. Operator. The person who has power or authority to manage, or direct, or has financial control of a commercial livestock truck washing facility. (3-31-22)~~

~~1304. Process Wastewater. Any water generated on a commercial livestock truck washing facility that comes into contact with manure, compost, bedding, or feed. ()~~

~~1405. Runoff. Any precipitation that comes into contact with manure, compost, bedding, or feed on a commercial livestock truck washing facility. ()~~

~~1506. Unauthorized Discharge. A discharge of process wastewater or manure from a commercial livestock truck washing facility to surface waters of the state that is not authorized by under an National IPollutant Discharge Elimination System permit issued by the United States Environmental Protection Agency. (3-31-22)()~~

~~16. Wastewater Storage and Containment Facility. That portion of a CLTWF where manure or process wastewater is stored or collected. This includes, but is not limited to, waste collection systems, waste conveyance systems, waste storage ponds, waste treatment lagoons and evaporative ponds. (3-31-22)~~

~~1707. Waters of the State. All surface and ground water located within the boundaries of the state or boundary streams, rivers and lakes except for private waters as defined in Title 42, Chapter 2, Idaho Code. ()~~

011. ABBREVIATIONS.

01. CLTWF. Commercial Livestock Truck Washing Facility. ()

~~02. FEMA. Federal Emergency Management Agency. (3-31-22)~~

~~032. ISDA. Idaho State Department of Agriculture. ()~~

~~043. NMP. Nutrient Management Plan. ()~~

~~054. NIPDES. National Idaho Pollutant Discharge Elimination System. (3-31-22)()~~

~~065. NRCS. Natural Resources Conservation Service. ()~~

~~076. USDA. United States Department of Agriculture. ()~~

~~012. APPLICABILITY.~~

~~These rules apply to all CLTWF. (3-31-22)~~

~~0132. -- 049. (RESERVED)~~

050. INSPECTIONS.

~~In order to ascertain compliance with this chapter, t~~The Director shall have reasonable access to all CLTWF facilities or records: (3-31-22)()

~~01. Inspect Facilities. Inspect any facility or land application site listed in the CLTWF's NMP. (3-31-22)~~

~~02. Inspect Records. Inspect, review, or copy any CLTWF's records deemed necessary, during normal business hours. (3-31-22)~~

051. -- 099. (RESERVED)

100. PERMIT REQUIRED.

No person shall construct or operate a CLTWF without first obtaining a permit to do so from the Director. ()

101. APPLICATION FOR PERMIT.

Applications for permits submitted to ~~the Director shall contain the following:~~ ISDA on a form approved by the Administrator. (3-31-22)()

~~**01. Name, Telephone Number, and Address.** The name, telephone number, and address of the owner and operator of the CLTWF. (3-31-22)~~

~~**02. Physical Address.** The physical address of the CLTWF. (3-31-22)~~

~~**03. Sealed Vicinity Map With Site Location.** A detailed sketch of the proposed or existing CLTWF site location, on an aerial photograph if available, which includes the following: (3-31-22)~~

~~**a.** The location of all homes, schools, churches, etc. within a one (1) mile radius of the proposed CLTWF; and (3-31-22)~~

~~**b.** Private and community domestic water wells, irrigation wells, existing monitoring wells, and existing injection wells as documented by Idaho Department of Water Resources or other sources, which are within a one (1) mile radius of the proposed or existing CLTWF; and (3-31-22)~~

~~**c.** Irrigation canals, irrigation laterals, rivers, streams, springs, lakes, reservoirs, and designated wetlands, which are within a one (1) mile radius of the proposed CLTWF; and (3-31-22)~~

~~**d.** Location of all land application sites; and (3-31-22)~~

~~**e.** FEMA flood zones or other appropriate flood data for the CLTWF site and all land application sites. (3-31-22)~~

~~**04. Sealed Site Plan.** A site plan showing all buildings, process wastewater and manure storage areas, piping, and roadways. (3-31-22)~~

~~**05. Land Application System.** A detailed description of the current or proposed management practices and methods used to make land application including: (3-31-22)~~

~~**a.** Timing, frequency, and duration of practices. (3-31-22)~~

~~**b.** Proximity of land application sites to residential and public use areas. (3-31-22)~~

~~**06. Nutrient Management Plan.** A NMP for all land where manure or process wastewater from the CLTWF is land applied. (3-31-22)~~

102. -- 109. (RESERVED)

110. DURATION OF PERMIT.

Permits issued pursuant to this chapter are valid for a period of two (2) years. ()

111. RENEWAL OF PERMIT.

The operator of a CLTWF shall submit an application to renew the permit to the Director for approval ninety (90) days prior to the expiration of the existing permit. ()

112. -- 119. (RESERVED)

120. REVOCATION OF PERMIT.

The Director may revoke the permit of any CLTWF that violates any of the provisions of this Chapter. ()

121. -- 199. (RESERVED)

200. UNAUTHORIZED DISCHARGES.

Unauthorized discharges of manure or process wastewater from CLTWF or land application sites owned or controlled by a CLTWF are prohibited. CLTWF operators shall notify the Director within twenty-four (24) hours of learning of a discharge. (3-31-22)()

~~201. -- 209. (RESERVED)~~

~~210. NOTIFICATION OF DISCHARGE.~~

~~Within twenty-four (24) hours of learning of a discharge, the operator of a CLTWF shall verbally notify the Director of such a discharge.~~ (3-31-22)

~~211. WRITTEN NOTIFICATION.~~

~~If the ISDA has not begun a discharge investigation within five (5) days of the verbal notification to the director, the operator shall submit a written report to the Director which includes:~~ (3-31-22)

- ~~01. **A Description of the Discharge.** A description of the flow path to the receiving water body; and~~ (3-31-22)
- ~~02. **Flow Rate.** An estimation of the flow rate and volume discharged; and~~ (3-31-22)
- ~~03. **Dates and Time.** The period of discharge, including dates and times, and if not already corrected, the anticipated time the discharge is expected to continue; and~~ (3-31-22)
- ~~04. **Steps Taken.** Steps taken to reduce, eliminate, and prevent recurrence of the discharge.~~ (3-31-22)

~~212~~**01. -- 299. (RESERVED)**

300. WASTEWATER STORAGE AND CONTAINMENT FACILITIES.

All CLTWF shall have wastewater storage and containment facilities designed, constructed, operated, and maintained pursuant to IDAPA 02.04.30, "Rules Governing Environmental and Nutrient Management." ~~sufficient to contain:~~ (3-31-22)()

- ~~01. **Process Wastewater.** All process wastewater generated on the CLTWF during the non-land application season; and~~ (3-31-22)
- ~~02. **Rainfall.** The runoff from a twenty-five (25) year, twenty-four (24) hour rainfall event; and~~ (3-31-22)
- ~~03. **Winter Precipitation.** Either three (3) inches of runoff from the accumulation of winter precipitation or the amount of runoff from the accumulation of precipitation from a one in five (1 in 5) year winter.~~ (3-31-22)

301. -- 3019. (RESERVED)

310. CONSTRUCTION REQUIREMENTS.

All CLTWF shall have wastewater storage and containment facilities designed and constructed in accordance with the engineering standards and specifications contained in the Natural Resources Conservation Service Agricultural Waste Management Field Handbook, Appendix 10D or the American Society of Agricultural Engineers Standard EP393.3, or other equally protective standards approved by the Director. (3-31-22)

~~311. -- 319. (RESERVED)~~

320. SUBSTANCES ENTERING WASTEWATER STORAGE AND CONTAINMENT FACILITIES.

Only manure and process wastewater from the operation of the CLTWF shall be allowed to enter wastewater storage and containment facilities. The disposal of any other materials into a wastewater storage and containment facility, including, but not limited to oil, grease, heavy metals, chlorinated solvents, and human waste is prohibited. ()

321. -- 329. (RESERVED)

330. NUTRIENT MANAGEMENT.

Each CLTWF shall ~~submit, to the Director for approval,~~ have an NMP that conforms to ~~the nutrient management standard~~ IDAPA 02.04.30, "Rules Governing Environmental and Nutrient Management." (3-31-22)()

~~01. Odor. Each NMP shall address odors generated on the CLTWF, and land application sites. Odors shall not be generated in excess of odors normally associated with livestock production in Idaho. (3-31-22)~~

~~02. Land Application. Each NMP shall include all land to which manure or process wastewater from the CLTWF is land applied. (3-31-22)~~

~~03. Duty of Operator. It shall be the duty of the operator of a CLTWF to ensure that the NMP, for any land included in the NMP, is implemented. (3-31-22)~~

~~04. Implementation of NMP. Failure to implement and abide by an approved NMP is a violation of this chapter. (3-31-22)~~

331. -- ~~359~~999. (RESERVED)

360. NEW CLTWF.

~~Any new CLTWF shall submit a NMP to the Director for approval with its application for a permit to operate a CLTWF. The Director responds to or approves such NMP within sixty (60) days of submission. (3-31-22)~~

~~361. — 999. (RESERVED)~~

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.04.30 – RULES GOVERNING ENVIRONMENTAL AND NUTRIENT MANAGEMENT

DOCKET NO. 02-0430-2301 (ZBR CHAPTER REWRITE)

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 22-110, 22-4903, 25-3802, 25-4012(2), 37-401(1), 37-405, 37-603(1), 67-6529F(4), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

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

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

This rule is being presented for authorization as part of the ISDA’s plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor’s [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

This rule governs the certification process for soil samplers and nutrient management planners, the process for collecting and handling soil samples, the contents of a request to form a CAFO Site Advisory Team, formation of a CAFO Site Advisory Team, development of a site suitability determination, submission of the suitability determination to the appropriate county officials, the management of odor generated on agricultural operations, except beef cattle animal feeding operations and large swine and poultry operations and the stockpiling of agricultural waste at agricultural operations to safeguard and protect animals, man, and the environment.

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

There are no fees included in this rule.

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

There is no fiscal impact 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 May 3, 2023 Idaho Administrative Bulletin, [Vol. 23-5, Page 11](#).

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

Multiple technical documents, federal standards, extension bulletins, engineering standards, and technical handbooks are incorporated into this rule. They are important as they are referenced and included as applicable standards for compliance with this rule.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), for any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, the director shall identify the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal

government. The following sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

This rule regulates activity and provides requirements beyond those required by the federal government, per the direction and authorization of Idaho Code.

The detailed 22-101A analysis can be found on the agency’s website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

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 25, 2023.

DATED this 4th day of October, 2023.

Lloyd B. Knight
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, ID 83707
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Email: lloyd.knight@isda.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0430-2301
(ZBR Chapter Rewrite)

02.04.30 – RULES GOVERNING ENVIRONMENTAL AND NUTRIENT MANAGEMENT

000. LEGAL AUTHORITY.

~~This chapter is adopted under the legal authority of~~ Sections 22-110, 22-4903, 25-3802, 25-4012(2), 37-401(1), 37-405, 37-603(1), 67-6529F(4), Idaho Code. ~~(3-31-22)()~~

001. ~~TITLE AND SCOPE.~~

~~01. Title.~~ The title of this chapter is IDAPA 02.04.30, “Rules Governing Environmental and Nutrient Management.” ~~(3-31-22)~~

~~02. Scope.~~ This rule governs the certification process for soil samplers and nutrient management planners, the process for collecting and handling soil samples, the contents of a request to form a CAFO Site Advisory Team, formation of a CAFO Site Advisory Team, development of a site suitability determination, submission of the suitability determination to the appropriate county officials, the management of odor generated on agricultural operations, except beef cattle animal feeding operations and large swine and poultry operations and the stockpiling of agricultural waste at agricultural operations to safeguard and protect animals, man, and the environment. ~~(3-31-22)()~~

002. -- 103. (RESERVED)

SUBCHAPTER A – NUTRIENT MANAGEMENT

104. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into Subchapter A, Sections 104-203 only: ()

01. **August 1997 University of Idaho, Soil Sampling Bulletin 704 (revised).** This document can be viewed online at <http://www.extension.uidaho.edu/publishing/pdf/EXT/EXT0704.pdf>. ()

02. **Nutrient Management Standard (NMS).** ()

a. **Idaho Nutrient Management Standard 590, June 1999.** The 1999 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590 ([1999 Idaho Nutrient Management Standard 590](https://agri.idaho.gov/main/wp-content/uploads/2017/08/nutrient_Management_code_590.pdf)). This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/08/nutrient_Management_code_590.pdf. ~~or,~~ (3-31-22)()

b. **Idaho NRCS Nutrient Management Standard 590, 2007.** The 2007 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/10/june_2007_NRCS_590.pdf. ~~or,~~ (3-31-22)()

c. **The Phosphorus Site Index: A Systematic Approach to Assess the Risk of Nonpoint Source Pollution of Idaho Waters by Agricultural Phosphorus, 2023 (Idaho Phosphorous Site Index).** This document is available online at <https://agri.idaho.gov/main/animals/environmental-nutrient-management/>. ()

03. **American Society of Agricultural and Biological Engineers Specification ASAE EP393.3 Manure Storages February 2004.** This document is part of a copyrighted publication and is available for viewing at the ISDA offices or a copy may be purchased online at <http://www.asabe.org/>. ()

04. **Natural Resources Conservation Service (NRCS) Web Soil Survey Database.** This document is available online at <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>. ()

05. **Natural Resources Conservation Service (NRCS) Part 630, Hydrology National Engineering Handbook, Chapter 7, (Hydrologic Soil Groups), January 2009.** This document is available online at <https://www.wcc.nrcs.usda.gov/ftpref/wntsc/H&H/NEHhydrology/ch7.pdf>. ()

06. **Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004.** This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/10/nrcs_313_Dec_2004.pdf. ()

07. **Natural Resources Conservation Service Agricultural Waste Management Field Handbook Appendix 10D (Appendix 10D) (March 2008 Edition) (USDA, NRCS).** This document can be viewed online at <https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=17767.wba>. ()

105. -- 109. (RESERVED)

110. DEFINITIONS.

~~In addition to the definitions found in Sections 22-4904, 25-4002, and 37-604, Idaho Code,~~ The following definitions apply in the interpretation and enforcement of Subchapter A, Sections 104-203 only: (3-31-22)()

01. **Approved Laboratory.** A soil testing laboratory with a valid certification from the North American Proficiency Testing Program under the auspices of the Soil Science Society of America. ()

02. **Certified Soil Sampler.** A person who has completed a Department approved soil sampler certification program and has received written certification from the Department. ()

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

034. Nutrient Management Standard. ~~For dairies and b~~Beef cattle animal feeding operations, the Nutrient Management Standard is the 1999 publication by the United States Department of Agriculture Natural Resources Conservation Service Conservation Practice Standard, Nutrient Management Code 590 or other standard approved by the Director. For poultry concentrated animal feeding operations, the Nutrient Management Standard is the 2007 publication by the United States Department of Agriculture Natural Resources Conservation Service Conservation Practice Standard, Nutrient Management Code 590 or other standard approved by the director. For dairies, the Nutrient Management Standard is (a) the 1999 Idaho NRCS Nutrient Management Standard 590; (b) the Idaho Phosphorus Site Index, or (c) other standard approved by the Director, pursuant to Idaho Code § 37-606(2). (3-31-22)()

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

05. Representative Soil Sample. ~~A representative soil sample is a soil sample obtained as outlined by the August 1997 University of Idaho, Soil Sampling Bulletin 704 (revised) or other equivalent method as approved by the Department.~~ (3-31-22)

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

111. ABBREVIATIONS.

The following abbreviations apply in the interpretation and enforcement of Subchapter A, Sections 104-203 only:

- 01. CNMP. Certified Nutrient Management Planner. ()
- 02. CSS. Certified Soil Sampler. ()
- 03. NMP. Nutrient Management Plan. ()
- 04. NMS. Nutrient Management Standard. ()
- 05. NRCS. United States Department of Agriculture, Natural Resources Conservation Service. ()
- 06. SSB. August 1997 University of Idaho Soil Sampling Bulletin 704 (revised). ()
- 07. USDA. United States Department of Agriculture. ()

112. -- 119. (RESERVED)

120. APPLICABILITY.

These rules apply to nutrient management on the following operations: ()

01. Dairies. All Manufactured Grade and Grade A dairies located in Idaho licensed to sell milk for human consumption, pursuant to Title 37, Chapter 6, Idaho Code. ()

02. Beef Cattle Animal Feeding Operations. All beef cattle animal feeding operations in Idaho required to implement a NMP pursuant to Title 22, Chapter 49 Idaho Code. ()

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

04. Commercial Truck Wash Operations. All commercial truck washes required to implement an NMP pursuant to Title 22, Chapter 1, Idaho Code. ()

121. -- 129. (RESERVED)

130. NUTRIENT MANAGEMENT PLANS.

All NMPs required by IDAPA 02.04.14, "Rules Governing Dairy Byproduct," IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations," ~~and~~ IDAPA 02.04.32, "Rules Governing Poultry Operations," ~~and~~ IDAPA 02.04.23, "Rules Governing Commercial Livestock Truck Washing Facilities" must be approved by the Department and written by certified nutrient management planners, ~~who have been certified by the Department.~~ (3-31-22)()

131. STORAGE AND CONTAINMENT FACILITY CRITERIA.

All facilities required to maintain an NMP, pursuant to these rules, shall construct, operate and maintain all storage and containment facilities as follows: ()

01. Secondary or Final Storage Effluent Facility. Process water containment structures that are utilized as the secondary or final storage for effluent shall have a minimum two (2) vertical feet of freeboard. Process water and containment structures that are not the secondary or final storage for effluent shall have a minimum one (1) vertical feet of freeboard. ()

b. Earthen storage and containment facilities less than ten (10) vertical feet high with a maximum high water line of eight (8) vertical feet shall have a top embankment width of at least eight (8) feet. The combined embankment slopes must be at least five (5) horizontal to one (1) vertical, and shall not exceed two (2) horizontal to one (1) vertical slope. Containment facilities greater than ten (10) vertical feet from the naturally occurring ground level shall meet the NRCS Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004 embankment requirements. ()

c. The inside bottom of the storage and containment facility shall be a minimum of two (2) feet above the high water table, bed rock, gravel, or permeable soils. For an earthen storage and containment facility, a soil liner shall be installed such that the specific discharge rate of the containment structure meet 1×10^{-6} cm³/cm²/sec or less. Concrete or synthetic liners must be constructed to ASAE and Appendix 10D specifications. ()

d. Storage areas for byproduct, including compost and solid manure storage areas, shall be located on approved soils and appropriately protected to prevent run on, run off, and contamination of ground and surface water. ()

e. Total containment volume shall be sufficient to contain: ()

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

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

f. All substances entering wastewater storage and containment facilities shall be composed of manure and process wastewater from the operation of the dairy, beef, poultry or commercial truck wash facility. The disposal of any other materials into a wastewater storage and containment facility, including, but not limited to, human waste, is prohibited. ()

g. Maintenance is sufficient to allow regular inspection of the integrity of the systems. ()

131.2. -- 139. (RESERVED)

140. NUTRIENT MANAGEMENT PLANNER CERTIFICATION.

All persons who develop NMPs pursuant to Subchapter A must be a certified nutrient management planner ~~through~~ via the Department Certification Program. The Department may require a CNMP to complete continuing education training to ensure compliance with Subchapter A. If a CNMP fails to follow the criteria in Subchapter A, the

Department may revoke their certification. (3-31-22)(____)

~~01. Certification.~~ The Nutrient Management Planner Certification will be valid unless revoked by the Department. (3-31-22)

~~02. Development.~~ Any person may develop an NMP for his own operation provided the person possesses a valid Nutrient Management Planner Certification issued by the Department. (3-31-22)

~~03. Continuing Education.~~ The Department may require a CNMP to complete periodic continuing education training to retain certification. (3-31-22)

~~141. REVOCATION OF NUTRIENT MANAGEMENT PLANNER CERTIFICATION.~~
CNMP Certification may be revoked by the Department if the CNMP: (3-31-22)

~~01. Submits Inaccurate Information.~~ Submits NMPs that contain falsified or materially inaccurate information. (3-31-22)

~~02. Fails to Submit Plans.~~ Fails to submit an NMP to the ISDA within thirty (30) days after being paid by a producer. (3-31-22)

~~03. Fails to Follow Provisions.~~ Fails to meet any requirement in Subchapter A of this rule. (3-31-22)

~~142~~1. -- 149. (RESERVED)

150. SOIL SAMPLES.

Dairies, beef cattle operations, and poultry operations implementing nutrient management plans pursuant to IDAPA 02.04.14, "Rules Governing Dairy Byproduct," IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations," and IDAPA 02.04.32, "Rules Governing Poultry Operations," Facilities required to maintain an NMP, pursuant to these rules, must have soil samples collected each year from all fields owned or operated by the dairy, beef, ~~or poultry,~~ or commercial truck wash operation to which livestock waste, manure, or process wastewater from the operation was land applied. ~~In addition, a poultry operation must have soil samples collected each year from all fields owned or operated by the poultry operation to which soil amendments from the operation were land applied.~~ Regulatory soil tests will be conducted at frequencies sufficient to provide assurance of compliance with this subchapter. (3-31-22)(____)

151. SOIL SAMPLE COLLECTION.

~~01. CSS.~~ All soil samples collected pursuant to this chapter must be ~~collected by a CSS~~ representative samples that are collected by a CSS at the depth indicated by the approved NMP for each facility. Samples shall be collected pursuant to SSB approved methods and submitted to an approved laboratory. If resource concerns require an alternate sampling depth be used, the CSS must indicate the alternate depths on all samples and lab submission forms. (3-31-22)(____)

~~02. Representative Samples.~~ All soil samples collected by a CSS must be representative samples pursuant to the provisions of the SSB. (3-31-22)

~~03. Sampling Depth.~~ The soil samples shall be obtained from depths outlined in each operation's NMP unless soil survey data or site specific situations warrant alternative sampling depths. (3-31-22)

~~04. Alternative Sampling Depths.~~ If the CSS determines that an alternative sampling depth is necessary due to resource concerns, the CSS must indicate such deviation in sampling depths on soil samples and laboratory soil sample submission forms. (3-31-22)

152. SOIL SAMPLE ~~SUBMISSION~~ CERTIFICATION.

~~All soil samples collected pursuant to this chapter must be appropriately handled to protect the integrity of the sample and submitted to an approved laboratory by the CSS who collected the soil sample.~~ All persons who collect soil samples pursuant to Subchapter A must be a certified soil sampler via the Department Certification Program. The

~~Department may require a CSS to complete continuing education training to ensure compliance with Subchapter A. If a CSS fails to follow the criteria in Subchapter A, the Department may revoke their certification. (3-31-22)()~~

~~153. -- 159~~**60. (RESERVED)**

~~160. APPROVED LABORATORIES.~~

~~Only laboratories that hold a current valid certification from the North American Laboratory Proficiency Testing Program or equivalent method approved by the Department are approved laboratories for the purposes of this chapter. (3-31-22)~~

~~161. RECORDS OF NUTRIENT ANALYSIS.~~

~~Owners or operators of facilities who are required to implement NMPs pursuant to IDAPA 02.04.14, "Rules Governing Dairy Byproduct," IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations," and IDAPA 02.04.32, "Rules Governing Poultry Operations," must retain All nutrient management records of nutrient analysis and nutrient analysis data required under this chapter must be complete, identified to the fields listed in the facility's NMP, retained for a minimum of five (5) years and available to the Department upon request. Required records include the following: (3-31-22)()~~

~~**01. Annual Soil Analysis.** Producer annual soil tests conducted as set forth in this subchapter, tested at an approved laboratory; and ()~~

~~**02. Land Applications.** Date and amount of nutrients, byproduct and commercial fertilizer applied to fields owned or operated by the approved NMP facility; ()~~

~~**03. Third-Party Exports.** Date(s) of exported nutrients or byproduct, number of acres applied, amount of nutrients or byproduct exported, and to whom nutrients or byproduct was exported; and ()~~

~~**04. Crop Yields.** Actual crop yields on all fields owned or operated by the approved NMP facility. ()~~

~~**05. IPDES Permits.** Dairy, beef, poultry or commercial truck facilities governed by the IPDES program are not required to submit an NMP to the Department. ()~~

~~**01. Complete Records.** Records must be complete, readily available, and identified to the fields listed in the facility's NMP. (3-31-22)~~

~~**02. Available to the Director.** Records must be made available to the director for inspection and copying upon request. (3-31-22)~~

~~162. -- 169. (RESERVED)~~

~~170. SOIL SAMPLER CERTIFICATION.~~

~~All persons who collect soil samples pursuant to Subchapter A must be certified through the Department Certification Program. (3-31-22)~~

~~**01. Certification.** The Soil Sampler Certification will be valid unless revoked by the Department. (3-31-22)~~

~~**02. Sampling.** Any person may sample their own operation as outlined in Subchapter A of these rules provided the person possesses a valid Soil Sampler Certification issued by the Department. (3-31-22)~~

~~**03. Continuing Education.** The Department may require CSS to complete continuing education training to ensure compliance within the provisions of this chapter. (3-31-22)~~

~~171. REVOCATION OF SOIL SAMPLER CERTIFICATION.~~

~~Soil Sampler Certification is subject to revocation by the Department if the Certified Soil Sampler fails to meet the soil sampling criteria set forth in Subchapter A. (3-31-22)~~

~~172. – 179.~~ (RESERVED)

180. PENALTIES.

Any person violating any of the provisions of Subchapter A may be subject to the penalty provisions of Title 22, Chapter 1 and 49, Title 37, Chapter 4 and 6, and Title 25, Chapter 40, Idaho Code. (3-31-22)

~~01. Monetary Penalties.~~ The imposition or computation of monetary penalties shall take into account the seriousness of the violation, good faith efforts to comply with the law, the economic impact of the penalty on the violator and such other matters as justice requires. (3-31-22)

~~02. Minor Violations.~~ The Director may issue suitable warnings or other administrative actions for minor violations. (3-31-22)

~~181~~62. -- 203. (RESERVED)

SUBCHAPTER B – CAFO SITE ADVISORY TEAM

204. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into Subchapter B, Sections 204-303: ()

01. Nutrient Management Standard (NMS). ()

a. Idaho Nutrient Management Standard 590, June 1999. The 1999 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/08/nutrient_Management_code_590.pdf. or, (3-31-22)()

b. Idaho NRCS Nutrient Management Standard 590, 2007. The 2007 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/10/june_2007_NRCS_590.pdf. or, (3-31-22)()

c. The Phosphorus Site Index: A Systematic Approach to Assess the Risk of Nonpoint Source Pollution of Idaho Waters by Agricultural Phosphorus, 2023 (Idaho Phosphorous Site Index). This document is available online at <https://agri.idaho.gov/main/animals/environmental-nutrient-management/>. ()

~~205. – 209.~~ (RESERVED)

210. DEFINITIONS.

~~In addition to the definitions found in Section 67-6529C, Idaho Code,~~ The following definitions apply in the interpretation and enforcement of Subchapter B, Sections 204-303: (3-31-22)()

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

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

03. Nutrient Management Plan. A plan prepared in conformance with the nutrient management standard. ()

04. Nutrient Management Standard. For dairies and beef cattle animal feeding operations, the 1999 publication by the United States Department of Agriculture Natural Resources Conservation Service, Conservation

Practice Standard, Nutrient Management Code 590, or other equally protective standard approved by the Director. For poultry concentrated animal feeding operations, the 2007 publication by the United States Department of Agriculture Natural Resources Conservation Practice Standard, Nutrient Management Code 590, or other equally protective standard approved by the Director. ()

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

211. ABBREVIATIONS.

The following abbreviations apply in the interpretation and enforcement of Subchapter B, Sections 204-303:

- 01. BMP.** Best Management Practices. ()
- 02. CAFO.** Concentrated Animal Feeding Operation. ()
- ~~**03. DEQ.** Idaho Department of Environmental Quality. (3-31-22)~~
- ~~**04. FEMA.** Federal Emergency Management Agency (3-31-22)~~
- ~~**05. IDWR.** Idaho Department of Water Resources. (3-31-22)~~
- ~~**06. NRCS.** The United States Department of Agriculture, Natural Resources Conservation Service. (3-31-22)~~
- ~~**073.** NMP. Nutrient Management Plan. ()~~
- ~~**084.** OMP. Odor Management Plan. ()~~
- ~~**09.** USGS. United States Geological Survey. (3-31-22)~~

212. -- 219. (RESERVED)

220. APPLICABILITY.

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

02. Sites That Do ~~n~~ot Meet the Definition of a CAFO. The Director may form a CAFO site advisory team, as requested by a board of county commissioners, for a site that does not meet the animal numbers in the definition of a CAFO provided that: (3-31-22)()

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

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

221. -- 2239. (RESERVED)

~~**230. FORMATION OF A SITE ADVISORY TEAM.**~~

~~A board of county commissioners may request the formation of a CAFO site advisory team to provide a site suitability determination by submitting to the Director a written request supported by the adoption of a resolution by the county. (3-31-22)~~

~~**01. Designation of the Team Leader.** Upon receipt of a request to form a site advisory team, the~~

~~Director shall designate a team leader. (3-31-22)~~

~~02. Notification of Team Members. The team leader shall provide a copy of the request to form a site advisory team to DEQ and IDWR. After receiving notification, DEQ and IDWR shall notify the Team Leader of their respective representatives to the team. (3-31-22)~~

~~231.—239: (RESERVED)~~

240. CAFO SITE ADVISORY TEAMS

A CAFO site advisory team will make determinations of suitability on all proposed CAFO sites, as defined in Subchapter B, following a written request to the Director by a board of county commissioners. The team leader, designated by the Director, will notify DEQ and IDWR of all requests. ()

~~01. Site for a Proposed CAFO. A CAFO site advisory team shall review and make a site suitability determination for all proposed CAFO sites, as defined in Subchapter B, submitted by a board of county commissioners pursuant to this Subchapter. (3-31-22)~~

~~021. Non-CAFO Sites That Do not Meet the Definition of a CAFO. The Director may form a CAFO site advisory team may be formed, as requested by a board of county commissioners, for a site that does not meet the animal numbers in the definition of a CAFO definitions provided that: (3-31-22)()~~

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

~~b. The state agencies have personnel and other resources available to conduct the site suitability determination. ()~~

~~**241. FORMATION OF A SITE ADVISORY TEAM.**~~

~~A board of county commissioners may request the formation of a CAFO site advisory team to provide a site suitability determination by submitting to the Director a written request supported by the adoption of a resolution by the county. (3-31-22)~~

~~01. Designation of the Team Leader. Upon receipt of a request to form a site advisory team, the Director will designate a team leader. (3-31-22)~~

~~02. Notification of Team Members. The team leader will provide a copy of the request to form a site advisory team to DEQ and IDWR. After receiving notification, DEQ and IDWR will notify the Team Leader of their respective representatives to the team. (3-31-22)~~

~~**242. CONTENTS OF A REQUEST TO FORM A SITE ADVISORY TEAM.**~~

~~The information contained in a request includes, but is not limited to, the following: (3-31-22)~~

~~01. County Definition of CAFO. The county's definition of "CAFO" as set forth in any applicable county ordinance. (3-31-22)~~

~~02. Legal Description and Address. Legal description and address of the proposed CAFO. (3-31-22)~~

~~03. One-Time Unit Capacity. The one-time animal capacity of the proposed CAFO. (3-31-22)~~

~~04. Type of Animals. The type of animals to be confined at the proposed CAFO. (3-31-22)~~

~~05. Water Right Information. All requests shall include one (1) of the following: (3-31-22)~~

~~a. Evidence that a valid water right exists to supply adequate water for the operation of the proposed CAFO; or (3-31-22)~~

~~b. A copy of an application for a permit to appropriate water that has been filed with IDWR, that if~~

~~approved, will supply adequate water for operation of the proposed CAFO; or (3-31-22)~~

~~e. A copy of an application to change the point of diversion, place, period, and nature of use of an existing water right that has been filed with IDWR, that if approved, will supply adequate water for the operation of the proposed CAFO. (3-31-22)~~

~~**06. Vicinity Map with Site Location.** A detailed sketch of the proposed CAFO site location, on an aerial photograph if available, that includes the following: (3-31-22)~~

~~a. Building locations; (3-31-22)~~

~~b. Waste storage facilities and general areas for any land application including a narrative description of the waste system; (3-31-22)~~

~~c. FEMA flood zones or other appropriate flood data for the proposed CAFO site and land application sites owned or leased by the applicant; (3-31-22)~~

~~d. Private and community domestic water wells, irrigation wells, existing monitoring wells, and existing injection wells as documented by IDWR or other sources, including the associated well logs if available, that are within a one (1) mile radius of the proposed CAFO; (3-31-22)~~

~~e. Irrigation canals, irrigation laterals, rivers, streams, springs, lakes, reservoirs, and designated wetlands, that are within a one (1) mile radius of the proposed CAFO. (3-31-22)~~

~~**07. Site Characterization.** A characterization of the proposed CAFO site and any land application sites owned or leased by the applicant, that includes the following information, if available: (3-31-22)~~

~~a. Annual precipitation and prevailing wind direction as contained in the Idaho Waste Management Guidelines, 1997; (3-31-22)~~

~~b. Soil characteristics from NRCS; (3-31-22)~~

~~e. Hydrologic characteristics from IDWR and USGS including: (3-31-22)~~

~~i. Depth to first water yielding zone and first encountered water; (3-31-22)~~

~~ii. Direction of ground water movement and gradient; (3-31-22)~~

~~iii. Sources and estimates of recharge; (3-31-22)~~

~~iv. Seasonal variations in water level and recharge characteristics; (3-31-22)~~

~~v. Susceptibility to contamination; and (3-31-22)~~

~~vi. Relation of ground water to surface water. (3-31-22)~~

~~d. Water quality data from DEQ, the Department, IDWR, or USGS, including: (3-31-22)~~

~~i. Microorganisms; (3-31-22)~~

~~ii. Nutrients; and (3-31-22)~~

~~iii. Pharmaceuticals and organic compounds. (3-31-22)~~

~~**08. Required OMPs or NMPs.** Any OMPs or NMPs that are required by the county to be submitted by the applicant at the time of application. (3-31-22)~~

243~~1~~. -- 249. (RESERVED)

250. REVIEW OF REQUEST.

Team members will review ~~the information provided in the~~ requests for the formation of a site advisory team to determine if ~~it includes the all~~ required elements of ~~Section 242~~ Section 67-6520E(2), Idaho Code, are included, and to schedule the date and time of the onsite visit. (3-31-22)()

~~01. Insufficient Information. If the team determines that the information provided by the county does not include the required elements of Section 242, the team leader will contact the county and request additional information.~~ (3-31-22)

~~02. Sufficient Information. When the team has determined that the information submitted by the county contains the required elements of Section 242, the team leader schedules an onsite review of the information with the team members. The team leader informs the county requesting the formation of the site advisory team of the date and time of the onsite review and the county may have a representative present.~~ (3-31-22)

251. -- 259. (RESERVED)

260. SITE SUITABILITY DETERMINATION.

Within thirty (30) days of receiving a request for the formation of a CAFO site advisory team that includes the required elements of ~~Section 242~~ Section 67-6520E(2), Idaho Code, the team will develop and submit to the county a site suitability determination, ~~based on the elements of Section 242 or other relevant information,~~ that contains: (3-31-22)()

01. Risk Category. A determination of an environmental risk category: high, moderate; low; or insufficient information to make a determination; ()

02. Description of Factors. A description of the factors that contribute to the environmental risks; ()

03. Mitigation. Any possible mitigation of the environmental risks. ()

261. -- 303. (RESERVED)

SUBCHAPTER C – AGRICULTURE ODOR MANAGEMENT

304. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into Subchapter C, Sections 304-409 only: ()

01. Idaho NRCS Nutrient Management Standard 590, June 1999. ()

02. Best Management Practices listed in the “Idaho Agricultural Pollution Abatement Plan,” August 2001. ()

03. ASAE Standard EP379.2 Sections 5 and 6 in their entirety, November 1997. ()

04. NRCS Conservation Practice Standard 317, March 2001. ()

305. -- 309. (RESERVED)

310. DEFINITIONS.

~~In addition to the definitions found in Section 25-3803, Idaho Code,~~ The following definitions apply in the interpretation and enforcement of Subchapter C, Sections 304-409: (3-31-22)()

~~01. Animal. Livestock and agricultural animals.~~ (3-31-22)

02~~1~~. BAT. The best application of science that is accessible and obtainable to achieve a desired

objective. ()

~~03~~ **Beef Cattle.** All cattle except those located on a dairy farm that have been permitted by the Idaho State Department of Agriculture pursuant to IDAPA 02.04.14, “Rules Governing Dairy Byproduct.” (3-31-22)

~~04~~ **Beef Cattle Animal Feeding Operation.** Those operations regulated pursuant to IDAPA 02.04.15, “Rules Governing Beef Cattle Animal Feeding Operations.” (3-31-22)

~~05~~**2.** **Compost.** A biologically stable material derived from the ~~biological~~ aerobic decomposition of organic matter. (3-31-22)()

~~06.~~ **Composting.** The aerobic degradation of manure and other organic material to a biologically stable form. (3-31-22)

~~07~~**3.** **Land Application.** The spreading on, or incorporation into the soil of agricultural by-products including, but not limited to, manure, wastewater, compost, cull potatoes, cull onions, or crop residues. ()

~~08~~**4.** **Large Swine And Poultry Operations.** Those swine operations regulated pursuant to IDAPA 58.01.09, “Rules Regulating Swine Facilities,” and those poultry operations regulated pursuant to IDAPA 02.04.32, “Rules Governing Poultry Operations.” ()

~~09~~**5.** **Liquid-Solid Separation.** The removal of solid manure from water through mechanical or settling means. ()

~~10~~**06.** **Waste Collection and Conveyance Systems.** The areas and systems used in the collection and transfer of manure from the point of generation to the wastewater storage and containment facilities, prior to land application. ()

~~11~~**07.** **Wastewater Treatment.** A process by which wastewater is treated through aerobic or anaerobic degradation or other means. ()

311. ABBREVIATIONS.
The following abbreviations apply in the interpretation and enforcement of Subchapter C, Sections 304-409: ()

~~01.~~ **ASAE.** American Society of Agricultural Engineers. (3-31-22)

~~02~~**1.** **BAT.** Best Available Technology. ()

~~03~~**2.** **BMP.** Best Management Practice. ()

~~04.~~ **DEQ.** Idaho Department of Environmental Quality. (3-31-22)

~~05~~**3.** **NMP.** Nutrient Management Plan. ()

~~06.~~ **NOV.** Notice Of Violation. (3-31-22)

~~07.~~ **NRCS.** The United States Department of Agriculture, Natural Resources Conservation Service. (3-31-22)

~~08~~**4.** **OMP.** Odor Management Plan. ()

312. -- 319. (RESERVED)

320. ACCEPTED AGRICULTURAL PRACTICES.
Management practices conducted in accordance with applicable laws, rules and best management practices, ~~as referenced in Subsections 320.01 and 320.02, or in the absence of referenced best management practices,~~ management practices conducted in a manner that demonstrates reasonable efforts to minimize odors, are considered

accepted agricultural practices for purposes of ~~Subchapter C~~ this rule. (3-31-22)()

01. Applicable Rules. The following are applicable rules for the purpose of Section 320: ()

a. IDAPA 02.04.14, “Rules Governing Dairy Byproduct.” ()

b. IDAPA 02.03.03, “Rules Governing Pesticide and Chemigation Use and Application.” ()

c. IDAPA 02.06.17, “Rules Concerning Disposal of Cull Onion and Potatoes.” ()

~~**d.** IDAPA 02.04.17, “Rules Governing Dead Animal Movement and Disposal.” (3-31-22)~~

~~**02. Applicable Best Management Practices.** The following practices, or other management practices approved by the Director that are conducted in a manner that demonstrates reasonable efforts to minimize odors are considered accepted agricultural practices for purposes of this rule. (3-31-22)~~

~~**a.** Idaho NRCS Nutrient Management Standard 590, June 1999. (3-31-22)~~

~~**b.** Best Management Practices listed in the “Idaho Agricultural Pollution Abatement Plan,” August 2001. (3-31-22)~~

~~**c.** “Control of Manure Odors,” ASAE Standard EP379.2 Sections 5 and 6 in their entirety, November 1997. (3-31-22)~~

~~**d.** “Composting Facility,” NRCS Conservation Practice Standard 317, March 2001. (3-31-22)~~

032. Excess Odors. An agricultural operation using an accepted agricultural practice that generates odors in excess of levels normally associated with such practice, as determined by the Department on a site specific basis, shall develop and submit an odor management plan to the Director in accordance with Section 360. ()

321. -- 329. (RESERVED)

330. APPLICABILITY.

Subchapter C applies to all agricultural operations, except: ()

01. Beef Cattle. Beef cattle animal feeding operations regulated pursuant to IDAPA 02.04.15, “Rules Governing Beef Cattle Animal Feeding Operations.” ()

02. Swine and Poultry. Large swine operations regulated pursuant to IDAPA 58.01.09, “Rules Regulating Swine Facilities,” and large poultry operations regulated pursuant to IDAPA 02.04.32, “Rules Governing Poultry Operations.” ()

~~**331. -- 339. (RESERVED)**~~

~~**340. LIQUID WASTE SYSTEMS.**~~

~~No person shall begin construction of a new or modified liquid waste system prior to approval of such system by the Director. (3-31-22)~~

~~**01. Department Review.** The Director may order the construction to cease if the construction of a new or modified liquid waste system has commenced prior to the Director’s approval. In doing so, the Director will consider a review and assessment of such systems made by Department staff. (3-31-22)~~

~~**02. Design Requirements.** All new or modified liquid waste systems shall be designed by licensed professional engineers, approved in writing by the Director, and constructed in accordance with standards and specifications approved by the Director for management of odors. (3-31-22)~~

~~**a.** If construction is commenced prior to the Director’s written approval, the Director may order~~

~~construction activities to be ceased. (3-31-22)~~

~~**b.** Material deviations from the approved plans and specifications are not allowed without the prior written approval of the director. (3-31-22)~~

~~**e.** Within thirty (30) days of completion of construction, alteration or modification of any new or modified liquid waste system, complete and accurate plans and specifications depicting the actual construction, alteration, or modification performed must be submitted by the operator to the Director. (3-31-22)~~

~~**d.** If construction does not materially deviate from the plans approved by the Director, a statement to that effect shall be filed by the agricultural operation with the Director. (3-31-22)~~

341. STANDARDS AND SPECIFICATIONS FOR LIQUID WASTE SYSTEMS.

All new or modified liquid waste systems shall be designed and constructed in accordance with applicable laws and rules, and for the purpose of managing odors. The Director shall require techniques and management practices as standards and specifications of liquid waste systems for the management of odors. These techniques and management practices may include but are not be limited to the following: (3-31-22)

~~**01. Wastewater Storage and Containment Facilities:** (3-31-22)~~

~~**a.** Liquid solid separation. (3-31-22)~~

~~**b.** Wastewater treatment. (3-31-22)~~

~~**e.** Use of chemical or biological additives. (3-31-22)~~

~~**d.** Dilution of wastewater. (3-31-22)~~

~~**e.** Impermeable or permeable storage covers. (3-31-22)~~

~~**f.** Biofilters. (3-31-22)~~

~~**g.** Enhancing dispersion. (3-31-22)~~

~~**h.** Location of wastewater discharge into storage and containment facilities. (3-31-22)~~

~~**02. Wastewater Collection and Conveyance Systems:** (3-31-22)~~

~~**a.** Wastewater Treatment. (3-31-22)~~

~~**b.** Use of chemical or biological additives. (3-31-22)~~

~~**e.** Dilution of wastewater. (3-31-22)~~

~~**d.** Impermeable or permeable covers of collection areas. (3-31-22)~~

~~**e.** Timing of collection and conveyance system operation. (3-31-22)~~

~~**f.** Frequency and duration of collection and conveyance system operation. (3-31-22)~~

~~**g.** Enhancing dispersion. (3-31-22)~~

~~**342.—349. (RESERVED)**~~

350. INSPECTIONS.

The Director or Director's designee is authorized to enter and inspect any agricultural operation, and during normal business hours have access to or copy any facility records deemed necessary to ensure compliance with Subchapter C

~~of these rules.~~ (3-31-22)

~~354~~**31.** -- 359. (RESERVED)

360. ODOR MANAGEMENT PLANS.

OMP~~s shall be~~ are designed to work in conjunction with any required NMP and ~~shall must~~ be submitted ~~to the Director~~ in writing, ~~and upon for~~ approval by the Director, ~~signed by owner or operator of the agricultural operation.~~ (3-31-22)()

01. OMP Development. Within sixty (60) days of receiving a NOV for a first time violation, the owner or operator of the agriculture operation ~~receiving the NOV~~ shall submit an OMP to the Director ~~an OMP~~ for approval. (3-31-22)()

02. Interim Measures. The Department will work with ~~the owner or operator of an agriculture operation that has received a NOV for a first time violation~~ ors to identify interim measures that can be implemented in a timely manner to begin the process of reducing odors while the OMP is being developed. (3-31-22)()

03. Department Approval. OMPs submitted to the Department from operators committing a first-time violation ~~The Director~~ will be approved, ~~rejected,~~ or requeste ~~d to provide~~ additional information, within thirty (30) days of receiving an OMP from the owner or operator of an agricultural operation deemed to have committed a first time violation and provide to the owner or operator of the agricultural operation the approval, rejection, or request for additional information in writing. (3-31-22)()

a. ~~If the Director rejects an OMP or requests additional information, the owner or operator of the agricultural operation shall submit to the Director the additional information or a rewritten OMP that address the reasons for the rejection within thirty (30) days of receiving written notification from the Director.~~ (3-31-22)

b. ~~Within fifteen (15) days of receiving the additional information or a rewritten OMP, the Director will approve or reject the OMP. If the OMP is rejected, the Director may issue a subsequent violation under Section 371 of these rules, and assess the penalty provisions specified in Subchapter C, Section 370 of these rules, and Section 25-3808, Idaho Code.~~ (3-31-22)

e. ~~The Director may, on a case by case basis, grant extensions to the deadlines contained in this section.~~ (3-31-22)

04. Implementation. ~~OMPs shall be implemented as approved by the Director.~~ (3-31-22)

054. Review of OMP. The Department will review OMPs no less than annually for three (3) years after the Director approves the OMP. If the Department determines an approved OMP has not reduced odors to a level associated with accepted agricultural practices after a reasonable period of time, as determined by the Department, the Department will review the OMP with the owner or operator of the agricultural operation and adjust the OMP to meet the goals of the Agriculture Odor Management Act. ()

361. CONTENTS OF AN ODOR MANAGEMENT PLAN.

Contents of an OMP for an agricultural operation ~~may include, but are not limited to the following:~~ shall include all relevant information as required by the Department. (3-31-22)()

01. Owner's Name. ~~Name and telephone number of the owner of the operation.~~ (3-31-22)

02. Address. ~~Physical address of the operation.~~ (3-31-22)

03. Location. ~~County in which the operation is located.~~ (3-31-22)

04. Operation Description. ~~A description of the operation that includes, as applicable:~~ (3-31-22)

a. ~~Type of operation.~~ (3-31-22)

- ~~b.~~ ~~General description of operation.~~ (3-31-22)
- ~~e.~~ ~~Number and type of any animals including age groups.~~ (3-31-22)
- ~~d.~~ ~~Any plans for expansion.~~ (3-31-22)
- ~~e.~~ ~~Type of housing used related to age groups of animals.~~ (3-31-22)
- ~~f.~~ ~~General description of nearby residential areas, public use areas, and pertinent agricultural operations.~~ (3-31-22)
- ~~g.~~ ~~Type of crop and number of acres grown.~~ (3-31-22)

051. **Scaled Vicinity Map.** A map that shall include all residences, public use areas, roads, general topography of the area, and other pertinent agricultural operations within a two (2) mile radius of the facility. ()

062. **Manure Management System.** A detailed description of the present manure handling systems including timing, frequency, duration, volumes, dimensions, and flow rates where applicable for the following: ()

- a. Manure cleaning systems. ()
- b. Manure transfer systems. ()
- c. Manure separation systems. ()

073. **Scaled Site Plan.** A site plan showing all buildings, housing facilities, waste/manure storage areas, piping, feed storage areas, and roadways. ()

084. **Land Application System.** A detailed description of the present management practices and methods used to make land application including: ()

- a. Timing, frequency, and duration of practices. ()
- b. Proximity of land application sites to residential and public use areas. ()

095. **Climatic Data.** A description of the typical climatic conditions for a minimum period of two (2) years that exist in the geographical area of the operation or have been recorded on-site for the operation including: ()

- a. Wind Speed and direction(s). ()
- b. Temperature range. ()
- c. Relative humidity range. ()
- d. Precipitation data. ()

~~1006.~~ **Facility Odor Sources.** A list of all primary odor sources located on the operation with a general ranking of low, moderate, or high with respect to overall odor production along with an explanation of why it is listed as a source and the reasoning for the overall ranking. ()

~~107.~~ **Tiered Implementation.** A three-tier process shall be used to reduce odor production from the facility with each tier containing a list of the primary BMPs and BATs that are going to be implemented by the facility. For each tier BMP and BAT listed, the plan shall include, but not be limited to: ()

- a. Process of how the BMP or BAT will be designed or managed. ()

b. Implementation schedule that defines when the BMP or BAT will be implemented on the facility and justification for why this time frame was chosen. ()

c. Monitoring program that will be implemented to evaluate the effectiveness of the BMP or BAT, with quantitative or qualitative reduction goals. ()

~~1208.~~ **Public Involvement.** This section shall describe how the public in the area of the facility will be involved in the implementation or evaluation of the OMP. ()

~~1309.~~ **Timeframe for Review of OMP.** A designated period of time when each tier of the plan will be evaluated to determine if further implementation is necessary, how each tier will be evaluated, which Department staff will conduct the review, and a period of time in which the agricultural operation will attain full compliance with the plan. ()

~~362. – 369.~~ (RESERVED)

~~370.~~ **FIRST-TIME VIOLATIONS.**

~~If the Department determines that an agricultural operation is generating odors in excess of levels of odors normally associated with accepted agricultural practices, the agricultural operations shall be deemed to have committed a first time violation of Subchapter C. The Department shall require agricultural operations deemed to have committed a first time violation to cooperate with the Department to develop and submit to the Director for approval an OMP. (3-31-22)~~

~~371.~~ **SUBSEQUENT VIOLATIONS.**

~~Agricultural operations have committed a subsequent violation if the operation is determined to have committed a subsequent violation within three (3) years, has failed to comply with a required OMP, or the Department determines that the owner or operator of the agriculture operation has not cooperated with the Department by failing to submit an OMP that meets Department approval requirements. (3-31-22)~~

~~372.~~ **EXCEPTIONS.**

~~Events contemplated in Section 25-3805(7), Idaho Code, are not considered violations of this subchapter. Section 25-3805, Idaho Code, is applicable whether or not an agricultural operation is required to have an OMP. (3-31-22)~~

~~373~~~~62.~~ -- 409. (RESERVED)

SUBCHAPTER D – STOCKPILING OF ~~AGRICULTURAL~~ LIVESTOCK WASTE

410. DEFINITIONS.

The following definitions apply: ~~in the interpretation and enforcement of Subchapter D, Sections 410-999:~~ (3-31-22)()

01. Agricultural Operation. Facilities that generate or receive and stockpile ~~agricultural~~ livestock waste and that are not regulated under IDAPA 02.04.14, “Rules Governing Dairy Byproduct,” or IDAPA 02.04.15, “Rules Governing Beef Cattle Animal Feeding Operations.” (3-31-22)()

~~02. Agricultural Waste.~~ Agricultural waste means livestock waste. (3-31-22)

~~032.~~ **Duration.** The length of time ~~agricultural~~ livestock waste is stockpiled. (3-31-22)()

~~043.~~ **Dwelling.** The ~~house, residence, abode, or other~~ structure where a person lives. (3-31-22)()

~~054.~~ **Livestock.** Bovidae, suidae, equidae, captive cervidae, camelidae, ratitidae, gallinaceous birds, and captive waterfowl. ()

~~065.~~ **Livestock Waste.** Manure that may also contain bedding, spilled feed, feathers, water, ~~or process water, feed leachate,~~ soil, ~~or livestock carcasses or parts thereof.~~ ~~It also includes wastes not particularly associated~~

~~with manure, such as milking center or washing wastes, milk, feed leachate, or livestock carcasses or parts thereof.~~ (3-31-22)()

~~07. Non-Compliance. A practice or facility condition that does not comply with Section 22-110, Idaho Code, or the provisions of these rules.~~ (3-31-22)

06. Process Water. Water directly or indirectly used or produced in dairy animal rearing or milk production. ()

07. Public Highway. All highways open to public use in the state, whether maintained by the state or by any county, highway district, city, or other political subdivision. ()

08. Responsible Party. A person who generates or receives and stockpiles agricultural waste on property the person owns, leases, or otherwise has permission to use as a stockpile site. ()

~~10. Setbacks for a Stockpile Site. The distance from a stockpile site to a location identified in Section 420 of Subchapter D.~~ (3-31-22)

~~109. Stockpile Staging Site.~~ A physical area where stockpiling occurs for a duration of no longer than thirty (30) days. ()

120. Stockpile Site. A physical location where agricultural livestock waste is stockpiled for a duration of more than thirty (30) days and that stockpiles more than fifty (50) cubic yards of agricultural livestock waste. (3-31-22)()

131. Stockpiling. The accumulation of agricultural livestock waste on an agricultural operation. (3-31-22)()

~~14. Surface Waters of the State. All accumulations of surface water, natural and artificial, public and private, or parts thereof that are wholly or partially within, that flow through or border upon the state.~~ (3-31-22)

411. -- 419. (RESERVED)

420. SETBACKS FOR STOCKPILE SITES.

Stockpile sites at agricultural operations must meet the following setback requirements. ()

01. Setback Distances. Stockpile sites shall maintain the following setbacks: ()

a. Three hundred (300) feet from a non-responsible party's dwelling. ()

b. Five hundred (500) feet from a hospital, church, or school. ()

c. One hundred (100) feet from a domestic or irrigation well. ()

d. One hundred (100) feet from surface waters of the State. ()

e. Fifty (50) feet from a public highway. ()

02. Responsible Party's Dwellings. Stockpile sites do not have setbacks from ~~a responsible party's dwelling or~~ dwellings owned by the responsible party. (3-31-22)()

03. Stockpile Staging Sites. Stockpile staging sites are not subject to the setbacks set forth in Subchapter D. ()

421. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.04.32 – RULES GOVERNING POULTRY OPERATIONS
DOCKET NO. 02-0432-2301 (ZBR CHAPTER REWRITE, FEE RULE)
NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 25-4012, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

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

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

This rule is being presented for authorization as part of the ISDA’s plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor’s [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

These rules govern the management practices of waste systems on poultry concentrated animal feeding operations.

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

No changes to fees were included in this rulemaking. Fees in the current rule include an assessment for each poultry permittee of no more than (\$0.03) per square foot of containment area.

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

There is no fiscal impact 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 May 3, 2023 Idaho Administrative Bulletin, [Vol. 23-5, Page 11](#).

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

The Nutrient Management Standard (2007 Publication) is incorporated by reference to serve as a standard for nutrient management planning required by the rule.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), for any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, the director shall identify the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal government. The following sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

This rule regulates activity and provides requirements beyond those required by the federal government, per the direction and authorization of Idaho Code.

The detailed 22-101A analysis can be found on the agency's website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

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 25, 2023.

DATED this 4th day of October, 2023.

Lloyd B. Knight
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, ID 83707
Phone: (208) 332-8615
Email: lloyd.knight@isda.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 02-0432-2301
(ZBR Chapter Rewrite)

02.04.32 – RULES GOVERNING POULTRY OPERATIONS

000. LEGAL AUTHORITY.

~~This chapter is adopted under the legal authority of~~ Section 25-4012, Idaho Code. (3-15-22)()

001. ~~TITLE AND SCOPE.~~

01. ~~Title.~~ The title of this chapter is IDAPA 02.04.32, "Rules Governing Poultry Operations." (3-15-22)

02. ~~Scope.~~ These rules govern the ~~design, function and~~ management practices of waste systems on poultry concentrated animal feeding operations. ~~These rules also establish the procedures and requirements for issuance of a permit to construct, operate, or expand poultry concentrated animal feeding operations.~~ (3-15-22)()

002. -- 003. (RESERVED)

004. INCORPORATION BY REFERENCE.

The following documents ~~are~~ **is** incorporated by reference and ~~a copies~~ **y** of ~~these~~ **this** documents may be obtained from the Idaho State Department of Agriculture central office. (3-15-22)()

01. ~~The 2004 Code of Federal Regulations (CFR) Title 40 Part 122 Section 122.23 (b).~~ This document can be viewed online at <https://www.govinfo.gov/content/pkg/CFR-2004-title40-vol20/pdf/CFR-2004-title40-vol20-part122.pdf>. (3-15-22)

~~02. Natural Resources Conservation Service Agricultural Waste Management Field Handbook Appendix 10D (Appendix 10D) (March 2008 Edition) (USDA, NRCS). This document can be viewed online at <https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=17767.wba>. (3-15-22)~~

~~031. Nutrient Management Standard (NMS). The June 2007 publication by the United States Department of Agriculture (USDA) Idaho Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/10/june_2007_NRCS_590.pdf. ()~~

~~04. Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004. This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/10/nres_313_Dec_2004.pdf. (3-15-22)~~

~~05. American Society of Agricultural and Biological Engineers Specification ASAE EP393.3 Manure Storages February 2004. This document can be viewed online at <https://www.asabe.org/Publications-Standards/Standards-Development/National-Standards/Published-Standards>. (3-15-22)~~

005. -- 009. (RESERVED)

010. DEFINITIONS.

~~In addition to the definitions set forth in Section 25-4002, Idaho Code, t~~The following definitions apply: ~~in the interpretation and the enforcement of this chapter.~~ (3-15-22)()

~~01. Discharge. Release of process wastewater or manure from a poultry animal feeding operation, including its land application area, to waters of the state or beyond the poultry facility's property boundaries or beyond the property boundary of any facility. Contract manure haulers, producers and other persons who haul manure beyond the operator's property boundaries are responsible for releases of manure between the property boundaries of the operator and the property boundaries at the point of application. A discharge does not include aerosolized matter, or manure that has been reasonably incorporated on the land application area. ()~~

~~02. Idaho Pollutant Discharge Elimination System (IPDES). Idaho's program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under these rules and the Clean Water Act sections 307, 402, 318, and 405. (3-15-22)~~

~~032. Runoff. Any precipitation that comes into contact with manure, compost, bedding, or feed on a poultry feeding operation and flows off the production area or flows off land application areas where the manure, compost, bedding, or feed has not been reasonably incorporated into the soil. ()~~

011. ABBREVIATIONS.

~~01. AFO. Animal Feeding Operation. ()~~

~~02. ASABE. American Society of Agricultural and Biological Engineers. (3-15-22)~~

~~032. CAFO. Concentrated Animal Feeding Operation. ()~~

~~04. DEQ. Department of Environmental Quality. (3-15-22)~~

~~05. FEMA. Federal Emergency Management Agency. (3-15-22)~~

~~06. IPDES. Idaho Pollutant Discharge Elimination System. (3-15-22)~~

~~073. NMP. Nutrient Management Plan. ()~~

~~08. NMS. Nutrient Management Standard. (3-15-22)~~

~~094. NRCS. United States Department of Agriculture, Natural Resources Conservation Service.~~

()

~~405.~~ USGS. United States Geological Survey.

()

012. -- 109. (RESERVED)

110. PERMIT APPLICATION.

~~01. Permit Application.~~ Every person required by Section 25-4003, Idaho Code, to obtain a permit must submit a permit application to the department. The permit application will be used to determine if the construction and operation of the poultry CAFO will be in conformance with these rules. (3-15-22)

~~02. Contents of Application.~~ Each Poultry CAFO permit applications must include, in the format set forth by the director in sufficient detail to allow the director to make necessary application review decisions concerning design and environmental protection by providing the following: all required information and be submitted on a form approved by the Administrator. (3-15-22)()

~~a.~~ Name, mailing address and phone number of the facility owner. (3-15-22)

~~b.~~ Name, mailing address and phone number of the facility operator. (3-15-22)

~~c.~~ Name and mailing address of the facility. (3-15-22)

~~d.~~ Legal description of the facility location. (3-15-22)

~~e.~~ The one time animal capacity, by head, of the facility. (3-15-22)

~~f.~~ The type of animals to be confined at the facility. (3-15-22)

~~g.~~ The facility's biosecurity and sanitary standards. (3-15-22)

~~02. Nutrient Management Plan.~~ Permit applications must include an NMP that was prepared in conformance with IDAPA 02.04.30, "Rules Governing Environmental and Nutrient Management," and approved by the Department. ()

~~03. Construction Plans.~~ Plans and specifications for the facility's animal waste management system that include the following information: (3-15-22)

~~a.~~ Vicinity map(s) prepared on one (1) or more seven and one half minute (7.5') USGS topographic quadrangle maps or a high quality reproduction(s) that includes the following: (3-15-22)

~~i.~~ Layout of the facility, including buildings and animal waste management system; (3-15-22)

~~ii.~~ The one hundred (100) year FEMA flood zones or other appropriate flood data for the facility site and land application sites owned or leased by the applicant; and (3-15-22)

~~iii.~~ Private and community domestic water wells, irrigation wells, monitoring wells, and injection wells, irrigation conveyance and drainage structures, wetlands, streams, springs, and reservoirs that are within a one (1) mile radius of the facility. (3-15-22)

~~b.~~ A site plan showing: (3-15-22)

~~i.~~ Building locations; (3-15-22)

~~ii.~~ Waste facilities; (3-15-22)

~~iii.~~ All waste conveyance systems; and (3-15-22)

- ~~iv. All irrigation systems used for land application, including details of approved water supply protection devices; (3-15-22)~~
- ~~e. Building plans showing; (3-15-22)~~
- ~~i. All wastewater collection systems in housed units; (3-15-22)~~
- ~~ii. All freshwater supply systems, including details of approved water supply protection devices; (3-15-22)~~
- ~~iii. Detailed drawings of wastewater collection and conveyance systems and containment construction. (3-15-22)~~
- ~~d. If a CAFO Site Advisory Team suitability determination was not conducted for the facility, the following additional information must be provided: (3-15-22)~~
 - ~~i. Idaho DEQ delineated source water assessment areas within a one (1) mile radius of the facility and land application area; (3-15-22)~~
 - ~~ii. Idaho DEQ delineated nitrate priority areas that intersect the facility or land application area; (3-15-22)~~
 - ~~iii. Soil characteristics from NRCS; and (3-15-22)~~
 - ~~iv. Well logs associated with wells listed in Subsection 110.04.a.iii. (3-15-22)~~
- ~~e. All construction plans will specify how the facility will meet the engineering standards outlined in the Natural Resources Conservation Service Agricultural Waste Management Field Handbook Appendix 10D (Appendix 10D) (March 2008 Edition) (USDA, NRCS), Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004, or American Society of Agricultural and Biological Engineers Specification ASAE EP393.3 Manure Storages February 2004. (3-15-22)~~

~~**04. Nutrient Management Plan.** NMPs must be prepared in conformance with the Nutrient Management Standard or other equally protective standard for managing the amount, source, placement, form and timing of the land application of nutrients or soil amendments. (3-15-22)~~

~~**03. Wastewater Storage and Containment Facilities.** For a poultry CAFO permit to be granted or renewed, all permitted facilities shall have a wastewater storage and containment facility included in the NMP that are designed, constructed, operated, and maintained pursuant to IDAPA 02.04.30, "Rules Governing Environmental and Nutrient Management." ()~~

111. -- 129. (RESERVED)

130. PERMIT CONDITIONS.
The following conditions will apply to all permittees: ()

~~**01. Compliance Required.** The permittee must comply with all conditions of the permit. The permit must not relieve the permittee of the responsibility of complying with all applicable local, state, and federal laws. (3-15-22)~~

~~**021. Construction, Operation, and Maintenance of the Facility.** The permittee must ensure that construction, operation, and maintenance of the facility proceed is according to the construction plans and specifications and the approved nutrient management plans NMP, and comply with the following: (3-15-22)()~~

- ~~**a.** Within thirty (30) days of construction completion, submit as-built construction plans. (3-15-22)~~

- ~~b. Apply best management practices as approved by the director. (3-15-22)~~
- ~~e. The facility or operations associated with the facility must not adversely affect waters of the state or create nuisance conditions including odor. (3-15-22)~~
- ~~d. The removal of animal waste from an impoundment or storage structure must be performed in a manner not to damage the integrity of the liner. (3-15-22)~~
- ~~e. Dead animals must be handled in accordance with IDAPA 02.04.17, "Rules Governing Dead Animal Movement and Disposal." (3-15-22)~~
- ~~f. Nutrient management plans must be amended in accordance with IDAPA 02.04.30.000 et seq. "Rules Governing Environmental and Nutrient Management." (3-15-22)~~
- a. Provisions of approved NMPs must be adhered to and amended in accordance with IDAPA 02.04.30.000 et seq. "Rules Governing Environmental and Nutrient Management." ()
- ~~g. Soil tests must be conducted annually on all land application sites owned or leased by the permittee to determine compliance with the NMP and NMS. The director may require more frequent soil tests if he deems it necessary. (3-15-22)~~
- ~~03. Information to be Provided. The permittee must furnish to the director, within a reasonable time, any information which the director may reasonably require to determine whether causes exists to modify or revoke the permit, or to determine compliance with the permit or applicable rules. (3-15-22)~~
- ~~04. Entry and Access. The permittee must allow the director entry and access in accordance with Section 25-4008, Idaho Code. (3-15-22)~~
- ~~05. Reporting. Permittees must report discharges or noncompliance issues within the following time frames: (3-15-22)~~
 - ~~a. Within twenty four (24) hours of the time the permittee knows or should have known of a discharge or unauthorized discharge, the permittee must verbally report the discharge. (3-15-22)~~
 - ~~b. Within five (5) working days from the time a permittee knows or reasonably should have known of any event which has resulted or which may result in noncompliance with these rules, the permittee must file a written report with the director containing: (3-15-22)~~
 - ~~i. A description of the event and its cause or if the cause is not known, steps taken to investigate and determine the cause; (3-15-22)~~
 - ~~ii. The period of the event including, to the extent possible, times and dates; (3-15-22)~~
 - ~~iii. Measures taken to mitigate or eliminate the event; and (3-15-22)~~
 - ~~iv. Steps taken to prevent recurrence of the event. (3-15-22)~~
 - ~~e. Immediately, whenever the permittee knows or learns or should reasonably know of material relevant acts not submitted or incorrect information submitted in a permit application or any report or notice to the director. (3-15-22)~~
- ~~06. Construction Commencement. If a permittee fails to begin construction or expansion of a facility within five (5) years of the effective date of the permit, the director may void the permit and require a new permit application. ()~~
- ~~07. Permit Renewal. If a permittee intends to continue operation of the permitted facility after expiration of an existing permit, the permittee must apply for a new permit at least one hundred eighty (180) days~~

prior to the expiration of the permit. ()

~~08. **Specific Permit Conditions.** The director may establish specific permit conditions on a case-by-case basis. Specific conditions will be established in consideration of facility's specific characteristics and will be designed to protect the state's water resources. (3-15-22)~~

131. -- 139. (RESERVED)

140. FEES AND ASSESSMENTS.

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

02. Payment of Annual Fees or Assessments. Annual fees or assessments are due annually by January 20th of the next calendar year. ()

141. -- 149. (RESERVED)

150. PERMIT MODIFICATION.

~~01. **Minor Modifications.** Minor permit modifications are those which do not have a potential effect on the state's water resources. Such modifications will be made by the director, and are generally limited to: that are not limited to the correction of errors, transfer of ownership or operational control, or minor changes in operational conditions that do not affect state water resources, must be submitted to the Department as a new permit application. (3-15-22)()~~

~~a. The correction of typographical or clerical errors; (3-15-22)~~

~~b. Transfer of ownership or operational control in accordance with Section 160; or (3-15-22)~~

~~c. Certain minor changes in monitoring or operational conditions. (3-15-22)~~

~~02. **Major Modifications.** All permit modifications not considered minor will be deemed major. The procedure for making major modifications is the same as that used for a new permit under these rules. (3-15-22)~~

151. -- 159. (RESERVED)

160. TRANSFER OF PERMITS.

01. Transfer Application. A new owner or operator of a facility must submit a transfer application to the ~~director~~ Department on an approved form that includes ~~at least the following~~ all required information and any change of conditions at the facility resulting from the permit transfer. (3-15-22)()

~~a. The relevant information required by Subsection 110.03; and (3-15-22)~~

~~b. Any change of conditions at the facility resulting from the ownership or operation transfer. (3-15-22)~~

02. Transfer Application Review. ~~The director will review the transfer application and either approve or deny the application within sixty (60) days of its receipt. (3-15-22)~~

~~a. An approved transfer will be considered a minor modification pursuant to Subsection 150.01 as long as there are no major changes of conditions at the facility. Major changes of conditions at the facility are subject to Subsection 150.02. (3-15-22)~~

~~b. If the ~~director denies the~~ transfer application is denied, the applicant will be provided, he will set forth the specific reasons for the denial, the steps necessary to meet the requirements for a permit transfer, and the~~

opportunity to request a hearing.

(3-15-22)()

161. -- 199. (RESERVED)

200. WASTE STORAGE AND CONTAINMENT FACILITIES.

~~01. Wastewater Storage and Containment Facilities. Construction, operation, and maintenance shall be in accordance with IDAPA 02.04.30, "Rules Governing Environmental and Nutrient Management." All poultry AFOs where process wastewater leaves the confinement area and has the potential to impact water of the state or be in violation of state water quality standards or ground water quality standards must have wastewater storage and containment facilities designed, constructed, operated, and maintained sufficient to contain:~~ (3-15-22)()

- ~~a. All process wastewater generated on the facility during the non-land application season; (3-15-22)~~
- ~~b. The runoff from a twenty-five (25) year, twenty-four (24) hour rainfall event; and (3-15-22)~~
- ~~e. Either three (3) inches of runoff from the accumulation of winter precipitation or the amount of runoff from the accumulation of precipitation from a one-in-five (1 in 5) year winter. (3-15-22)~~

~~02. All Substances Entering Wastewater Storage and Containment Facilities. All substances entering wastewater storage and containment facilities must be composed of manure and process wastewater from the operation of the poultry AFO. The disposal of any other materials into a wastewater storage and containment facility, including, but not limited to, human waste, is prohibited. (3-15-22)~~

~~03. Waste Storage. Storage areas for poultry waste including compost and solid manure storage areas must be located on approved soils and appropriately protected to prevent run on and run off. (3-15-22)~~

~~04. Waste and Wastewater System Maintenance. Waste and wastewater storage and containment systems must be maintained in a condition that allows the producer to regularly inspect the integrity of the systems. (3-15-22)~~

~~05. Additional Ground Water Protection Requirements. The permittee must construct and maintain all waste containment structures within the parameters of this rule, including the Natural Resources Conservation Service Agricultural Waste Management Field Handbook Appendix 10D (Appendix 10D) (March 2008 Edition) (USDA, NRCS), Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004, or American Society of Agricultural and Biological Engineers Specification ASAE EP393.3 Manure Storages February 2004 (see Section 004, Incorporation by Reference). After inspection, if the Department has information that the waste containment structure(s) has been compromised severely enough to no longer meet the requirements of this rule, the Department may require an evaluation to be conducted by a licensed professional engineer. The engineer will make recommendations on steps needed to bring the facility into compliance with this rule. The permittee is responsible for engineering and reconstruction costs. If the permittee has a repeat waste containment compromise, as determined by the department, the Director may require ground water monitoring by the permittee. (3-15-22)~~

201. -- 249. (RESERVED)

250. NUTRIENT MANAGEMENT.

~~Each poultry CAFO must submit an NMP for land owned or controlled by the operator to the director for approval. The NMP must conform to the NMS and address odors generated in excess of odors normally associated with raising poultry in Idaho. (3-15-22)~~

~~01. Designated Poultry CAFOs. Any poultry AFO which is designated as a CAFO by the Department in accordance with Section 400 must submit an NMP within forty-five (45) days of designation. ()~~

~~02. NMP Approval. The director will respond to or approve an NMP in writing within forty-five (45) days of submission. (3-15-22)~~

~~03. NMP Updates or Amendments. Nutrient management plans must be updated as needed to accurately reflect the facility and its nutrient management system. (3-15-22)~~

251. NUTRIENT MANAGEMENT PLAN RETENTION.

All NMPs which have been approved by the department and returned to the CAFO records must be maintained on site at by the CAFO permittee for a minimum of five (5) years and made available to the Department upon request. The department will retain a copy of the NMP. (3-15-22)()

252. NUTRIENT MANAGEMENT RECORDS.

~~01. Required Nutrient Management Records. The CAFO operator must keep complete and accurate records of: (3-15-22)~~

~~a. Land application records, consisting of, at a minimum: (3-15-22)~~

~~i. The dates, methods and approximate amounts of any manure or process wastewater applied on land owned or controlled by the operator. (3-15-22)~~

~~ii. Weather conditions and soil moisture at the time of application. (3-15-22)~~

~~iii. The lapsed time to manure incorporation, rainfall or irrigation event. (3-15-22)~~

~~iv. Documentation of the actual rate at which nutrients were applied. When the actual rate used differs from the recommended and planned rates, nutrient management records must indicate the rationale for the difference. (3-15-22)~~

~~b. The name and address of any third party receiving manure or process wastewater from the facility, including the dates of the transfer and the amount of manure or process wastewater transferred. (3-15-22)~~

~~c. Nutrient Application. The quantities, analyses and sources of nutrients applied. (3-15-22)~~

~~d. Soil Analysis. Complete soil analysis to create nutrient budget. (3-15-22)~~

~~e. Crops. Crops planted, planting and harvest dates, yields and crop residues removed. (3-15-22)~~

~~f. Record Review. Dates of annual review, person performing the review, and recommendations determined from the review. (3-15-22)~~

~~02. Records Retention. All nutrient management records must be maintained for a period of five (5) years and provided to the department upon request. (3-15-22)~~

253. NMP VIOLATIONS.

The failure to implement an approved NMP, failure to retain and maintain an NMP at the CAFO, or failure to retain nutrient management records is a violation of these rules. (3-15-22)

254. -- 259. (RESERVED)

260. GROUND WATER QUALITY MONITORING.

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

261. -- 299. (RESERVED)

300. PROHIBITED DISCHARGES.

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

301. -- 309. (RESERVED)

310. NOTIFICATION OF DISCHARGE.

Within twenty-four (24) hours of learning of a discharge ~~or unauthorized discharge~~, the operator of a poultry CAFO must ~~verbally~~ notify the ~~Department of the discharge or unauthorized discharge~~. (3-15-22)()

~~311.—499. (RESERVED)~~

500. INSPECTIONS.

Pursuant to Title 25, Chapter 40, Idaho Code, the director or his designee is authorized to inspect any poultry AFO, and to have access to and copy any facility records deemed necessary to ensure compliance with Title 25, Chapter 40, Idaho Code, and these rules. (3-15-22)

~~01. Frequency. All poultry CAFOs will be inspected at least annually, or at intervals sufficient to determine that waste has been managed to prevent an unauthorized discharge or contamination of waters of the state. (3-15-22)~~

~~02. Inspection Methods. Inspections may include, but are not limited to, evaluating effectiveness of best management practices, collecting samples, taking photographs, video recording or collecting other information as necessary. (3-15-22)~~

~~501.—549. (RESERVED)~~

550. VIOLATIONS.

~~01. Failure to Comply. Failure by a permittee to comply with the provisions of these rules or with any permit condition is a violation of these rules. (3-15-22)~~

~~02. Falsification of Statements and Records. It is a violation of these rules for any person to knowingly make a false statement, representation, or certification in any application, report, document, or record developed, maintained, or submitted pursuant to these rules or the conditions of a permit. (3-15-22)~~

~~03. Discharge. Any discharge or unauthorized discharge from a facility is a violation of these rules. (3-15-22)~~

~~551~~311. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.06.01 – RULES GOVERNING THE PRODUCTION AND DISTRIBUTION OF SEED

DOCKET NO. 02-0601-2301 (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 22-2006, 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 18, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 Eastern Oregon Seed Association (IEOSA) has petitioned the agency to open rulemaking regarding the service fee schedule for the State Seed Lab, which is operated by the agency. The petition expresses the concern that the current fee structure is “incompatible” with fee structures in surrounding state seed labs and private sector seed labs. The petition further states that the State Seed Lab fee structure is much lower than private sector and surrounding state seed labs.

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

Two rulemaking meetings were held, and the fee structure proposed is a result of those meetings. The fee structure includes a 51% increase across all fees, with additional increases for rush fees and beans as detailed below and included in Sections 190 through 192.

Purity, Germination, and Tetrazolium Fees			
Kind of Seeds	Purity* \$/Unit	Germination \$/Unit	Tetrazolium** \$/Unit
AGRICULTURAL GRASS SEED			
Bluegrasses	\$68	\$38	\$60
Bromegrasses	\$57	\$36	\$60
Fescues	\$53	\$33	\$60
Orchardgrass	\$57	\$38	\$60
Ryegrasses	\$57	\$35***	\$60
Timothy	\$42	\$35	\$60
For all others the hourly rate will apply			
FIELD SEED			
Alfalfa, clovers and trefoils	\$30	\$26	\$60

Cereals (Barley, Oats, Rice, Rye, Triticale and Wheat)	\$38	\$26	\$60
Beans	\$32	\$28	\$60
Corn (all types)	\$30	\$26	\$60
Peas, and Lentils	\$27	\$26	\$60
For all others the hourly rate will apply			
VEGETABLES, FLOWERS AND HERB SEED			
Brassica (Canola, Cauliflower, Broccoli, Radish, etc.)	\$60	\$26	\$76
Beets and Swiss chard	\$44	\$48	\$60
Carrots, celery, dill and parsley	\$41	\$30	\$60
Curcubits (Squash, melons, etc.)	\$38	\$30	\$60
Flowers (Bachelors button, poppy, etc.)	\$60	\$38	\$76
Lettuce, tomato, and pepper	\$38	\$30	\$60
Onion and Chives	\$38	\$30	\$60
For all others the hourly rate will apply			
TREE AND SHRUB SEED			
Bitterbrush	\$60	\$45	\$76
Saltbush	\$91	\$45	\$76
Chokecherry and Woods' rose	\$38	\$91	\$91
Serviceberry, cliff-rose and mahogany	\$45	\$45	\$60
Trees (Firs, pines, spruces, etc.)	\$38	\$45	\$60
For all others the hourly rate will apply			
RANGE AND NATIVE SEED			
Bluestems and grammas	Hourly Rate	\$45	\$76
Globemallow and penstemons	\$60	\$45	\$76
Kochia and forage Kochia	\$45	\$45	\$60
Rushes and Sedges	Hourly Rate	\$45	\$76
Sagebrush and Rabbitbrush	Hourly Rate	\$45	\$60
Wheatgrasses, wildryes, and squirreltail	\$60	\$38	\$60
Winterfat	Hourly Rate	\$45	Hourly Rate
For all others the hourly rate will apply			

* Samples with high levels of impurities (i.e. other crops, weeds, multiple florets, inert materials) requiring more than one (1) hour analyst time for purity testing will be charged the standard hourly rate of forty dollars (\$40) for each additional hour.

** For all samples submitted for a TZ or Germination test requiring more than one (1) hour for cleaning and/or preparing will be charged at the standard hourly rate of forty dollars (\$40) for each additional hour.

*** With germination fluorescence testing thirty dollars (\$30).

Special Testing Fees	
Test Procedures:	Fees \$/Unit
All States Noxious	\$38
Canada: Purity Germination	\$20 - Added to purity fee \$4.00- Added to germination fee
Certified Grains	\$13 - Added to purity fee
Cold Test	\$35
Crop & Weed Check	\$37
Dormancy Percentage	\$11 - Minimum or Dormant % found x germination fee
E.C. Norms	\$30
Ergot Check	\$20
Noxious Weed Germination (Compost/Mulch, etc.)	\$27
Noxious Weed Purity (Hay, Straw, etc.)	\$Hourly Rate
Identification	\$8- Minimum or hourly if necessary
Inventory Germinations (For Carryover Seed Only, when requested)	20% discount of listed germination fee; Available only for the months of March through July.
ISTA: Purity Germination	\$20 - Added to purity fee \$4.- Added to germination fee
Mixtures: Purity Germination Tetrazolium	\$19 - Added per kind exceeding 5% \$19 - Added per kind exceeding 5% \$27 - Added per kind exceeding 5%
Moisture Test	\$21

Round-Up-Ready Trait Test (Alfalfa, Canola, Corn)	\$60
Sand Germination	\$38
Seed Count	\$20
Soil Exam	\$43.50 <u>20.00</u>
Sod Quality:	
Bentgrass	\$100
Bermudagrass	\$97
Bluegrass	\$97
Soil Germination	\$35
Species Exam	\$37
Undesirable Grass Species	\$39

Miscellaneous Fees	
Type of Service:	Fees \$/Unit
Administrative Charge per Test for Internet Access and Data Processing.	Not to exceed \$2 per test
Hourly Charge	\$60
Reports:	
Merge Records	\$4
Rush Service (priority processing over standard)	\$75
Super Rush Service (priority processing over Rush)	\$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 resulting from this rulemaking:

If there were no changes in sample volume, the proposed changes would result in an additional \$110,000 in dedicated fund revenue.

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 5, 2023 Idaho Administrative Bulletin, [Vol. 23-7, page 12](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), for any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, the director shall identify the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal government. The following sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

This rule regulates an activity that is not regulated by the federal government; therefore the entire rule is broader in scope or more stringent than federal law. All activity is authorized or directed by Idaho Code.

The detailed 22-101A analysis can be found on the agency’s website at: www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

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 25, 2023.

DATED this 4th day of October, 2023.

Lloyd B. Knight
 Deputy Director
 Idaho State Department of Agriculture
 2270 Old Penitentiary Road
 P.O. Box 7249
 Boise, ID 83707
 Phone: (208) 332-8615
 Email lloyd.knight@isda.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 02-0601-2301
(Only Those Sections With Amendments Are Shown.)

190. SERVICE TESTING FEES -- PURITY, GERMINATION AND TETRAZOLIUM FEES.

Purity, Germination, and Tetrazolium Fees			
Kind of Seeds	Purity* \$/Unit	Germination \$/Unit	Tetrazolium** \$/Unit
AGRICULTURAL GRASS SEED			
Bluegrasses	\$ 45 ⁶⁸	\$ 25 ³⁸	\$ 40 ⁶⁰
Brome-grasses	\$ 38 ⁵⁷	\$ 24 ³⁶	\$ 40 ⁶⁰
Fescues	\$ 35 ⁵³	\$ 22 ³³	\$ 40 ⁶⁰
Orchardgrass	\$ 38 ⁵⁷	\$ 25 ³⁸	\$ 40 ⁶⁰
Ryegrasses	\$ 38 ⁵⁷	\$ 23 ³⁵ ***	\$ 40 ⁶⁰

Purity, Germination, and Tetrazolium Fees			
Kind of Seeds	Purity* \$/Unit	Germination \$/Unit	Tetrazolium** \$/Unit
Timothy	\$ 28 <u>42</u>	\$ 23 <u>35</u>	\$ 40 <u>60</u>
For all others the hourly rate will apply			
FIELD SEED			
Alfalfa, clovers and trefoils	\$ 20 <u>30</u>	\$ 17 <u>26</u>	\$ 40 <u>60</u>
Cereals (Barley, Oats, Rice, Rye, Triticale and Wheat)	\$ 25 <u>38</u>	\$ 17 <u>26</u>	\$ 40 <u>60</u>
Beans	\$ 18 <u>32</u>	\$ 16 <u>28</u>	\$ 40 <u>60</u>
Corn (all types)	\$ 20 <u>30</u>	\$ 17 <u>26</u>	\$ 40 <u>60</u>
Peas, and Lentils	\$ 18 <u>27</u>	\$ 17-50 <u>26</u>	\$ 40 <u>60</u>
For all others the hourly rate will apply			
VEGETABLES, FLOWERS AND HERB SEED			
Brassica (Canola, Cauliflower, Broccoli, Radish, etc.)	\$ 40 <u>60</u>	\$ 17 <u>26</u>	\$ 50 <u>76</u>
Beets and Swiss chard	\$ 29 <u>44</u>	\$ 32 <u>48</u>	\$ 40 <u>60</u>
Carrots, celery, dill and parsley	\$ 27 <u>41</u>	\$ 20 <u>30</u>	\$ 40 <u>60</u>
Curcubits (Squash, melons, etc.)	\$ 25 <u>38</u>	\$ 20 <u>30</u>	\$ 40 <u>60</u>
Flowers (Bachelors button, poppy, etc.)	\$ 40 <u>60</u>	\$ 25 <u>38</u>	\$ 50 <u>76</u>
Lettuce, tomato, and pepper	\$ 25 <u>38</u>	\$ 20 <u>30</u>	\$ 40 <u>60</u>
Onion and Chives	\$ 25 <u>38</u>	\$ 20 <u>30</u>	\$ 40 <u>60</u>
For all others the hourly rate will apply			
TREE AND SHRUB SEED			
Bitterbrush	\$ 40 <u>60</u>	\$ 30 <u>45</u>	\$ 50 <u>76</u>
Saltbush	\$ 60 <u>91</u>	\$ 30 <u>45</u>	\$ 50 <u>76</u>
Chokecherry and Woods' rose	\$ 25 <u>38</u>	\$ 60 <u>91</u>	\$ 60 <u>91</u>
Serviceberry, cliff-rose and mahogany	\$ 30 <u>45</u>	\$ 30 <u>45</u>	\$ 40 <u>60</u>
Trees (Firs, pines, spruces, etc.)	\$ 25 <u>38</u>	\$ 30 <u>45</u>	\$ 40 <u>60</u>
For all others the hourly rate will apply			
RANGE AND NATIVE SEED			
Bluestems and grammas	Hourly Rate	\$ 30 <u>45</u>	\$ 50 <u>76</u>
Globemallow and penstemons	\$ 40 <u>60</u>	\$ 30 <u>45</u>	\$ 50 <u>76</u>

Purity, Germination, and Tetrazolium Fees			
Kind of Seeds	Purity* \$/Unit	Germination \$/Unit	Tetrazolium** \$/Unit
Kochia and forage Kochia	\$ 30 <u>45</u>	\$ 30 <u>45</u>	\$ 40 <u>60</u>
Rushes and Sedges	Hourly Rate	\$ 30 <u>45</u>	\$ 50 <u>76</u>
Sagebrush and Rabbitbrush	Hourly Rate	\$ 30 <u>45</u>	\$ 40 <u>60</u>
Wheatgrasses, wildryes, and squirreltail	\$ 40 <u>60</u>	\$ 25 <u>38</u>	\$ 40 <u>60</u>
Winterfat	Hourly Rate	\$ 30 <u>45</u>	Hourly Rate
For all others the hourly rate will apply			

* Samples with high levels of impurities (i.e. other crops, weeds, multiple florets, inert materials) requiring more than one (1) hour analyst time for purity testing will be charged the standard hourly rate of forty dollars (\$40) for each additional hour.

** For all samples submitted for a TZ or Germination test requiring more than one (1) hour for cleaning and/or preparing will be charged at the standard hourly rate of forty dollars (\$40) for each additional hour.

*** With germination fluorescence testing thirty dollars (\$30). (~~3-15-22~~)()

191. SERVICE TESTING FEES -- SPECIAL TESTS.

Special Testing Fees	
Test Procedures:	Fees \$/Unit
All States Noxious	\$ 25 <u>38</u>
Canada: Purity Germination	\$ 13 <u>20</u> - Added to purity fee \$ 2,504 <u>1,00</u> - Added to germination fee
Certified Grains	\$13 - Added to purity fee
Cold Test	\$ 23 <u>50</u> <u>35</u>
Crop & Weed Check	\$ 24 <u>50</u> <u>37</u>
Dormancy Percentage	\$ 40 <u>11</u> - Minimum or Dormant % found x germination fee
E.C. Norms	\$ 20 <u>30</u>
Ergot Check	\$13.50
Noxious Weed Germination (Compost/Mulch, etc.)	\$ 18 <u>27</u>
Noxious Weed Purity (Hay, Straw, etc.)	\$ 40 <u>Hourly Rate</u>
Identification	\$ 5 <u>8</u> - Minimum or hourly if necessary
Inventory Germinations (For Carryover Seed Only, when requested)	20% discount of listed germination fee; Available only for the months of March through July.

Special Testing Fees	
Test Procedures:	Fees \$/Unit
ISTA: Purity Germination	\$1320 - Added to purity fee \$2504 - Added to germination fee
Mixtures: Purity Germination Tetrazolium	\$12.5019 - Added per kind exceeding 5% \$12.5019 - Added per kind exceeding 5% \$1827 - Added per kind exceeding 5%
Moisture Test	\$1421
Round-Up-Ready Trait Test (Alfalfa, Canola, Corn)	\$4060
Sand Germination	\$2538
Seed Count	\$13.5020
Soil Exam	\$13.5020.00
Sod Quality: Bentgrass Bermudagrass Bluegrass	\$66100 \$6497 \$6497
Soil Germination	\$23.5035
Species Exam	\$24.5037
Undesirable Grass Species	\$25.5039

(3-15-22)()

192. SERVICE TESTING FEES -- MISCELLANEOUS FEES.

Miscellaneous Fees	
Type of Service:	Fees \$/Unit
Administrative Charge per Test for Internet Access and Data Processing.	Not to exceed \$2 per test
Hourly Charge	\$4060
<u>Reports:</u>	
Merge Records	\$4
Rush Service	\$2575
<u>Super Rush Service (priority processing over Rush)</u>	\$150

(3-15-22)()

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.06.02 – RULES GOVERNING REGISTRATIONS AND LICENSES
DOCKET NO. 02-0602-2301
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 22-604, 22-2204, 22-2303(5), 22-2503, 22-2511, and 25-2710, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 includes updates to the publication dates for publications Incorporated by Reference in the rule. The two publications include standardized definitions and standards utilized by states to regulate commercial feed, commercial fertilizer, and soil & plant amendments.

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

No changes have been made to fees for these rules.

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

There is no fiscal impact due to these changes.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these changes are to the publication dates of documents that were already incorporated into these 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:

Association of American Plant Food Control Officials (AAPFCO) Official Publication – provides a national standard that is common to all state fertilizer and soil & plant amendment regulatory programs.

Association of American Feed Control Officials (AAFCO) Official Publication – provides a national standard that is common to all state animal feed regulatory programs.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), for any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, the director shall identify the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal government. The following sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

This rule regulates an activity that is not regulated by the federal government; therefore the entire rule is broader in scope or more stringent than federal law.

The detailed 22-101A analysis can be found on the agency's website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

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 25, 2023.

DATED this 4th day of October, 2023.

Lloyd B. Knight
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, ID 83707
Phone: (208) 332-8615
Email: lloyd.knight@isda.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0602-2301
(Only Those Sections With Amendments Are Shown.)

SUBCHAPTER A – COMMERCIAL FEED

104. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into this Subchapter A: (3-23-23)

01. The Association of American Feed Control Officials (AAFCO) Official Publication. The Terms, Ingredient Definitions, Model Bill and Regulations, and Policies as published in the “20~~22~~²⁴ Official Publication” of AAFCO where those statements do not conflict with Title 25, Chapter 27, Idaho Code, and any rule promulgated thereunder. A copy may be purchased online from the AAFCO website at: www.aafco.org.
(~~3-23-23~~)()

02. The Merck Index. The “Merck Veterinary Manual,” 11th Edition, as published by Merck Research Laboratories Division of Merck & Co., Incorporated. The manual is publicly available online from Merck & Co., Inc at: <http://www.rsc.org/merckindex>. (3-23-23)

(BREAK IN CONTINUITY OF SECTIONS)

SUBCHAPTER C – FERTILIZER

404. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into Subchapter C: (3-23-23)

01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication. The Officially adopted Documents, Official Terms, and Policies, as published in the “20~~22~~²⁴ Official Publication” of AAPFCO where those statements do not conflict with Title 22, Chapter 6, Idaho Code, and any rule promulgated thereunder. A copy may be purchased online from the AAPFCO website at: www.aapfco.org. (~~3-23-23~~)()

02. The Association of Official Agricultural Chemists (AOAC) International. The “2019 Official

Methods of Analysis (OMA) of the AOAC,” 21st Edition, a copyrighted publication, is maintained and published by the AOAC International. The AOAC OMA is available in electronic format at: www.EOMA.AOAC.org. A copy may be purchased online from AOAC International. (3-23-23)

(BREAK IN CONTINUITY OF SECTIONS)

SUBCHAPTER D – SOIL AND PLANT AMENDMENTS

504. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into Subchapter D: (3-23-23)

01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication. The Terms, Ingredient Definitions, and Policies, as published in the “~~2022~~²⁴ Official Publication” of AAPFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 22, Chapter 22, Idaho Code, and any rule promulgated thereunder. A copy may be purchased online from the AAPFCO website at: www.aapfco.org. (~~3-23-23~~)()

02. The Association of Official Agricultural Chemists (AOAC) International. The “2019 Official Methods of Analysis (OMA) of the AOAC,” 21st Edition, a copyrighted publication, is maintained and published by the AOAC International. The AOAC OMA is available in electronic format at: www.EOMA.AOAC.org. A copy may be purchased online from AOAC International. (3-23-23)

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.06.04 – RULES GOVERNING PLANT EXPORTS
DOCKET NO. 02-0604-2301 (ZBR CHAPTER REWRITE, FEE RULE)
NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 22-107, 22-112, and 22-2303(5), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

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

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

This rule is being presented for authorization as part of the ISDA’s plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor’s [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

These rules govern the production of pest-free plants, plant products, and like inspections. To provide procedures for compliance with phytosanitary regulations of other states and foreign countries, in order to protect Idaho agriculture from the introduction of foreign pests on imported plants and materials. These rules also govern procedures for voluntary certification of virus-free nursery stock for export. These rules also establish a ginseng registration and export program to protect American ginseng as an endangered species.

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

Fees are charged for services requested under this rule, including phytosanitary certification and sampling, field sampling, and lab services.

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

There is no fiscal impact because 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 May 3, 2023 Idaho Administrative Bulletin, [Vol. 23-5, Page 11](#).

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

Materials cited as Incorporated by Reference include to manuals published by the United States Department of Agriculture, Plant Protection and Quarantine program as required technical standards for those certification and inspection activities performed on commodities for export.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), for any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, the director shall identify the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal

government. The following sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

This rule outlines the application of federal quarantines or phytosanitary requirements and governs state or customer activities in order to comply with those requirements.

The detailed 22-101A analysis can be found on the agency’s website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

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 25, 2023.

DATED this 4th day of October, 2023.

Lloyd B. Knight
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, ID 83707
Phone: (208) 332-8615
Email: lloyd.knight@isda.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 02-0604-2301
(ZBR Chapter Rewrite)

02.06.04 – RULES GOVERNING PLANT EXPORTS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 22-107, 22-112, and 22-2303(5), Idaho Code. ()

001. ~~TITLE AND SCOPE.~~

~~01. Title. The title of this chapter is “Rules Governing Plant Exports.” (3-15-22)~~

~~02. Scope. These rules govern the production of pest-free plants, and plant products, and like inspections. To provide procedures for compliance with phytosanitary regulations of other states and foreign countries, in order to protect Idaho agriculture from the introduction of foreign pests on imported plants and materials. These rules also govern procedures for voluntary certification of virus-free nursery stock for export. These rules also establish a ginseng registration and export program to protect American ginseng as an endangered species. (3-15-22)()~~

002. – 109. (RESERVED)

SUBCHAPTER A – PHYTOSANITARY AND POST-ENTRY ~~SEED~~ CERTIFICATION

110. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into subchapter A: ()

01. United States Department of Agriculture, Plant Protection and Quarantine Export Program Manual (XPM). The Officially adopted Documents, Official Terms, and Policies, as published in the XPM of USDA/APHIS/PPQ. A copy may be obtained online from the USDA website at: http://www.aphis.usda.gov/import_export/plants/manuals/domestic/downloads/xpm.pdf. ()

02. United States Department of Agriculture, Plant Protection and Quarantine Post-Entry Quarantine (PEQ) Manual. The Officially adopted Documents, Official Terms, and Policies, as published in the PEQ manual of USDA/APHIS/PPQ. A copy may be obtained online from the USDA website at: https://www.aphis.usda.gov/import_export/plants/manuals/domestic/downloads/postentry.pdf. ()

110. DEFINITIONS.

The definitions found in Section 110 apply to the interpretation and enforcement of Subchapter A only: (3-15-22)

01. Applicant. Any person applying for an inspection or certification under Subchapter A. (3-15-22)

~~**02. Federal Phytosanitary Certificate.** This certificate is issued by the Department pursuant to a “Memorandum of Understanding” with the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, in accordance with the Code of Federal Regulations, Title 7, Part 353, Sections 353.1 – 353.7 as amended. This type certificate may only be issued for domestic plants and plant products being exported into a foreign country. (3-15-22)~~

~~**03. Federal Phytosanitary Certificate for Reexport.** This certificate is issued by the Department pursuant to a “Memorandum of Understanding” as referenced in Subsection 110.02 above. This type certificate may only be issued for plants and plant products of foreign origin to certify that, based on the original foreign phytosanitary certificate and/or an additional inspection, the plants and plant products entered the United States in conformance with the phytosanitary regulations of the importing country and have not been subjected to the risk of infestation or infection during storage in the United States. Shipments transiting the United States under a Customs bond are not eligible for reexport certification. (3-15-22)~~

~~**04. Post-Entry Quarantine Certification.** This program is carried out pursuant to a “Memorandum of Understanding” between the Department and the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, in accordance with the Code of Federal Regulations, Title 7, Part 319.37-7 as amended. The purpose of this program is to prevent the accidental introduction of plant pests in living plants that are imported into the United States and Idaho under permit. (3-15-22)~~

~~**05. Rush Service.** This service is to accommodate phytosanitary certification applications that must be issued earlier than the routine three (3) to four (4) day turn-around. This service will be carried out only after a mutual agreement between the applicant and the Department. (3-15-22)~~

~~**06. State Phytosanitary Certificate.** This certificate may be issued for shipments of Idaho produced plants and plant products to foreign or domestic locations. This certificate is issued to confirm a field or commodity inspection for foreign destinations. This certificate must be issued to the same standard as a federal certificate as outlined in Subsection 110.02. Idaho Crop Improvement Association field inspections may serve as the basis for the issuance of a state phytosanitary certificate for domestic markets only. This certificate will also bear any notation or comment the Director may make as to any findings concerning the inspection or import requirements of the products being certified. (3-15-22)~~

~~111.—119. (RESERVED)~~

120. DESIGNATED INSPECTION AREAS.

The land mass of the state has been divided into fourteen (14) “inspection areas” to facilitate the inspection of all seed-producing localities and to confine the loci of disease infestations when they arise. These areas will be numbered serially and the boundaries of each remain fixed as described below. The cultural conditions, i.e., weather, elevation, soil type and general farming practices, are relatively uniform within each area; therefore, the disease

- ~~content of the seed produced within each respective area may be expected to be uniform. (3-15-22)~~
- ~~01. Area 1. Kootenai County. (3-15-22)~~
 - ~~02. Area 2. Benewah County. (3-15-22)~~
 - ~~03. Area 3. That portion of Latah County above two thousand (2,000) feet elevation and that portion of Nez Perce County north of the Clearwater River and above two thousand (2,000) feet elevation. (3-15-22)~~
 - ~~04. Area 4. That portion of Latah County below two thousand (2,000) feet elevation and all of the Clearwater River and below two thousand (2,000) feet elevation (3-15-22)~~
 - ~~05. Area 5. Lewis County. (3-15-22)~~
 - ~~06. Area 6. Canyon, Ada, Owyhee, Payette, Washington and Gem Counties. (3-15-22)~~
 - ~~07. Area 7. Gooding, Jerome, Lincoln and Elmore Counties. (3-15-22)~~
 - ~~08. Area 8. Twin Falls County. (3-15-22)~~
 - ~~09. Area 9. Cassia County. (3-15-22)~~
 - ~~10. Area 10. That portion of Minidoka County lying south of the main line of the Union Pacific Railroad. (3-15-22)~~
 - ~~11. Area 11. That portion of Minidoka County lying north of the main line of the Union Pacific Railroad. (3-15-22)~~
 - ~~12. Area 12. Bingham, Bonneville, Power and Bannock Counties. (3-15-22)~~
 - ~~13. Area 13. Jefferson, Madison, Fremont, Teton, Clark and Butte Counties. (3-15-22)~~
 - ~~14. Area 14. All other agricultural areas of the state not specifically designated above. (3-15-22)~~

~~121~~11. -- 129. (RESERVED)

130. CROP/COMMODITY, DISEASE AND PEST(S) INSPECTIONS.

01. **Minimum Field Inspection(s).** ~~Unless otherwise requested by the applicant, m~~Minimum field inspections for diseases will be ~~as follows~~ published annually by the Department. (3-15-22)()

~~a. Corn: Stewart's wilt, Erwinia stewartii (E.F.Sm.)Dye, head smut Sphacelotheca reiliana, common smut Ustilago zeae (U. maydis), and maize dwarf mosaic virus. (3-15-22)~~

~~b. Peas: Bacterial blight, Pseudomonas species. (3-15-22)~~

~~e. Beans: Halo Blight, caused by Pseudomonas syringae pv. phaseolicola (Burkholder 1926) Young, Dye & Wilkie 1978, (synonym P. phaseolicola (Burkholder 1926) Dawson 1943); common blight caused by Xanthomonas campestris pv. phaseoli (Smith 1897) Dye 1978, (synonyms X. phaseoli (Smith 1897) Dawson 1939, X. phaseoli var. fuscans (Burkholder 1930) Starr and Burkholder 1942); brown spot, caused by Pseudomonas syringae pv. syringae, van Hall 1902, (synonym P. syringae, van Hall 1902) only strains virulent to Phaseolus sp.; bacterial wilt, caused by Corynebacterium flaccumfaciens (Hedges 1922) Dawson 1942; or any variations or new strains of these bacteria, which are recognized as virulent to and seedborne in Phaseolus spp., and are a potential threat to seed production, all of which are hereafter referred to as bacterial diseases of beans. Anthraenose, Colletotrichum lindemuthianum (Sacc. and Magn.) Scrib. (3-15-22)~~

~~d. Alfalfa: Verticillium Wilt Verticillium albo-atrum, stem and bulb nematode Ditylenchus dipsaci.~~

- (3-15-22)
- e. Lettuce: Lettuce mosaic virus. (3-15-22)
 - f. Radish: Bacterial spot ~~*Xanthomonas campestris* pv. *vesicatoria*~~, Anthracnose ~~*Colletotrichum higginsianum*~~, blackleg ~~*Leptosphaera maculans*~~. (3-15-22)
 - g. Onion: Stem and bulb nematode ~~*Ditylenchus dipsaci*~~, Onion white rot ~~*Sclerotium cepivorum*~~, onion smut ~~*Urocystis cepulae*~~, neck rot ~~*Botrytis alli*~~, purple blotch ~~*Alternaria porri*~~. (3-15-22)
 - h. Carrot: Bacterial blight ~~*Xanthomonas campestris* pv. *carotae*~~, soft rot ~~*Erwinia carotovera*~~. (3-15-22)

02. Special Inspection Requests. Requests for inspection of plants and plant products for plant diseases or pests not specifically listed in ~~Subchapter A~~ the annual publication will be performed subject to the availability of Department inspectors and the biology of the pest and plant or plant products for which the request is being made. Procedures for conducting the special field or commodity inspections, the time the inspection is to be made, and any charges or fees will be made at the discretion of the Department and may be in addition to those listed in Section 195. (3-15-22)()

~~131.—139.~~ (RESERVED)

~~140. APPLICATION FOR INSPECTION PROCEDURES.~~

~~01. Application for Field Inspection.~~ Application(s) must include but will not be limited to the following: company name, grower name, crop, variety, lot number (if available), pest(s)/disease(s) inspections being requested, field location, number of acres and type of irrigation. Application(s) must be filed with the Idaho Department of Agriculture, Division of Plant Industries, P.O. Box 7249, Boise, ID 83707 or Idaho Department of Agriculture, Division of Plant Industries, P.O. Box 401, 434 Shoshone St. West, Twin Falls, Idaho 83303-0401, on forms provided by the Department. (3-15-22)

~~02. Application for Area Inspection (Peas and Corn Only).~~ Application shall be made in writing on company letterhead listing crop, grower name, variety, lot number, acres, and area grown in as outlined in Subsections 120.01 through 120.14. A minimum of two hundred (200) acres per company per designated inspection area must be submitted to be eligible for an area inspection. Applicants submitting under two hundred (200) acres within a designated inspection area must do so pursuant to Subsection 140.01 above. (3-15-22)

~~03. Deadlines.~~ Applications for individual and/or area field inspections are to be submitted no later than: April 30 for Alfalfa, May 1 for peas and mint, May 15 for lettuce, radish, onion, or other vegetable crops, and July 1 for beans and corn. Applications submitted after these dates will be performed only at the discretion of the Director. (3-15-22)

~~04. Special Field Inspection Requests.~~ Requests for field inspections of plants and plant products for diseases or pests not listed in Subsections 130.01.a. through 130.01.h. above shall be written in on the application as provided in Subsection 140.01 above and be subject to the conditions as outlined in Subsection 130.02. (3-15-22)

~~141.—149.~~ (RESERVED)

~~150. INSPECTION AUTHORITY.~~

The Director will authorize the crop inspections and will delegate competent agents or agencies to conduct the work. Phytosanitary certificates will be issued only by the Director. (3-15-22)

~~151.—159.~~ (RESERVED)

~~160. INSPECTION PROCEDURES.~~

~~01. Mechanics of Inspection.~~ The mechanics of inspection for a particular crop(s) will be left to the

discretion of the Department, but will take into account sound sampling procedures, the biology of the pest, and the crop being inspected. A crop will be inspected a minimum of, but not limited to, one (1) time during the growing season, depending on the biology of the pest or disease being inspected. (3-15-22)

02. Reports of Inspection Summaries and Requests for Inventory. Written reports of the field and area inspections will be filed and retained in the office of the Director, for a minimum of five (5) years after the inspection of the fields is completed. At the end of each inspection season, each applicant will be sent a summary of the inspections performed with a request for any corrections or adjustments to be made as far as lot numbers, varietal names, or other information is concerned. A request will also be made at that time for the clean weights of the product harvested from each lot inspected. No phytosanitary certificate will be issued for any inspected lot for which there is incomplete documentation. (3-15-22)

03. Notification of the Detection of Disease(s) or Pest(s). The Department will notify the applicant in writing upon the confirmation of the presence of a disease or pest. Notification will be limited to those disease(s) or pest(s) outlined in Subsections 130.01.a. through 130.01.h. above or as specifically requested on the applicant's application for inspection for phytosanitary certification pursuant to Subsection 140.04. (3-15-22)

~~164~~**31.** -- 169. (RESERVED)

170. PROCEDURE FOR OBTAINING APPLICATIONS FOR FIELD INSPECTION AND PHYTOSANITARY CERTIFICATES.

01. Application for Field Inspection. Application(s) must be filed with the Department's online submission form. Applications submitted after published deadlines will be performed only at the discretion of the Department. ()

042. Requests for Phytosanitary Certificates. Application shall be made in writing to the Department on the appropriate application form(s) provided by the Department for the certificate(s) being requested and submitted by the application to the USDA Phytosanitary Certificate Issuance and Tracking (PCIT) System at <https://pcit.aphis.usda.gov/pcit/>. Only fully completed applications will be accepted. Applications can be submitted to either the State of Idaho, Department of Agriculture, Plant Industries Division, P.O. Box 7249, Boise, ID 83707, or State of Idaho, Department of Agriculture, P.O. Box 401, Twin Falls, Idaho 83301. Notification of pending applications shall be submitted to the area phone message line. (3-15-22)()

02. Application Information. Applications for phytosanitary certificates must include, but will not be limited to the following information: variety, crop (including scientific name), lot number (in the case of blends, all lots used in the blend must be included), number of pounds in each lot, name of grower, area and year in which crop was grown, state number, consignor and consignee, and chemical treatment applied. (3-15-22)

03. "Rush" Service. As defined in Subsection 110.05 must be requested before or upon submission of an application for phytosanitary certification. This service is to accommodate requests for phytosanitary certification applications, official sampling, field inspection, or other services that must be completed with a one (1) business day turn-around or within a specific timeframe on a certain day without a two (2) business day prenotification. Request for phytosanitary or treatment observation services after normal working hours, on weekends, or holidays are subject to overtime and state per diem charges in addition to the normal charges. This service will be carried out only after a mutual agreement between the applicant and the Department. The request may must be made by telephone. "Rush" service will be subject to the fees as outlined in Subsections ~~195.02.d~~ 195.01 and 195.02. (3-15-22)()

~~171.~~ ~~179.~~ (RESERVED)

180. SIZE OF SAMPLES.

Size of samples for visual inspection for phytosanitary seed inspection certificates shall be: When shipment is: under two hundred (200) pounds — one half (1/2) pound sample (minimum); two hundred (200) pounds up to one thousand (1,000) pounds — two (2) pound samples; over one thousand (1,000) pounds — five (5) pound samples (maximum); or as may be required by the importing state or country. (3-15-22)

~~181.~~ ~~189.~~ (RESERVED)

190. POST ENTRY QUARANTINE CERTIFICATION.

Applications shall be made on forms provided by the Department and accompanied by the fee as stated in Subsection 195.05. The applicant must allow inspection by the Department as a condition of application approval, and additional inspections as required by the Department or the United States Department of Agriculture. The United States Department of Agriculture has final approval authority. The minimum period of the quarantine is two (2) years, with a minimum of one (1) inspection being performed during each of the two (2) years. (3-15-22)

191-194. (RESERVED)

195. FEES AND CHARGES.

01. Phytosanitary Certificates, Like Inspections, and Official Treatment Observations. Fees for these voluntary services will be published annually on the Department website at www.agri.idaho.gov. Fees will be updated every three (3) years. Proposed fees will be posted for comment no later than September 1, final fees will be posted no later than November 1 to be in effect the following January 1. (3-15-22)(____)

- a.** Federal Phytosanitary Inspection Certificates or like documents: sixty dollars (\$60) per certificate. (3-15-22)
- b.** State Phytosanitary Inspection Certificates or like documents: twenty-five dollars (\$25) per certificate. (3-15-22)

02. Phytosanitary Certification and Like Inspections and Official Treatment Observations. (3-15-22)

- a.** Officially Drawn Samples: (i.e., purity and germ samples, referee samples, lab analysis) twenty dollars (\$20) per sample. (3-15-22)
- b.** Submitted Samples: twenty dollars (\$20) per item submitted. (3-15-22)
- c.** Treatment Observations: for official verification of seed and plant treatment, seed lot fumigation, cold storage treatments, and treatment of agricultural products brought into the state in violation of a state quarantine, fees are thirty dollars (\$30) per hour (including travel time), and any per diem incurred. Per diem will be at established state rates. (3-15-22)
- d.** Rush service fees will be one hundred dollars (\$100) per certification, which will be in addition to the normal phytosanitary certification charges outlined in this Section 195. (3-15-22)
- e.** Request for phytosanitary or treatment observation services after normal working hours, on weekends, or holidays are subject to overtime and state per diem charges in addition to the normal charges outlined in this section. (3-15-22)

03. Area Inspections. Area Inspection: fourteen cents (\$.14) per hundred weight. (3-15-22)

04. Field or Lot Inspections. Fees published annually by the Department. Fees for these voluntary services will be published annually on the Department website at www.agri.idaho.gov. Fees will be updated every three (3) years. Proposed fees will be posted for comment no later than September 1, final fees will be posted no later than November 1 to be in effect the following January 1. (3-15-22)(____)

- a.** Application for Field Inspection: five dollars (\$5) per application. (3-15-22)
- b.** Acreage Inspection Fee: three dollars and fifty cents (\$3.50) per acre per inspection. A minimum of fifty dollars (\$50) per inspection will be charged when the total acreage submitted by any one (1) applicant is fifteen (15) acres or less. (3-15-22)

05. Post-Entry Quarantine Inspections. The inspection fee is two hundred dollars (\$200) for the

~~required two (2) year quarantine and an additional one hundred dollars (\$100) per year for each year beyond the initial two (2) years, if required. For rejected applications, twenty five dollars (\$25) of the two hundred dollar (\$200) inspection fee is non-refundable, and will be retained to cover administrative costs. (3-15-22)~~

063. Plant Pathological Laboratory Services. Fees available upon request through the Bureau of Agriculture Laboratories. (3-15-22)()

07. Special Project Fee. (3-15-22)

~~a. Special projects not covered by the existing fee schedule may be billed at twenty five dollars (\$25) per hour with a minimum twenty five dollar (\$25) fee. Special projects include, but are not limited to, the following: (3-15-22)~~

~~i. Research; (3-15-22)~~

~~ii. Lot history verification; (3-15-22)~~

~~iii. Data entry; (3-15-22)~~

~~iv. Sales and purchases; (3-15-22)~~

~~v. Transfer of lots into ISDA database; (3-15-22)~~

~~vi. ISDA training of private company personnel; (3-15-22)~~

~~vii. Special plant pest detection surveys; or (3-15-22)~~

~~viii. Any other circumstance approved by the Director. (3-15-22)~~

~~b. This fee does not include any laboratory analysis fees that might be required as part of a special plant pest detection survey. (3-15-22)~~

196. -- 209. (RESERVED)

SUBCHAPTER B – VIRUS-FREE NURSERY STOCK CERTIFICATION

210. CERTIFICATION PROCEDURES.

A virus certification program exists to produce fruit and ornamental nursery stock material discernibly free of economically harmful plant viruses and virus-like agents that meet domestic and international standards required for export. Eligible nurseries participate in the program on a voluntary basis and plant material must meet certification program requirements as provided by the Department. ()

210. DEFINITIONS.

In addition to the definitions found in Section 22-2302, Idaho Code, the definitions in Section 210 apply in the interpretation and enforcement of Subchapter B only. (3-15-22)

~~**01. Certification.** Verification that proper field sampling procedures were followed and that the indexing results as outlined in this rule are those determined by an approved laboratory designated to test for virus diseases under Subchapter B. (3-15-22)~~

~~**02. Idaho Certified Nursery Seed.** Seed produced from registered seed trees or commercial seed having been tested and found to have a transmissible virus content that does not exceed five percent (5%). (3-15-22)~~

~~**03. Idaho Certified Nursery Stock.** Nursery grown, true seedlings, clonal rootstocks originating from certified virus-free trees, and nursery grown trees or seedlings propagated by using top stock from certified virus-free trees and rootstock originating from certified virus-free trees except as herein provided for certain rootstocks. (3-15-22)~~

- ~~04. **Index.** To determine virus infection by means of inoculation from the plant to be tested to an indicator plant or by any other acceptable method as designated by the Director. (3-15-22)~~
- ~~05. **Indicator Plant.** Any herbaceous or woody plant used to index or determine virus infection. (3-15-22)~~
- ~~06. **Interstock.** Scionwood used for compatibility purposes to graft between a particular top stock and rootstock. (3-15-22)~~
- ~~07. **Nursery Stock.** For purposes of this rule includes the plants and plant parts of the genera *Prunus*, *Malus*, *Pyrus*, *Chaenomeles* and *Cydonia*. (3-15-22)~~
- ~~08. **Off Type.** Not true to name (phenotype) as registered under Subchapter B. (3-15-22)~~
- ~~09. **Registered Tree.** A tree or clonal planting that has been inspected and tested in accordance with the provisions of this program and assigned a registration number by the Department. (3-15-22)~~
- ~~10. **Rootstock.** That part of a plant including the roots on which another variety of plant material may be grafted. (3-15-22)~~
- ~~11. **Scion Block.** A planting of certified virus-free trees that serves as a source of scionwood for the propagation of "Idaho certified nursery stock." (3-15-22)~~
- ~~12. **Scion (Scionwood).** A detached shoot or other portion of a plant consisting of one or more buds used in propagation by grafting. (3-15-22)~~
- ~~13. **Seed Block.** A planting of certified virus-free trees that serves as a source of seed for producing rootstock used in the propagation of "Idaho certified nursery stock." (3-15-22)~~
- ~~14. **Stool Bed.** A clonal planting of self-rooted, certified virus-free trees for the specific purpose of producing vegetatively propagated rootstock used in the propagation of "Idaho certified nursery stock." (3-15-22)~~
- ~~15. **Top Stock.** Usually scionwood used for grafting onto interstock or rootstock, may include seed. (3-15-22)~~
- ~~16. **True Seedling.** A tree that has been grown from seed. (3-15-22)~~
- ~~17. **Virus Infected.** The presence of a harmful virus(es) in a plant or plant part. (3-15-22)~~
- ~~18. **Virus Like.** A disorder of genetic or non-transmissible origin and also includes mycoplasma like organisms and rickettsia-like organisms. (3-15-22)~~

~~211.—219. (RESERVED)~~

~~220. **REQUIREMENTS.**~~

- ~~01. **Participation.** Participation is open only to those nurseries registered under Title 22, Chapter 23, Idaho Code, and is voluntary. (3-15-22)~~
- ~~02. **Application.** Application forms for the establishment of new blocks will be provided by the Idaho Department of Agriculture. The applicant nurseryman shall furnish to the Department all information pertinent to the operation of this program, including a diagram of each block and give consent to the Department to take plant parts (buds, leaves, roots, etc.) from any tree for testing purposes. (3-15-22)~~
- ~~03. **Registration.** Trees may be registered as rootstock, top stock, or seedstock sources for the propagation of certified nursery stock when inspected, tested, and found to be true to name and discernibly free from~~

~~known harmful virus and virus-like diseases by procedures outlined in this program. (3-15-22)~~

~~**04. Responsibility.** The applicant nurseryman is responsible, subject to the approval of the Director, for the selection of the location and the proper maintenance of registered plantings grown under the provisions of Subchapter B. The applicant nurseryman is responsible for maintaining the identity of all nursery stock entered into this program in a manner approved by the Department. Any planting entered into this program shall be kept in a healthy growing condition and free of plant pests. (3-15-22)~~

~~**05. Filing Date.** Application for inspection and testing of new or existing blocks of registered scion, seed, and stool bed trees and for inspection of nursery stock for certification shall be filed by June 1 of each year with the Idaho Department of Agriculture. (3-15-22)~~

~~**06. Nematode Sampling.** The ground being submitted for planting with virus-free stock as outlined in Subchapter B shall be officially sampled, using established procedures acceptable to the Director, tested, and found free of virus transmitting nematodes prior to planting of any stock. Subsequent sampling for the presence of nematodes after planting may be carried out at the discretion of the Director, to ensure that a nematode-free status is maintained. (3-15-22)~~

~~**07. Grafting.** There shall be no budding, grafting, or top-working of registered trees in any scion block, seed block, or stool block. (3-15-22)~~

~~**08. Inspection.** Maintenance of virus-free integrity of all plants entered into this program will be by inspection and spot testing at a minimum of every three (3) years or as stated elsewhere in this rule. (3-15-22)~~

~~**09. Diseased Plants.** Immediately following notice from the Director or his agent, any plant found to be infected by a virus or virus-like disease or if off type, the plant(s) shall be removed and destroyed. Any ground found to be infested with virus transmitting nematodes must be fumigated with a fumigant registered and approved by the Idaho Department of Agriculture prior to planting, at the grower's expense. (3-15-22)~~

~~221.—229. (RESERVED)~~

230. SCION BLOCKS.

~~**01. Location.** A scion block shall be located not less than one hundred (100) feet away from any non-registered cultivated plant of the Rosaceae family. The ground in a scion block and for a distance of twenty (20) feet surrounding it shall be kept either clean cultivated or in an approved, properly controlled ground cover. Registered scion block trees shall be planted and maintained in a manner and at sufficient distance so that branches of different varieties do not overlap. Care shall be taken in the use of pollenizing insects and pollen application to prevent the transmission and spread of virus diseases through the use of infected pollen or its application. Registered scion block trees may not be used for propagation purposes until trueness to name or variety has been established. Each tree will bear a permanent registration number. The ground in the scion block will be sampled, using established procedures acceptable to the Director, and be tested and found free of virus transmitting nematodes prior to planting of any stock. (3-15-22)~~

~~**02. Acceptability.** The rootstock and top stock sources of the scion block trees shall have originated from foundation trees established under this program or from virus-tested trees originating through the USDA-ARS Inter-Regional Project No. 2 (IR-2) or other approved programs. If the tree is scion rooted, its source shall have met the requirements stated in Subchapter B. Only registered trees are permitted in the scion block. (3-15-22)~~

~~231.—234. (RESERVED)~~

235. SEED BLOCKS.

~~**01. Location.** A Prunus seed block shall be located not less than three hundred (300) feet from any non-registered flowering plant of the Prunus species. The ground in a seed block and for a distance of twenty (20) feet surrounding it shall be kept clean cultivated or in an approved, controlled ground cover. Care shall be taken in the use of pollenizing insects and pollen application to prevent the transmission and spread of virus diseases through the~~

~~use of infected pollen or its application. Each tree will bear a permanent registration number. (3-15-22)~~

~~**02. Acceptability.** The rootstock and top stock sources of the seed tree shall have originated from foundation trees established under this program or from virus-tested trees originating through the USDA-ARS Inter-Regional Project No. 2 (IR-2) or other approved program. If the tree is scion rooted, its source shall have met the requirements stated in Subchapter B. Only registered trees are permitted in the seed block. (3-15-22)~~

~~**236.—239. (RESERVED)**~~

~~**240. STOOL-BEDS.**~~

~~**01. Location.** A stool bed shall be located not less than fifty (50) feet from any non-registered cultivated plant of the Rosaceae family. The following exception will apply: Non-registered stool beds may be located not less than ten (10) feet from registered stool bed plantings. The ground in a stool bed and for a distance of ten (10) feet surrounding it shall be kept clean cultivated. (3-15-22)~~

~~**02. Acceptability.** Existing stool beds that index clean on the commonly used virus indicators will qualify as Registered Stool Beds. New stool beds (those planted after the effective date of Subchapter B) shall have originated from foundation stock established under this program or from virus-tested plants originating through the USDA-ARS Inter-Regional No. 2 (IR-2) or other approved program. If the tree is scion rooted, its source shall have met the requirements stated in Subchapter B. Only registered trees are permitted in the stool beds. (3-15-22)~~

~~**241.—244. (RESERVED)**~~

~~**245. NURSERY STOCK.**~~

~~**01. Rootstocks.** All nursery stock being grown for certification, shall be on rootstock from registered trees except for stone fruit trees grown on peach seedlings and pome fruit trees grown on apple and pear seedlings. These seedling rootstocks, when grown from commercial seed, will be acceptable if seed transmissible virus content does not exceed five percent (5%). Clonal rootstock used in the production of Idaho Certified Nursery Stock must originate from Registered Stool Beds. (3-15-22)~~

~~**02. Location.** The isolation distances between certified and non-certified nursery stock shall be: (3-15-22)~~

~~**a.** Not less than fifty (50) feet from non-certified plants of the Rosaceae family; (3-15-22)~~

~~**b.** Not less than twenty (20) feet from other non-certified nursery stock; (3-15-22)~~

~~**e.** Program participants shall maintain a twenty (20) foot clean cultivated area around all certified nursery stock beds. Nursery stock shall be designated as to rootstock, top stock, and inter stock sources. There shall be no re-budding or re-grafting of nursery raw stock unless such stock is re-worked with scions from the original registered scion tree. (3-15-22)~~

~~**03. Identity Maintenance.** The maintenance of certified stock identity shall be a tagging program identifying trees produced from: (3-15-22)~~

~~**a.** Registered rootstock produced from registered seed or stool beds; (3-15-22)~~

~~**b.** Registered scion source trees. The tracking system involves a numbering diagram system of each participant's nursery stock beds in the program. (3-15-22)~~

~~**04. Seed.** Certified seed shall have been produced on Registered Seed Trees or commercial seed having been tested and found to have a transmissible virus content that does not exceed five percent (5%). (3-15-22)~~

~~**05. Tagging.** An Idaho Certified Nursery Stock Tag designates trees produced from registered scion source trees and that have been propagated on rootstocks produced from registered seed source or stool bed trees, or~~

~~that are self-rooted. All nursery stock meeting the requirements of this program when sold shall have the variety, inter stock, and rootstock designated where applicable as follows: variety/inter stock/rootstock. (3-15-22)~~

~~**06. Acceptability.** All nursery stock meeting the requirements of this program are known as Idaho Certified Nursery Stock. (3-15-22)~~

~~**246.—249. (RESERVED)**~~

~~**250. BLOCK EXPANSION.**~~

~~Expansion within a scion or stool bed will be allowed with no restriction regarding the number of generations, provided accepted tissue culture methods are employed. Only two (2) propagative steps will be allowed between “mother plants” and foundation trees for scion, seed, and stool bed blocks. (3-15-22)~~

~~**251.—259. (RESERVED)**~~

~~**260. INSPECTION PROCEDURES.**~~

~~**01. Time of Inspection.** Inspections will be made at the discretion of the Department and at times when specific disease symptoms are most likely to be expressed. (3-15-22)~~

~~**02. Inspection of Nursery Stock for Certification.** At least one (1) visual inspection will be made of nursery rootstock in a planting being grown for certification during the first growing season. At the request of the Department, any undesirable rootstock will be rogued before propagation. At least two (2) visual inspections will be made of nursery stock during the growing season following bud or graft placement. (3-15-22)~~

~~**03. Refusal of Certification.** The Department will refuse certification if plants have been propagated from registered trees determined to be affected by a virus or virus-like disease or if other requirements of this program have not been met. (3-15-22)~~

~~**261.—264. (RESERVED)**~~

~~**265. TESTING PROCEDURES.**~~

~~Testing standards prescribed in this program will conform to USDA ARS Inter-Regional Project No. 2 (IR-2) standards or to any other acceptable and approved procedures developed and used for determining the presence of virus diseases in nursery stock. All testing results shall be made available directly to the Department by the approved agency or laboratory. (3-15-22)~~

~~**266.—269. (RESERVED)**~~

~~**270. TAGGING, IDENTITY, AND RECORDS.**~~

~~**01. Official Certification Tags.** The Department will authorize the use of official certification tags for identification of nursery stock or seed that meet the requirements of this program. These tags will be supplied at cost to all program cooperators by the Department. (3-15-22)~~

~~**02. Identity.** Any person selling Idaho Certified Nursery Stock is responsible for the identity of the stock bearing each tag and for such nursery stock meeting the requirements of this program. (3-15-22)~~

~~**03. Records.** Any person selling Idaho Certified Nursery Stock shall keep record on a form prescribed by the Director that includes but is not limited to the source of the stock, quantity, and disposition. (3-15-22)~~

~~**271.—279. (RESERVED)**~~

~~**280. FEES.**~~

~~**01. Application Fees.** A fee of fifty dollars (\$50) per application submitted plus ten cents (\$.10) per tree being certified shall be submitted with each application. (3-15-22)~~

~~02. **Laboratory Fees.** Laboratory fees are established by a Department approved testing facility and will be paid directly to the facility. (3-15-22)~~

~~03. **Service Fees.** Fees for plant or soil sampling and inspection services provided by the Idaho Department of Agriculture are in accordance with the following schedule. (3-15-22)~~

~~a. A fee of twenty five dollars (\$25) per hour for inspection and travel time with a minimum charge of fifty dollars (\$50). (3-15-22)~~

~~b. Per diem costs will be charged according to established state rates. (3-15-22)~~

~~e. The fees charged for tags will be at cost plus an administrative fee of ten percent (10%) for each order. (3-15-22)~~

~~28411.~~ -- 309. (RESERVED)

SUBCHAPTER C – GINSENG REGISTRATION AND EXPORT

310. REGISTRATION.

A ginseng registration and export program exists to protect American ginseng (*Panax quinquefolius*) as an endangered species, prevent illegal trade of wild ginseng, and ensure cultivated ginseng meets domestic and international standards required for export. Anyone who buys ginseng for resale or grows and sells it for export shall register with the Department and plant material must meet program requirements as provided by federal and state standards. ()

310. DEFINITIONS.

In addition to the definitions found in Section 22-2005, Idaho Code, the definitions in Subchapter C apply in the interpretation and enforcement of Subchapter C, only. (3-15-22)

~~01. **Cultivated Ginseng.** Any part of a ginseng plant that is growing or grown in managed beds under artificial or natural shade and cultivated according to recognized ginseng horticultural practices. Cultivated ginseng includes woodsgrown ginseng. (3-15-22)~~

~~02. **Dealer.** Anyone who buys ginseng for resale, or grows and sells it for export. This definition does not apply to persons who buy ginseng solely for the purpose of final retail sale to consumers in the United States. (3-15-22)~~

~~03. **Dealer Registration.** An annual registration issued by the department authorizing a dealer to buy, collect, or otherwise acquire ginseng for resale or export. (3-15-22)~~

~~04. **Dry Weight.** The weight in pounds and ounces of harvested or collected ginseng root that is dried and is no longer viable. (3-15-22)~~

~~05. **Export.** Outside the boundaries of the United States. (3-15-22)~~

~~06. **Ginseng.** Any and all parts of the plant known as American ginseng (*Panax quinquefolius*) including, but not limited to: plants; whole roots; essentially intact roots; root chunks; slices; seeds; and tissue. (3-15-22)~~

~~07. **Green Ginseng.** A ginseng root from which the moisture has not been removed by drying. (3-15-22)~~

~~08. **Green Weight.** The weight in pounds and ounces of freshly harvested or collected ginseng root that is not dried and is still viable. (3-15-22)~~

~~09. **Grower.** A person who grows “cultivated,” “wild simulated,” and or “woodsgrown” ginseng, and~~

~~sells it to a dealer. (3-15-22)~~

~~10. **Grower Registration.** An annual registration issued by the department that enables a grower to sell cultivated ginseng that the grower has produced. (3-15-22)~~

~~11. **Out of State Ginseng.** Ginseng that is grown or originated outside the state of Idaho. (3-15-22)~~

~~12. **Wild Ginseng.** Ginseng growing naturally within its native range. (3-15-22)~~

~~13. **Wild Simulated Ginseng.** Wild ginseng seeds or roots planted in natural habitat, within the natural range, in suitable ginseng habitat that is not further cultivated. (3-15-22)~~

~~14. **Woodsgrown Ginseng.** Ginseng grown in managed beds under natural shade. (3-15-22)~~

311. -- 319. (RESERVED)

320. REGULATED PRODUCTS.

American ginseng (*Panax quinquefolius*). ()

321. -- 329. (RESERVED)

330. COLLECTION OF WILD GINSENG.

~~To prevent illegal trade, No grower's or dealer's registration will be issued for the collection, sale or distribution of wild ginseng. (3-15-22)()~~

~~**331. DEALERS AND GROWERS ANNUAL REGISTRATION WITH THE DEPARTMENT.**~~

~~No person may act as a dealer or grower without first registering with the department. Any person who acts as a dealer and a grower shall register as both. The department will assign a registration number to each person registered. Registration with the applicable fee will be made annually no later than January 15 of each year on a form provided by the department and the registration will expire on December 31. (3-15-22)~~

~~332. -- 339. (RESERVED)~~

~~**340. GROWER RECORDS.**~~

~~A grower selling cultivated ginseng shall do all of the following when selling to a dealer: (3-15-22)~~

~~01. **Record of Sale.** Provide to the dealer a record of sale containing all of the following information: grower's name and address; grower's registration number; ginseng certificate number; ginseng dry weight; year harvested; county of harvest; and date of transaction. (3-15-22)~~

~~02. **Certificate of Origin.** Certify that the ginseng was grown in the state of Idaho. The certificate of origin form is prescribed by the department. (3-15-22)~~

~~03. **Records.** Maintain records of all ginseng production and sales. Records must be maintained for a period of three (3) years. (3-15-22)~~

~~341. -- 349. (RESERVED)~~

~~**350. DEALER RECORDS.**~~

~~Dealers shall keep true and accurate records of transactions, including both sales and purchase records, in a format prescribed by the department. Records must be maintained for a period of three (3) years. (3-15-22)~~

~~01. **Purchase Records.** Purchase records include dealer's name, address and registration number; grower/seller name and registration number; ginseng weight in pounds and ounces; designation of green or dry ginseng; designation of wild or cultivated ginseng; harvest year of ginseng; county in which the ginseng was harvested; and date of transaction. (3-15-22)~~

~~02. Sales Records. Sales records shall include the following information: dealer's name, address and registration number; buyer's name, address and registration number; ginseng weight in pounds and ounces; designation of green or dry ginseng; designation of wild or cultivated ginseng; harvest year; county in which the ginseng was harvested; and date of transaction. (3-15-22)~~

~~351~~**31.** -- 359. (RESERVED)

360. OUT-OF-STATE GINSENG.

~~01. Certificate of Origin. No dealer may purchase, receive or import out of state ginseng unless it is accompanied by a valid certificate of origin issued by the state or country of origin. The certificate must include the state or country of origin, the source (wild or cultivated), year of harvest, and dry weight of the out of state ginseng. (3-15-22)~~

~~02. Recordkeeping. The dealer shall retain for a period of three (3) years a copy of each written certificate of origin received. (3-15-22)~~

~~03-1 Uncertified Ginseng. If a dealer receives ginseng not accompanied by a valid certificate of origin, the uncertified ginseng must be returned within thirty (30) days to the state or country of origin. Failure to do so renders the ginseng illegal for commerce. ()~~

~~361. SELLING OR SHIPPING OF GINSENG — CERTIFICATES.~~

~~01. Export. Except as described in Subsection 361.06, no person may sell or ship ginseng out of state or export Idaho grown ginseng unless it is accompanied by a valid, prenumbered certificate of origin on a form issued by the department. The department will, upon request and receipt of the required fee(s), provide each registered grower or dealer with forms for certificates of origin. The department will identify each certificate of origin form with a serial number, and the registration number of the grower or dealer. Registered growers or dealers may certify their own cultivated ginseng by filling out and signing a certificate of origin form. The certificate of origin contains the following information: (3-15-22)~~

- ~~a. State of origin; (3-15-22)~~
- ~~b. Serial number of certificate; (3-15-22)~~
- ~~c. Dealer's and/or grower's state registration number; (3-15-22)~~
- ~~d. Year of harvest of ginseng being certified; (3-15-22)~~
- ~~e. Designation as cultivated roots or plants; (3-15-22)~~
- ~~f. Designation as dried or fresh (green) roots, or live plants; (3-15-22)~~
- ~~g. Weight of roots or plants (or number of plants) separately expressed both numerically and in writing; (3-15-22)~~
- ~~h. Date of certification; and (3-15-22)~~
- ~~i. Signature of grower or dealer making certification. (3-15-22)~~

~~02. Idaho Certificate of Origin. All of the following conditions must be met in order for an Idaho certificate of origin to be valid: (3-15-22)~~

- ~~a. The grower or dealer whose registration number was entered on it by the department shall sign the certificate; and (3-15-22)~~
- ~~b. The ginseng is cultivated ginseng grown in Idaho. (3-15-22)~~

~~03. **Forms.** Forms for certificates of origin are issued by the department in triplicate. The original is designated for the dealer's use in commerce; the first copy is for the dealer's records; and the grower or dealer shall send the second copy, within two (2) weeks of issuance, to the Division of Plant Industries, Idaho State Department of Agriculture, P.O. Box 7249, Boise, ID 83707. (3-15-22)~~

~~04. **Out-of-State Issued Certificates.** No person may export ginseng grown in Idaho using an out-of-state issued certificate. (3-15-22)~~

~~05. **Wild Ginseng Certificates.** Certificates of origin will not be issued for wild ginseng. (3-15-22)~~

~~06. **Final Retail Sales.** Subsection 361.01 does not apply to a person who sells or ships cultivated ginseng out of state to a person who is buying or receiving it solely for the purpose of final retail sale to consumers in the United States, if the person selling or shipping keeps a record for a period of three (3) years that includes: name and address of the buyer or receiver; weight of the ginseng in pounds and ounces; date of the sale or shipment; county of harvest of the ginseng; and year of harvest of the ginseng. (3-15-22)~~

~~362.—369. (RESERVED)~~

~~370. **MAINTAINING SEPARATE LOTS OF GINSENG.**~~

~~Dealers shall maintain separation between lots of out-of-state ginseng and that harvested in Idaho until a certificate of origin has been issued for the ginseng harvested in Idaho. (3-15-22)~~

~~371. **DEALER OR GROWER HOLDING GINSENG AFTER DECEMBER 31 OF THE YEAR.**~~

~~Any grower or dealer holding ginseng on or after December 31 shall report all carryover stocks on a form provided by the department. The form shall list the name and address of the grower or dealer; location of the lot; lot identification; county of harvest; dry or green weight in pounds and ounces; and year of harvest. (3-15-22)~~

~~372.—379. (RESERVED)~~

~~380. **INSPECTION AND DISCLOSURE OF RECORDS.**~~

~~01. **Inspection.** All records required to be kept under Subchapter C shall be made available to the department upon request for inspection and copying. (3-15-22)~~

~~02. **Disclosure.** The department will not disclose information obtained regarding purchases, sales, or production of an individual ginseng dealer, except for providing reports to the United States Fish and Wildlife Service. (3-15-22)~~

~~381.—389. (RESERVED)~~

~~390. **EXPORT PROCEDURES.**~~

~~Valid federal Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) documents are necessary to export ginseng. (3-15-22)~~

~~391. **FEES—HOURLY, OVERTIME.**~~

~~Fees will be charged to cover the department's cost of implementing Subchapter C. (3-15-22)~~

~~01. **Certification and Overtime Rate.** Ginseng certification services will be provided at an hourly and overtime rate as provided in Section 392 of Subchapter C. The overtime rate will apply for service provided subsequent to a regularly scheduled eight (8) hour week day shift or on Saturdays, Sundays, and state legal holidays. No service will be performed on Thanksgiving Day, Christmas Day or New Year's Day, beginning at 5 p.m., on the previous day. (3-15-22)~~

~~02. **Minimum Charges.** Charges will be for a minimum of one (1) hour. Additional time will be charged in one half (1/2) hour increments. (3-15-22)~~

392. ~~SCHEDULE OF FEES AND CHARGES.~~

The following schedule for ~~ginseng certification services~~ apply: ~~(3-15-22)~~

01. ~~Registration.~~ ~~Registration (grower or dealer or grower and dealer), twenty five dollars (\$25).~~ ~~(3-15-22)~~

02. ~~Certificate of Origin Form.~~ ~~Certificate of origin form, each, ten dollars (\$10).~~ ~~(3-15-22)~~

03. ~~Hourly Rate.~~ ~~Hourly rate for certification services, twenty eight dollars (\$28).~~ ~~(3-15-22)~~

04. ~~Overtime Rate.~~ ~~Overtime rate for certification services, thirty three dollars (\$33).~~ ~~(3-15-22)~~

393. ~~01.~~ -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.06.09 – RULES GOVERNING INVASIVE SPECIES AND NOXIOUS WEEDS

DOCKET NO. 02-0609-2301

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 22-1907, 22-2004, 22-2006, 22-2403, and 22-2412, 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 18, 2023.

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

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

This rule is being presented for authorization as part of the ISDA's plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor's [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

This rule governs the designation of invasive species, inspection, permitting, decontamination, recordkeeping and enforcement and apply to the possession, importation, shipping, transportation, eradication, and control of invasive species. This rule identifies those noxious weeds that have been officially designated by the Director as Noxious Weeds in the state of Idaho, designates articles capable of disseminating noxious weeds, requires treatment of articles to prevent dissemination of noxious weeds and provides authority to designate cooperative weed management areas for management of noxious weeds. Also this rule governs the inspection, certification, and marking of noxious weed free forage and straw to allow for the transportation and use of forage and straw in Idaho and states where regulations and restrictions are placed on such commodities.

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

There are no fees impacted by 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:

There is no fiscal impact 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 May 3, 2023 Idaho Administrative Bulletin, [Vol. 23-5, Page 11](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Not applicable.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), for any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, the director shall identify the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal government. The following sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

The entirety of the rule is broader in scope or more stringent than federal law or rules, but is consistent with the direction and authority defined in Idaho Code.

The detailed 22-101A analysis can be found on the agency’s website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

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 25, 2023.

DATED this 4th day of October, 2023.

Lloyd B. Knight
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, ID 83707
Phone: (208) 332-8615
Email: lloyd.knight@isda.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0609-2301
(Only Those Sections With Amendments Are Shown.)

130. EARLY DETECTION AND RAPID RESPONSE AQUATIC INVERTEBRATE INVASIVE SPECIES.

01. Statewide EDRR AIIS List. If any of the species listed in the following table are found to occur in Idaho, they shall be reported to the Department immediately. Positive identification will be made by the Department or other qualified authority as approved by the Director. Subsections 130.02 through 130.05 are applicable to EDRR AIIS only and not to other invasive species listed in Sections 140 through 148.

Early Detection Rapid Response Aquatic Invertebrate Invasive Species (EDRR AIIS) List	
Common Name	Scientific Name
Quagga Mussel	<i>Dreissenia bugensis</i>
Zebra Mussel	<i>Dreissenia polymorpha</i>

(3-15-22)

02. Transporting EDRR AIIS Over Public Roads. No person may transport Equipment or any Conveyance containing EDRR AIIS over public roads within the state of Idaho without first being decontaminated.

(3-15-22)

03. Contaminated Conveyances in Idaho Waters. No person may place any EDRR AIIS contaminated Equipment or Conveyance into any Water Body or Water Supply System in the state of Idaho.

(3-15-22)

04. Firefighting Equipment. Precautions should be taken to prevent the introduction and spread of EDRR AIIS through firefighting activities. All firefighting agencies moving equipment into the state of Idaho shall follow protocols similar to the United States Forest Service decontamination protocols set forth in “[Preventing Spread of Aquatic Invasive Organisms Common to the Intermountain Region](http://www.fs.usda.gov/detail/r4/landmanagement/resourcemanagement/?cid=fbdev3_016113)” [Guide to Preventing Aquatic Invasive Species Transport by Wildland Fire Operations](https://www.nwccg.gov/sites/default/files/publications/pms444.pdf).” Those protocols can be viewed online at http://www.fs.usda.gov/detail/r4/landmanagement/resourcemanagement/?cid=fbdev3_016113 <https://www.nwccg.gov/sites/default/files/publications/pms444.pdf>. (3-15-22)()

05. Construction and Road Building and Maintenance Equipment. Construction and equipment used for road building and maintenance must be free of EDRR AIIS. If equipment that is being transported into the state of Idaho has been in an infested water body or water supply system within the preceding thirty (30) days, the equipment must be inspected in accordance with Section 132. The Department may require decontamination. (3-15-22)

(BREAK IN CONTINUITY OF SECTIONS)

146. INVASIVE SPECIES – INSECTS.

Invasive Species - Insects		
	Common Name	Scientific Name
01.	Asian Longhorned Beetle	<i>Anoplophora blabripennis</i>
02.	Emerald Ash Borer	<i>Agilus planipennis</i>
03.	Spongy Moth	<i>Lymantria dispar</i>

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147. INVASIVE SPECIES – MOLLUSKS.

Invasive Species – Mollusks		
	Common Name	Scientific Name
01.	Applesnail	<i>Pomacea spp.</i>
02.	Brown Garden Snail	<i>Cryptomphalus aspersa</i>
03.	Chinese Mysterysnail	<i>Bellamya chinensis</i>
04.	Decollate Snail	<i>Rumina decollate</i>

Invasive Species – Mollusks		
	Common Name	Scientific Name
05.	Faucet Snail	<i>Bithynia tentaculata</i>
06.	Giant African Snail	<i>Achatha fulica</i>
07.	Green or Burrowing Snail	<i>Cantareus apertus</i>
08.	Japanese Mysterysnail	<i>Bellamya japonica</i>
09.	Lactea Snail	<i>Otala lactea</i>
10.	Marisa	<i>Marisa cornuarietis</i>
11.	Maritime Garden Snail	<i>Ceruella virgata</i>
12.	Pulmonate Snail	<i>Helix pomatia</i>
13.	Quilted Melania	<i>Tarebia granifera</i>
14.	Red-lipped Melania	<i>Melanoides tuberculata</i>
15.	White Garden Snail	<i>Theba pisana</i>
16.	Wrinkled Snail	<i>Candidula intersecta</i>

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~~146.~~—148. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

220. NOXIOUS WEEDS - DESIGNATIONS.

The weeds listed on the Statewide Prohibited Genera, EDRR, Containment, and Control lists are hereby officially designated and published as noxious. (3-15-22)

01. Statewide Prohibited Genera Noxious Weed List. (3-15-22)

a. All plants and plant parts in the generas of: *Cytisus*, *Genista*, *Spartium*, and *Chamaecytisus* additionally including “all” subtaxa of these plant genera are prohibited in Idaho. (3-15-22)

b. Weeds listed in the Prohibited Genera list may exist in varying populations throughout the state. The concentration of these weeds is at a level where control and/or eradication may be possible. A written plan for weeds on the Statewide Prohibited Genera Noxious Weed List shall be developed by the control authority that specifies active control methods to reduce known populations in not more than five (5) years. The plan shall be

available to the Department upon request.

(3-15-22)

02. Statewide EDRR Noxious Weed List. If any of the listed plants (Subsection 220.02) are found to occur in Idaho, they shall be reported to the Department within ten (10) days following positive identification by the University of Idaho or other qualified authority as approved by the Director. These weeds shall be eradicated during the same growing season as identified.

	Common Name	Scientific Name
1.	Brazilian Elodea	<i>Egeria densa</i>
2.	Cogongrass	<i>Imperata cylindrica</i>
23.	Common/European Frogbit	<i>Hydrcharis morsus-ranae</i>
34.	Fanwort	<i>Cobomba caroliniana</i>
45.	Feathered Mosquito Fern	<i>Azolla pinnata</i>
56.	Giant Hogweed	<i>Heracleum mantegazzianum</i>
67.	Giant Salvinia	<i>Salvinia molesta</i>
78.	Goatsrue	<i>Galega officinalis</i>
89.	Hydrilla	<i>Hydrilla verticillata</i>
910.	Iberian Starthistle	<i>Centaurea iberica</i>
101.	Policeman's Helmet	<i>Impatiens glandulifera</i>
142.	Purple Starthistle	<i>Centaurea calcitrapa</i>
123.	Squarrose Knapweed	<i>Centaurea triumfetti</i>
134.	Starry Stonewort	<i>Nitellopsis obtusa</i>
145.	Syrian Beancaper	<i>Zygophyllum fabago</i>
156.	Tall Hawkweed	<i>Hieracium piloselloides</i>
167.	Turkish Thistle	<i>Carduus cinereus</i>
178.	Variable-Leaf-Milfoil	<i>Myriophyllum heterophyllum</i>
189.	Water Chestnut	<i>Trapa natans</i>
1920.	Water Hyacinth	<i>Eichhornia crassipes</i>
201.	Yellow Devil Hawkweed	<i>Hieracium glomeratum</i>
242.	Yellow Floating Heart	<i>Nymphoides pelata</i>

(3-15-22)()

03. Statewide Control Noxious Weed List. Weeds listed in the control list are known to exist in varying populations throughout the state. The concentration of these weeds is at a level where control or eradication, or both, may be possible. A written plan for weeds on the Statewide Control Noxious Weed List shall be developed by the control authority that specifies active control methods to reduce known populations in not more than five (5) years. The plan shall be available to the Department upon request.

	Common Name	Scientific Name
1.	Black Henbane	<i>Hyoscyamus niger</i>

	Common Name	Scientific Name
2.	Bohemian Knotweed	<i>Polygonum X bohemicum</i>
3.	Buffalobur	<i>Solanum rostratum</i>
4. 3.	Common Crupina	<i>Crupina vulgaris</i>
5. 4.	Common Reed (Phragmites)	<i>Phragmites australis</i>
6. 5.	Dyer's Woad	<i>Isatis tinctoria</i>
7. 6.	Eurasian Watermilfoil	<i>Myriophyllum spicatum</i> (and hybrids)
8. 7.	Flowering Rush	<i>Butomus umbellatus</i>
9. 8.	Giant Knotweed	<i>Polygonum sachalinense</i>
10. 9.	Japanese Knotweed	<i>Polygonum cuspidatum</i>
140.	Johnsongrass	<i>Sorghum halepense</i>
121.	Matgrass	<i>Nardus stricta</i>
132.	Meadow Knapweed	<i>Centaurea debeauxii</i>
143.	Mediterranean Sage	<i>Salvia aethiopsis</i>
154.	Musk Thistle	<i>Carduus nutans</i>
165.	Orange Hawkweed	<i>Hieracium aurantiacum</i>
176.	Parrotfeather Milfoil	<i>Myriophyllum aquaticum</i>
187.	Perennial Sowthistle	<i>Sonchus arvensis</i>
198.	Russian Knapweed	<i>Acroptilon repens</i>
2019.	Scotch Broom	<i>Cytisus scoparius</i>
240.	Small Bugloss	<i>Anchusa arvensis</i>
221.	Vipers Bugloss	<i>Echium vulgare</i>
232.	Yellow Hawkweed	<i>Hieracium caespitosum</i>

(3-15-22)()

04. Statewide Containment Noxious Weed List. Weeds listed in the containment noxious weeds list are known to exist in various populations throughout the state. Weed control efforts may be directed at reducing or eliminating new or expanding weed populations while known and established weed populations, as determined by the weed control authority, may be managed by any approved weed control methodology, as determined by the weed control authority.

	Common Name	Scientific Name
1.	Canada Thistle	<i>Cirsium arvense</i>
2.	Curlyleaf Pondweed	<i>Potamogeton crispus</i>
3.	Dalmatian Toadflax	<i>Linaria dalmatica ssp. dalmatica</i>
4.	Diffuse Knapweed	<i>Centaurea diffusa</i>
5.	Field Bindweed	<i>Convolvulus arvensis</i>

	Common Name	Scientific Name
6.	Hoary Alyssum	<i>Berteroa incana</i>
7.	Houndstongue	<i>Cynoglossum officinale</i>
8.	Jointed Goatgrass	<i>Aegilops cylindrica</i>
9.	Leafy Spurge	<i>Euphorbia esula</i>
10.	Milium	<i>Milium vernale</i>
11.	Oxeye Daisy	<i>Leucanthemum vulgare</i>
12.	Perennial Pepperweed	<i>Lepidium latifolium</i>
13.	Plumeless Thistle	<i>Carduus acanthoides</i>
14.	Poison Hemlock	<i>Conium maculatum</i>
15.	Puncturevine	<i>Tribulus terrestris</i>
16.	Purple Loosestrife	<i>Lythrum salicaria</i>
17.	Rush Skeletonweed	<i>Chondrilla juncea</i>
18.	Saltcedar	<i>Tamarix sp.</i>
19.	Scotch Thistle	<i>Onopordum acanthium</i>
20.	Spotted Knapweed	<i>Centaurea stoebe</i>
21.	Tansy Ragwort	<i>Senecio jacobaea</i>
22.	White Bryony	<i>Bryonia alba</i>
23.	Whitetop (Hoary Cress)	<i>Cardaria draba</i>
24.	Yellow Flag Iris	<i>Iris pseudocorus</i>
25.	Yellow Starthistle	<i>Centaurea solstitialis</i>
26.	Yellow Toadflax	<i>Linaria vulgaris</i>

(3-15-22)

05. Designation of Articles Capable of Disseminating Noxious Weeds. The following articles are designated by the Director as capable of disseminating noxious weeds: (3-15-22)

- a.** Construction equipment, road building and maintenance equipment, and implements of husbandry. (3-15-22)
- b.** Motorized vehicles such as, all-terrain vehicles, motorcycles, and other off-road vehicles and non-motorized vehicles such as bicycles and trailers. (3-15-22)
- c.** Grain and seed. (3-15-22)
- d.** Hay, straw and other material of similar nature. (3-15-22)
- e.** Nursery stock including plant material propagated for the support of aquarium, pet, or horticultural activities. (3-15-22)
- f.** Feed and seed screenings. (3-15-22)
- g.** Fence posts, fencing and railroad ties. (3-15-22)

- h.** Sod. (3-15-22)
- i.** Manure, fertilizers and material of similar nature. (3-15-22)
- j.** Soil, sand, mulch, and gravel. (3-15-22)
- k.** Boats, personal watercraft, watercraft trailers, and items of a similar nature. (3-15-22)

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.06.09 – RULES GOVERNING INVASIVE SPECIES AND NOXIOUS WEEDS
DOCKET NO. 02-0609-2302
NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 21, 2023.

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 22-2004, 22-2006, 22-2012, and 22-2013, Idaho Code.

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

Invasive quagga mussel samples were recently discovered in the Snake River. Left unchecked, quagga mussels pose a significant threat to the health and safety of Idaho's environment, and water use as well as threaten Idaho's economy. Accordingly, the Director has exercised the authority granted to them under Idaho law to quarantine certain areas of the Snake River until the Department is able to eradicate any existing quagga mussels.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Protection for and maintaining the safety of property and aquatic plant life.

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: There is no fee being charged by this temporary rule.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Lloyd Knight, Deputy Director, at (208)332-8615.

DATED this 21st day of September, 2023.

Lloyd B. Knight
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, ID 83707
Phone: (208) 332-8615
Email: lloyd.knight@isda.idaho.gov

THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 02-0609-2302
(Only Those Sections With Amendments Are Shown.)

135. SNAKE RIVER QUARANTINE.

ISDA has issued a quarantine of the Snake River from Twin Falls to Niagara Springs to contain and treat quagga mussels. All public access to the Snake River between these areas is prohibited during ISDA's active treatment and response plan. (9-21-23)T

135~~6~~. -- 139. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.06.10 – RULES GOVERNING THE GROWING OF POTATOES
DOCKET NO. 02-0610-2301 (ZBR CHAPTER REWRITE)
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 22-505, 22-1907, 22-2004, 22-2006, and 22-2013, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

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

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

This rule is being presented for authorization as part of the ISDA’s plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor’s [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

These rules govern the procedures for all potato management within Seed Potato Crop Management Areas and establish the procedures of identifying, handling and testing uncertified seed potatoes to be planted in Idaho. These rules also seek to prevent the spread of Pale Cyst Nematode and the introduction and/or spread of Cms and subsequently bacterial ring rot throughout Idaho and the United States.

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

There are no fees included in this rule.

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

There is no fiscal impact 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 May 3, 2023 Idaho Administrative Bulletin, [Vol. 23-5, Page 11](#).

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

The documents incorporated by reference in this rule are federal regulations and manuals related to Pale Cyst Nematode. These documents are important to include so as to ensure that any activities are consistent with the federal regulation.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), for any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, the director shall identify the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal government. The following sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

The entire rule – except for Subchapter A – regulates activity not otherwise regulated by the federal government.

The detailed 22-101A analysis can be found on the agency’s website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

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 25, 2023.

DATED this 4th day of October, 2023.

Lloyd B. Knight
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, ID 83707
Phone: (208) 332-8615
Email: lloyd.knight@isda.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0610-2301
(ZBR Chapter Rewrite)

02.06.10 – RULES GOVERNING THE GROWING OF POTATOES

000. LEGAL AUTHORITY.

~~This chapter is adopted under the legal authority of~~ Sections, 22-505, 22-1907, 22-2004, 22-2006, and 22-2013, Idaho Code. (3-15-22)()

001. ~~TITLE AND SCOPE.~~

01. ~~Title.~~ The title of this chapter is IDAPA 02.06.10, “Rules Governing the Growing of Potatoes.” (3-15-22)

02. ~~Scope.~~ These rules govern the procedures for all potato management within Seed Potato Crop Management Areas and establish the procedures of identifying, handling and testing uncertified seed potatoes to be planted in Idaho. These rules also seek to prevent the spread of Pale Cyst Nematode and the introduction and/or spread of *Cms* and subsequently bacterial ring rot throughout Idaho and the United States. (3-15-22)()

002. -- 103. (RESERVED)

SUBCHAPTER A – PALE CYST NEMO~~A~~TODE

104. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into this Subchapter A ~~only~~: (3-15-22)()

01. 7 CFR Part 301 SubPart ~~S~~ - **Pale Cyst Nematode**. Sections 301.86 through 301.86-9 as published under Docket No. APHIS-2006-0143 in the Federal Register Volume 72, No. 176, Wednesday, September 12, 2007, and as amended under Docket No. APHIS-2006-0143 published in the Federal Register Vol. 74, No. 81, Wednesday, April 29, 2009, and as amended under docket No. APHIS-2018-0041 published in the Federal Register Vol. 85, No. 249, Tuesday, December 29, 2020, and except as amended below in Subchapter A of this rule. (3-15-22)()

02. USDA APHIS PPQ Treatment Manual Schedule T406-d, ~~Revision 10, September 2006~~ https://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf. (3-15-22)()

03. 7 CFR Part 305 - Phytosanitary Treatments, as revised ~~September 12, 2007~~ **January 1, 2022**. (3-15-22)()

105. -- 109. (RESERVED)

110. DEFINITIONS AND TERMS.

In addition to the definitions found in Section 22-2005, Idaho Code, the following definitions found in Section 110 apply in the interpretation and enforcement of Subchapter A only: ()

01. Inspector. Any employee of [Idaho State Department of Agriculture \(ISDA\)](#), [Animal and Plant Health Inspection Service \(APHIS\)](#), the ~~U.S.~~ [United States](#) Department of Agriculture ([USDA](#)), or other person authorized by the USDA APHIS Administrator or ISDA Director to perform the duties required under Subchapter A. (3-15-22)()

02. Interstate. From any state into or through any other state. ()

03. Intrastate. Movement within the boundaries of the state of Idaho. ()

~~111.~~ **ABBREVIATIONS.**

~~01. APHIS. Animal and Plant Health Inspection Service. (3-15-22)~~

~~02. ISDA. Idaho State Department of Agriculture. (3-15-22)~~

~~03. PCN. Pale Cyst Nematode. (3-15-22)~~

~~04. PPQ. Plant Protection and Quarantine. (3-15-22)~~

~~05. USDA. United States Department of Agriculture. (3-15-22)~~

~~112. -- 119. (RESERVED)~~

120. INTRASTATE MOVEMENT.

No regulated articles may move within the state of Idaho without complying with the federal regulations, as incorporated by reference in Subsection 104.01 in Subchapter A. ()

121. QUARANTINED AREAS.

Those areas of the State quarantined or regulated for PCN under 7 CFR Part 301 Sections 301.86-3 as published on the USDA APHIS ~~PPQ internet~~ website at http://www.aphis.usda.gov/plant_health/plant_pest_info/potato/pcn.shtml. (3-15-22)()

122. RESTRICTIONS.

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

02. Movement From a Quarantined Area. Movement of regulated articles from a quarantined area is

subject to the provision of Section 123 of Subchapter A. ()

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

04. Seed Potatoes. Seed potatoes may not be grown in a quarantined area. ()

05. Exemptions. Host plant material may be planted in infested fields under the authorization and supervision of the USDA and ~~Idaho State Department of Agriculture~~ ISDA eradication program. (3-15-22)()

123. CONDITIONS FOR INTRASTATE OR INTERSTATE MOVEMENT OF REGULATED ARTICLES.

Regulated articles may only be moved intrastate or interstate from a quarantined area by a person under a compliance agreement if accompanied by a certificate or limited permit issued by an inspector in accordance with ~~7 CFR Part 301 Sections 301.86-4 and 5,~~ the federal regulations, as incorporated by reference in Section 104 in Subchapter A ~~of this rule.~~ (3-15-22)()

124. -- 129. (RESERVED)

130. INSPECTION, SAMPLING, AND TESTING.

In order to accomplish the purposes of Subchapter A, an inspector may enter upon and inspect any public or private premises, lands, means of conveyance, or article of any person within this State, for the purpose of inspecting, surveying, sampling, testing, treating, controlling, or destroying any soil, plant, or plant material thought to or found to contain or be infested with Pale Cyst Nematode. ()

131. – 209. (RESERVED)

SUBCHAPTER B – SEED POTATO CROP MANAGEMENT AREA

210. DEFINITIONS.

In addition to the definitions found in Idaho Code Sections 22-501 and 22-2005, Idaho Code, the definitions found in section 210 apply to the interpretation and enforcement of Subchapter B. ()

01. Cull Potatoes. Potatoes not usable for planting or consumption. ()

02. Grower. Any person who plants and cultivates more than fifteen one-hundredths (.15) acres of potatoes within a Seed Potato Crop Management Area. ()

03. Volunteer Potatoes. Volunteer potatoes are defined as any residue left in a field from previous years of production that has sprouted and is growing. ()

~~**211. ABBREVIATIONS.**~~

~~**01. ICIA.** Idaho Crop Improvement Association. (3-15-22)~~

~~**2121. -- 219. (RESERVED)**~~

220. SEED POTATO CROP MANAGEMENT AREAS.

Area boundary maps as published on ISDA website: <https://agri.idaho.gov/main/plants/potatoes/> for the following Seed Potato Crop Management Areas: All of Teton, Caribou and Franklin Counties; Portions of Fremont and Madison County; and areas known as: Lost River, Almo Valley Bridge, Ririe Reservoir, Picabo, Little Camas, and Hog Hollow. ()

~~**01. Fremont Seed Potato Crop Management Area.** That portion of Fremont county described as follows: Beginning at a point that is the southwest corner of Section 16, Township 7 North, Range 43 East, Boise, Meridian, Fremont County, Idaho; Thence north approximately 1 mile to the northwest corner of Section 16,~~

~~Township 7 North, Range 43 East; Thence west approximately 2 miles to the southwest corner of Section 7, Township 7 North, Range 43 East; Thence north approximately 1 mile to the northwest corner of Section 7, Township 7 North, Range 43 East; Thence west approximately 3 miles to the southwest corner of Section 3, Township 7 North, Range 42 East; Thence north approximately 2 miles to the northwest corner of Section 34, Township 8 North, Range 42 East; Thence west approximately 2 miles to the southwest corner of Section 29, Township 8 North, Range 42 East; Thence north approximately 1 3/8 miles to the center line of Fall River; Thence northwest along Fall River approximately 1 1/8 miles to where Fall River intersects the west line of Section 8, Township 8 North, Range 41 East; Thence north approximately 1 7/8 miles to the northwest corner of Section 7, Township 18 North, Range 41 East; Thence west approximately 2 miles to the southwest corner of Section 2, Township 8 North, Range 41 East; Thence north approximately 1 mile to the northwest corner of Section 2, Township 8 North, Range 41 East; Thence west approximately 1/4 of 1 mile; Thence north along an existing road approximately 4 miles; Thence northeasterly along said road approximately 1 1/10 miles to the northwest corner of Section 11, Township 9 North, Range 41 East; Thence north approximately 1 mile to the northwest corner of Section 2, Township 9 North, Range 41 East; Thence east approximately 14 miles to the northeast corner of Section 1, Township 9 North, Range 43 East; Thence south approximately 2 miles to the southeast corner of Section 12, Township 9 North, Range 43 East; Thence east approximately 4 miles to the northeast corner of Section 15, Township 9 North, Range 44 East, which is the west boundary line of the Targhee National Forest; Thence south along said forest boundary approximately 3 miles to the southeast corner of Section 27, Township 9 North, Range 44 East; Thence east continuing along said forest boundary approximately 2 miles to the northeast corner of Section 36, Township 9 North, Range 44 East; Thence south along said forest boundary approximately 1 mile to the east 1/4 corner of Section 1, Township 8 North, Range 44 East; Thence east continuing along said forest boundary approximately 2 miles to the east 1/4 corner of Section 5, Township 8 North, Range 45 East; Thence south continuing along said forest boundary approximately 5 miles to the east 1/4 corner of Section 32, Township 8 North, Range 45 East; Thence east continuing along said forest boundary approximately 1 1/2 miles to the center of Section 34, Township 8 North, Range 45 East; Thence south continuing along said forest boundary approximately 1 1/8 miles to the center line of Bitch Creek; Thence southwesterly along the center line of Bitch Creek approximately 10 1/2 miles to the confluence of Bitch Creek with the Teton River; Thence westerly 8 miles along the center line of the Teton River to the west line of Section 21, Township 7 North, Range 43 East; Thence north approximately 1/10 of a mile to the southwest corner of Section 16, Township 7 North, Range 43 East and the point of beginning.~~ (3-15-22)

~~**02. Teton And Portions Of Madison County Seed Potato Crop Management Area.** (3-15-22)~~

~~**a.** All of Teton County, Idaho; (3-15-22)~~

~~**b.** That portion of Madison County, Idaho, located in Township 6 North and Township 7 North lying East of Canyon Creek; and (3-15-22)~~

~~**e.** That portion of Madison County, Idaho located in Township 6 North, Range 42 East, which includes portions of Sections 11 and 13 located south of Highway 33 and all of Sections 14, 15, 23, and 24. (3-15-22)~~

~~**03. Lost River Seed Potato Crop Management Area.** Those portions of Butte and Custer Counties within Township 3 North to Township 7 North and Range 23 East to Range 27 East. (3-15-22)~~

~~**04. Caribou and Franklin County Seed Potato Crop Management Area.** All of Caribou County, Idaho and all of Franklin County, Idaho. (3-15-22)~~

~~**05. Almo Valley Bridge Seed Potato Crop Management Area.** (3-15-22)~~

~~**a.** That portion of Cassia County, Idaho located in Township 16 South, Range 24 East, which includes all of Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36; (3-15-22)~~

~~**b.** That portion of Cassia County, Idaho located in Township 15 South, Range 24 East, which includes all of Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36; (3-15-22)~~

~~**e.** That portion of Cassia County, Idaho located in Township 14 South, Range 24 East, which includes all of Section 36; (3-15-22)~~

d. That portion of Cassia County, Idaho located in Township 14 South, Range 25 East, which includes all of Sections 19, 20, 29, 30, 31, and 32; (3-15-22)

e. That portion of Cassia County, Idaho located in Township 15 South, Range 25 East, which includes all of Sections 5, 6, 7, 8, 18, 19, 20, 29, 30, 31, 32 and the Northeast ¼ of Section 33; (3-15-22)

f. That portion of Cassia County, Idaho located in Township 16 South, Range 25 East, which includes all of Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 29, 30, 31, 32, 33, 34, 35, and 36; (3-15-22)

g. That portion of Cassia County, Idaho located in Township 16 South, Range 26 East; and (3-15-22)

h. That portion of Cassia County, Idaho located in Township 16 South, Range 27 East, which includes all of Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, and 30. (3-15-22)

06. Ririe Reservoir Seed Potato Crop Management Area. (3-15-22)

a. That portion of Bonneville County, Idaho located in Township 3 North, Range 40 East, which includes all of Sections 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, and 36; (3-15-22)

b. That portion of Bonneville County, Idaho located in Township 3 North, Range 41 East, which includes all of Sections 8, 15, 16, 17, 18, 20, 21, 22, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36; (3-15-22)

e. That portion of Bonneville County, Idaho located in Township 2 North, Range 42 East, which includes all of Sections 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34; and (3-15-22)

d. That portion of Bonneville County, Idaho located in Township 3 North, Range 42 East, which includes all of Sections 31, 32, and 33. (3-15-22)

07. Picabo Seed Potato Crop Management Area. That portion of Blaine County, Idaho beginning with Township 1S, in Range 18, all of sections 23 and 24, leading into Township 1N, in Range 19 all of sections: 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, and 34. Leading into Township 1S, in Range 19, the W ½ of section 1, and all of sections: 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29. Leading into Township 1S, Range 20, all of sections: 7, 8, 11, 12, 13, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30, 35, and 36, including the N ½ of Sections 33 and 34. Leading into Township 2S, Range 20, all of sections 1, 2, and 12. Leading into Township 1S, Range 21, all of sections: 3, 4, 5, 6, 7, 8, 9, 10, 16, 17, 18, 19, 20, W ½ of section 28, and all of sections 29, 30, 31, 32, and the NW ¼ of section 33, from Hwy 20 North, plus section 21 from Dry Creek Road North. Leading into Township 2S, Range 21, all of the W ½ of section 3, and all of the following sections: 4, 5, 6, 7, 8, E ½ of section 9, all of sections 17, 18, 19, 20, 21, 28, 29, 30, and 31, W ½ and the SE ½ of the NE ¼ of section 10. Leading into Township 1N, Range 21, all of sections: 30, 31, and 32. All U.S. Department of the Interior, Bureau of Land Management property and property owned by the state of Idaho existing within the above mentioned areas will not be considered part of the management area. (3-15-22)

08. Little Camas Ranch Seed Potato Crop Management Area. (3-15-22)

a. That portion of Elmore County, Idaho located in Township 1 North, Range 9 East, Boise Meridian, which includes the S ½ N ½ SE ¼, S ½ SE ¼, SW ¼ of Section 27, the SE ¼ SE ¼, SW ¼ SW ¼ of Section 28, the S ½ S ½, N ½ SE ¼, SE ¼ NE ¼, W ½ NE ¼, NE ¼ NE ¼ NW ¼, S ½ NE ¼ NW ¼, SE ¼ NW ¼, N ½ SW ¼, NE ¼ NE ¼ of Section 32, the E ½, E ½ W ½, SW ¼ SW ¼, NW ¼ SW ¼, SW ¼ NW ¼, NW ¼ NW ¼ of Section 33, and all of Section 34; and (3-15-22)

b. That portion of Elmore County, Idaho located in Township 1 South, Range 9 East, Boise Meridian, which includes all of Section 4, all less the SW ¼ NW ¼ and less the W ½ SW ¼ of Section 5, the N ½ NE ¼ of Section 8, and the NW ¼ NE ¼, N ½ NW ¼ of Section 9; and (3-15-22)

e. That portion of Elmore County, Idaho located in Township 1 South, Range 9 East, Boise Meridian, which includes Lots 1, 2, 3, and 4, and the S ½ N ½, N ½ SE ¼, SW ¼ of Section 3 less Tax Lot 1 described as

follows: That portion of Elmore County, Idaho located in Township 1 South Range 9 East, Boise Meridian, described above as Tax Lot 1: Save and Except that portion of S ½ SW ¼, Section 3, Township 1 South, Range 9 East, Boise Meridian, Elmore County, Idaho more particularly described as follows: Commencing at the Southwest corner of Section 3, Township 1 South, Range 9 East, Boise Meridian, and running thence South 89o51' East along the South Section line of said Section 3, a distance of 437 feet to a steel pin in the center of a graveled road, the Real Point of Beginning. Thence continuing from the Real Point of Beginning North 0o04' West a distance of 1,000 feet to a steel pin; thence South 89o51' East a distance of 1,742.4 feet to a steel pin; thence South 0o04' East a distance of 1,000 feet to a steel pin on the South Section line of said Section 3; thence North 89o51' West along the South Section line of said Section 3 a distance of 1,742.4 feet, more or less to the Real Point of Beginning more particularly described as Tax Lot 1. (3-15-22)

09. Hog Hollow Seed Potato Crop Management Area. (3-15-22)

a. Beginning at a point that is the northeast corner of Section 19, Township 7 North, Range 43 East, Boise Meridian; Thence south along the eastern border of Section 19, Township 7 North, Range 43 East approximately 3/4 mile to the centerline of the Teton River as it enters said Section 19 at the eastern border of said Section 19; Thence southwesterly along the centerline of the Teton River as it runs through the southeast corner of Section 19, Township 7 North, Range 43 East; Continuing along the centerline of the Teton River as it runs southwesterly into the N1/2 NE1/4 of Section 30, Township 7 North, Range 43 East and then northwesterly out of the N1/2 NE1/4 of said Section 30; Continuing along the centerline of the Teton River as it runs northwesterly from the southern borderline of Section 19, Township 7 North, Range 43 East and then as the river curves southwesterly to the western border of said Section 19; Continuing along the centerline of the Teton River as it runs generally north-northwesterly through Section 24, Township 7 North, Range 42 East to the western border of said Section 24; Continuing along the centerline of the Teton River as it runs generally northwesterly through Section 23, Township 7 North, Range 42 East and to the northern border of said Section 23; Continuing along the centerline of the Teton River as it runs northwesterly through the SW1/4 SW1/4 of Section 14, Township 7 North, Range 42 East to the western border of said Section 14; Continuing along the centerline of the Teton River as it runs generally westerly through Section 15, Township 7 North, Range 42 East to the western border of said Section 15; Continuing along the centerline of the Teton River as it runs southwesterly through the SE1/4 SE1/4 of Section 16, Township 7 North, Range 42 East to the southern border of said Section 16; Thence west approximately 3/4 mile along the southern border of Section 16, Township 7 North, Range 42 East to the southwest corner of said Section 16; Thence north 1 mile along the western border of Section 16, Township 7 North, Range 42 East to the northwest corner of said Section 16; Thence north approximately 1/4 mile along the western border of Section 9, Township 7 North, Range 42 East to the northwest corner of the SW1/4 SW1/4 of said Section 9; Thence west 1 mile along the northern border of the S1/2 S1/2 of Section 8, Township 7 North, Range 42 East to the western border of said Section 8; Thence west 1 mile along the northern border of the S1/2 S1/2 of Section 7, Township 7 North, Range 42 East to the western border of said Section 7; Thence south 1/4 mile to the southeast corner of Section 12, Township 7 North, Range 41 East; Thence west approximately 3/4 mile along the southern border of Section 12, Township 7 North, Range 41 East to the southwest corner of the SE1/4 SW1/4 of said Section 12; Thence north approximately 3/4 mile to the northwest corner of the SE1/4 NW1/4 of Section 12, Township 7 North, Range 41 East; Thence east 1/4 mile along the northern border of the S1/2 NW1/4 of Section 12, Township 7 North, Range 41 East to the southwest corner of the N1/2 NE1/4 of said Section 12; Thence north 1/4 mile along the western border of the NE1/4 of Section 12, Township 7 North, Range 41 East to the northern border of said Section 12; Thence east along the northern border of Section 12, Township 7 North, Range 41 East to the northeast corner of said Section 12; Excluding from the described portion of Section 12, Township 7 North, Range 41 East, Boise Meridian the following parcel; Commencing at the northeast corner of Section 12, Township 7 North, Range 41 East thence North 89°02'34" West, along the north line of said Section, 40.03 feet to a point on the westerly line of a county road; said point being the true point of beginning; thence continuing North 89°02'34" West, along the Section line, 612.05 feet; thence South 253.12 feet; thence East 611.96 feet, to a point on the westerly line of said county road; thence North 242.89 feet to the true point of beginning, containing 3.48 acres more or less; Thence east along the northern border of Section 7, Township 7 North, Range 42 East, Boise Meridian to the northeast corner of said Section 7; Thence east along the northern border of Section 8, Township 7 North, Range 42 East to the northeast corner of said Section 8; Thence east along the northern border of Section 9, Township 7 North, Range 42 East to the northeast corner of said Section 9; Thence east along the northern border of Section 10, Township 7 North, Range 42 East to the northeast corner of said Section 10; Thence east 1/4 mile along the northern border of Section 11, Township 7 North, Range 42 East to the northeast corner of the NW1/4 NW1/4 of said Section 11; Thence south approximately 3/4 mile to a county road known as the Old Hog Hollow Road, located approximately along the northern border of the S1/2 S1/2 of Section 11, Township 7 North,

~~Range 42 East; Thence east along the county road known as the Old Hog Hollow Road as it travels easterly approximately along the northern border of the S1/2 S1/2 of Section 11, Township 7 North, Range 42 East approximately to the northeast corner of the SW1/4 SE1/4 of said Section 11; Thence southeast along the county road known as the Old Hog Hollow Road as it travels southeasterly through the SE1/4 SE1/4 of Section 11, Township 7 North, Range 42 East to the to the eastern border of said Section 11; Thence generally easterly along the county road known as the Old Hog Hollow Road as it travels generally easterly through the S1/2 S1/2 of Section 12, Township 7 North, Range 42 East to the eastern border of said Section 12; Thence south approximately 1/4 mile along the eastern border of Section 12, Township 7 North, Range 42 East to the southeast corner of said Section 12; Thence south 1 mile along the eastern border of Section 13, Township 7 North, Range 42 East to the southeast corner of said Section 13; Thence east 1 mile along the northern border of Section 19, Township 7 North, Range 43 East to the northeast corner of said Section 19 the point of beginning. (3-15-22)~~

~~b. Including also the following non-contiguous parcel: Beginning at a point that is the northeast corner of Section 5, Township 7 North, Range 42 East, Boise Meridian and continuing south along the eastern border of said Section 5 to the southeast corner of the NE1/4 of said Section 5; Thence west 1 mile along the northern border of the S1/2 of Section 5, Township 7 North, Range 42 East to the western border of said Section 5; Thence north 1/2 mile along the western border of Section 5, Township 7 North, Range 42 East to the northwest corner of said Section 5; Thence north 1/4 mile along the western border of Section 32, Township 8 North, Range 42 East to the northwest corner of the SW1/4 SW1/4 of said Section 32; Thence east 1 mile along the northern border of the S1/2 S1/2 of Section 32, Township 8 North, Range 42 East to the eastern border of said Section 32; Thence south 1/4 mile along the eastern border of Section 32, Township 8 North, Range 42 East to the northeast corner of Section 5, Township 7 North, Range 42 East the point of beginning. (3-15-22)~~

221. -- 229. (RESERVED)

230. REGULATED ARTICLES.

- 01. Irish Potato.** All plants and plant parts of the Irish potato, *Solanum tuberosum*. ()
- 02. Green Peach Aphid Hosts.** All plants that are hosts to the green peach aphid, *Myzus persicae*, including but not limited to peach and apricot trees and bedding plants. ()
- 03. Any Host.** Any host that may spread or assist in the spread of any of the diseases or pests of concern. ()
- 04. Equipment.** All ground working, earth moving, or potato handling equipment shall be cleaned of soil and plant debris and disinfected before entering the Seed Potato Crop Management Areas in order to prevent the introduction of disease(s) or pest(s) of concern. ()

231. -- 239. (RESERVED)

240. DISEASES AND PESTS OF CONCERN.

- 01. Introduction of Pests.** Introduction into the Seed Potato Crop Management Areas of any of the pests or diseases listed in this Section by a contaminated vehicle or any other means constitutes a violation of Subchapter B of this rule. ()
- 02. Leaf Roll.** *Net necrosis* or leaf roll, caused by potato leaf roll virus. ()
- 03. Ring Rot.** Ring rot, *Corynebacterium sepedonicum*. ()
- 04. Columbia Root Knot Nematode.** Columbia root knot nematode, *Meloidogyne chitwoodii*. ()
- 05. Green Peach Aphid.** Green peach aphid, *Myzus persicae*, a vector of the leaf roll virus. ()
- 06. Northern Root Knot Nematode.** Northern root knot nematode, *Meloidogyne hapla*. ()

07. **Corky Ring Spot.** Corky ring spot, a disease caused by tobacco rattle virus. ()
08. **Powdery Scab.** Powdery scab, *Spongospora subterranea* (Wallr.) Lagerh. f. sp. *subterranea*. ()
09. **Stubby Root Nematode.** Stubby root nematode, *Paratrichodorus pachydermus*, *Paratrichodorus christiei*, *Trichodorus primitivus*. ()
10. **Potato Late Blight.** Potato late blight, a disease caused by *Phytophthora infestans*. ()

241. -- 249. (RESERVED)

250. PLANTING OF POTATOES.

01. **Seed Potato Crop Management Area.** No person shall plant any potatoes in any of the Seed Potato Crop Management Areas except those that have met standards for recertification of the [Idaho Crop Improvement Association \(ICIA\)](#) or equivalent agency of another state or political jurisdiction in accordance with Section 22-503, Idaho Code. (3-15-22)()

02. **Certification.** All plantings of potatoes shall be entered for certification with ICIA who notifies ISDA of any lots of potatoes rejected. Exceptions: ()

- a. All plantings of potatoes in Lost River Seed Potato Crop Management Area; and ()
- b. All plantings of potatoes in home gardens that are fifteen one-hundredths (.15) acre or less. ()

~~03. **Home Gardens.** Potatoes planted in home gardens within a Seed Potato Crop Management Area are subject to inspection by the ISDA for the pests and diseases listed in Section 240. ISDA ensures that proper control measures are taken. (3-15-22)~~

~~04. **Control.** The grower shall spray with a pesticide or take other control measures approved by ISDA when potato late blight is found within a twenty-five (25) mile radius of a Seed Potato Crop Management Area boundary except the Lost River Seed Potato Crop Management Area. A grower in the Lost River Seed Potato Crop Management Area shall spray with a pesticide or take other control measures approved by ISDA when potato late blight is found within the boundaries of the Lost River Seed Potato Crop Management Area. ()~~

251. -- 259. (RESERVED)

260. PEACH, APRICOT TREES, OR ANY HOST.

Peach, apricot trees, or any host of green peach aphid growing in Seed Potato Crop Management Areas shall be controlled with an ISDA approved pesticide. ()

261. BEDDING PLANTS.

01. **Aphid Inspection.** All bedding plants are subject to inspection by the Director for aphids. If aphids are found, the plants shall be treated by a method approved by the Director. Such methods may include destruction of infested plants. ()

02. **Treatment for Infestation.** Bedding plants in transit to Seed Potato Crop Management Areas are subject to inspection for aphids and if found infested, treated in a manner approved by the Director before delivery into Seed Potato Crop Management Areas. ()

03. **Treatment of Property.** The Director may order treatment of property on which there are bedding plants or cut floral arrangements where he determines such treatment is necessary to control aphids. ()

04. **Treatment of Cemeteries.** All cemeteries within Seed Potato Crop Management Areas shall be

sprayed or controlled for insects immediately after the Memorial Day holiday. Such spraying or control will be done in compliance with all State and Federal laws, rules and regulations. ()

262. -- 269. (RESERVED)

270. STORAGE OF POTATOES.

01. Potatoes Produced Within Seed Potato Crop Management Areas. ~~All potatoes grown within Seed Potato Crop Management Areas may be stored within Seed Potato Crop Management Areas.~~ All potatoes found to be infested with any disease or pests of concern as defined in Section 240 **or those that have not met standards for recertification by ICIA** shall be removed from Seed Potato Crop Management Areas no later than April 15 of the year following harvest. (3-15-22)()

02. Potatoes Produced Outside Seed Potato Crop Management Areas. Before any lot of potatoes can be brought into Seed Potato Crop Management Areas, the lot shall be inspected, certified, and tagged by ICIA, the ~~Federal/~~ State **Shipping Point** Inspection Service or a recognized equivalent agency of another state or territory in accordance with Section 22-503, Idaho Code except the Lost River Seed Potato Crop Management Area. Before any lot of potatoes can be brought into the Lost River Seed Potato Crop Management Area the lot shall pass ICIA summer inspection or inspected, certified, and tagged by the ~~Federal/~~ State **Shipping Point** Inspection Service or a recognized equivalent agency of another state or territory in accordance with Section 22-503, Idaho Code. (3-15-22)()

271. SEED DISPOSITION NOTIFICATION.

The ~~Federal/~~ State **Shipping Point** Inspection Service will notify the ISDA of all seed lots rejected for certification. This notification will include the variety, grower, storage location and the certification number of each rejected lot. (3-15-22)()

272. -- 279. (RESERVED)

280. CULL AND VOLUNTEER POTATOES.

01. Plant Growth. All plant growth on cull potato piles shall be controlled by a state approved chemical or mechanical measure including, but not limited to, burial with a minimum of eighteen (18) inches of soil, field spreading no more than two (2) potato layers and composting. ()

02. Destroying Volunteer Potatoes. It is the responsibility of each grower within Seed Potato Crop Management Areas to destroy all cull piles and volunteer potatoes growing on summer fallow, set-aside and non-cultivated areas of the grower's property. In the event that the grower fails to destroy such plants, the Director may order them destroyed at the expense of the grower. ()

281. -- 289. (RESERVED)

290. TRANSPORTATION OF POTATOES.

01. Responsibilities. It is the responsibility of the growers of rejected lots to keep contaminated trucks and equipment, infested vegetable matter and foliage from contaminating public roadways, neighboring fields and cellars. ()

02. In Transit. Potatoes in transit through Seed Potato Crop Management Areas shall be in covered vehicles and not be unloaded in Seed Potato Crop Management Areas. ()

291. -- 294. (RESERVED)

295. POTATOES FOR CONSUMPTION.

Potatoes for human and animal consumption, grown outside Seed Potato Crop Management Areas as defined in Section 220, shall be treated with a sprout inhibitor before being offered for sale within Seed Potato Crop Management Areas as defined in Section 220 of Subchapter B. ()

296. -- 303. (RESERVED)

SUBCHAPTER C – BACTERIAL RING ROT

304. -- 309. (RESERVED)

310. DEFINITIONS.

In addition to the definitions in Sections 22-1904 and 22-2005, Idaho Code, the definitions in section 310 apply in the interpretation and the enforcement of this Subchapter C only: ()

~~01. Bacterial Ring Rot. Caused by a bacterium, *Clavibacter michiganensis subsp. sepedonicus* (Cms). (3-15-22)~~

~~021. Contact Lot. A seed lot produced on a farming operation using common production and handling equipment or storage facilities, or both. (3-15-22)()~~

~~03. Idaho Crop Improvement Association, Inc. A grower association of certified seed producers and conditioners. In 1959, the Regents of the University of Idaho appointed the Idaho Crop Improvement Association, Inc. as its duly authorized agent to administer and conduct seed certification in Idaho. (3-15-22)~~

~~042. Seed Lot. A field or a group of fields producing seed potatoes or the potatoes (tubers) harvested from a seed potato field, identified with a certification number and a North American Plant Health Certificate, enabling identity preservation and tracking. ()~~

~~053. Seed Potato Certification Process. The process, timing, and requirements for the certification of seed potatoes in Idaho, as set forth in the Idaho Potato Certification Standards, as set forth by the Idaho Crop Improvement Association (ICIA). (3-15-22)()~~

~~064. Seed Stock. Seed potatoes intended for use as a planting source for certification that are “Identity Preserved” with a certification number and a North American Plant Health Certificate. ()~~

~~075. Sister Lot. Seed lots originating from the same lot of seed stock. ()~~

~~311. ABBREVIATIONS.~~

~~01. BRR. Bacterial Ring Rot. (3-15-22)~~

~~02. Cms. *Clavibacter michiganensis subsp. sepedonicus*. (3-15-22)~~

~~03. ISDA. Idaho State Department of Agriculture. (3-15-22)~~

~~04. ICIA. Idaho Crop Improvement Association. (3-15-22)~~

312.1. – 319. (RESERVED)

320. REGULATED PEST - BACTERIAL RING ROT (BRR).

Caused by a bacterium, *Clavibacter michiganensis subsp. sepedonicus* (Cms). (3-15-22)()

321. -- 329. (RESERVED)

330. REPORTING OF BRR.

01. Mandatory Reporting. It is mandatory for any person including, but not limited to, a grower, processor, shipper, laboratory staff member, field inspector, or shipping point inspector, to immediately report the presence of BRR Cms to the Department Idaho State Department of Agriculture (ISDA) when: (3-15-22)()

a. The BRR Cms is discovered or observed in seed potato plants or tubers prior to final seed potato

certification by ICIA; and (3-15-22)()

b. The presence of ~~BRR~~ Cms is confirmed via laboratory testing; and (3-15-22)()

c. The positive tubers or plant parts are still in the possession of the original seed grower. ()

02. Contents. All reports shall, to the best of the reporter's ability, contain the following information: ()

a. The field, facility or other location at which *Cms* was found; ()

b. The date of discovery; ()

c. The location at which the suspect potatoes were grown; ()

d. The variety and generation of the suspect potatoes; ()

e. The laboratory submission report and test results; ()

f. The certification tags and origin of the seed potatoes used to produce the suspect crop; ()

g. North American Plant Health Certificate. ()

03. Methods of Reporting. The report shall be made by phone, in person or in writing (which may include electronic mail sent to BRR@agri.idaho.gov). ()

331. HOLD HARMLESS.

Reporting parties and those parties participating in and cooperating with the ~~Department's~~ ISDA's trace back investigation of any alleged *Cms* contaminated potatoes will be held harmless from any civil penalties the ~~Department~~ ISDA has authority to issue. (3-15-22)()

332. TRACE BACK INVESTIGATION, SAMPLING, AND TESTING.

01. Trace Back and Investigation. ~~The department~~ ISDA, upon receiving a mandatory report of *Cms* infected potatoes, investigates the origin and destination of such potatoes. Trace back and investigation activities may include, but not be limited to: (3-15-22)()

a. A review of all inspection, certification, shipping and production records held by any person for the potatoes in question; ()

b. Inspection and sampling at the reporting operation as well as points for origin, storage and destination related to that operation; and ()

c. Laboratory testing records of any samples. ()

02. Mutual Cooperation. ~~The Department~~ ISDA and the ~~Idaho Crop Improvement Association~~ ICIA will mutually cooperate with each other in trace back investigations where appropriate. (3-15-22)()

03. Testing Positive for Cms. If certified seed potatoes in a lot test positive for *Cms* after they have left the control of the grower of that lot, ISDA's trace back investigation may include *Cms* testing any remaining seed from that lot that is still at the seed potato grower's facility. The testing level will be at a rate, depending on lot size, up to a maximum of four hundred (400) randomly selected tubers. ()

04. Trace Back Investigations. The public disclosure of information obtained during an investigation conducted under Subchapter C of this rule is subject to disclosure to the public only insofar as it is allowed by Title 74, Chapter 1, Idaho Code. ()

333. RESTRICTION ON THE USE OF INFECTED POTATOES.

Those potatoes found to be infected with *Cms* may not be utilized for planting as seed. ()

334. -- 349. (RESERVED)

350. TESTING FOR BRR.

01. Compliance With Certification Standards. Seed potato tubers for planting for commercial production or for seed certification in Idaho or being imported into Idaho as seed potatoes for commercial production or certification as seed for planting must comply with the Idaho Potato Certification Standards, as set forth by the [Idaho Crop Improvement Association ICIA](#). (3-15-22)()

02. Seed Potatoes to Be Exported Tested. Seed potato tubers being exported from Idaho to a foreign country as seed potatoes for planting must meet all ICIA requirements for certification and export tag placement, as well as all phytosanitary certification requirements of the importing country. All costs for sampling, transport and testing are borne by the exporter. ()

351. -- 359. (RESERVED)

360. HOLD ORDERS.

The Director may authorize Hold Orders restricting the movement of infested or suspect potatoes until investigation, trace back, and sample analysis are complete. Hold Orders may require verification that said potatoes will not be utilized for any purposes not authorized in writing by the Department. When potatoes from a certified seed potato lot are sampled and test positive for ~~BRR~~ *Cms* after the seed potatoes have left the seed potato grower's facility, the department will not issue a hold order on any seed potatoes from that lot that remain on the seed potato grower's facility unless and until potatoes from the affected lot are sampled at the seed potato grower's facility and test positive for ~~BRR~~ *Cms*. (3-15-22)()

361. -- 369. (RESERVED)

370. FEES.

Fees for samples for laboratory testing for *Cms* are those normally charged by the approved laboratory doing the testing. ()

371. -- 409. (RESERVED)

SUBCHAPTER D – PLANTING SEED POTATOES

410. DEFINITIONS.

In addition to the definitions found in Section 22-501, Idaho Code, the definitions found in section 410 apply in the interpretation and the enforcement of this subchapter D of this rule: ()

01. Disease. Any fungus, bacteria, virus, or other organism injurious to plant life or plant products, including the spore or any other propagative state thereof. ()

02. Pest. Any form of animal life that is or may be detrimental or injurious to plant life or plant products, including the egg, larva, pupa, or any other immature stage thereof. ()

411. -- 449. (RESERVED)

450. REQUIREMENTS FOR UNCERTIFIED SEED POTATOES.

01. No More Than One Generation. No more than one (1) generation from certified parent seed potatoes. ()

02. Grown by the Farmer. Grown by the farmer and separated and graded at the storage of the farmer planting the uncertified seed potatoes. ()

- 03. Planting.** Planted only on the farm of the farmer who produced the uncertified seed potatoes. ()
- 04. Disease Content.** In compliance with Idaho Crop Improvement Association (ICIA) rules of certification for seed potatoes by having a disease content that does not exceed the standard for the last generation of certified seed potatoes. ~~(3-15-22)~~()
- 05. Laboratory Testing.** Laboratory tested for bacterial ring rot prior to planting. ()
- 06. Laboratory Tested and/or Grown Out.** Laboratory tested and/or grown-out for potato leaf roll virus and potato virus Y prior to planting. ()
- 07. Testing by Designated Agencies.** Laboratory and/or grow-out tested by agencies designated by the department. ()
- 08. Sampling.** Sampled in accordance with procedures established by the department. ()
- 451. -- 459. (RESERVED)**
- 460. ENFORCEMENT.**
- 01. Reporting – Uncertified Seed Potatoes.** All growers planning to plant uncertified seed potatoes shall complete an uncertified seed potatoes report form approved by the department and submit it to the department prior to planting. ()
- 02. Records - Certified Seed Potatoes.** All potato growers are required to keep seed potato certification records for a minimum of four years after planting. The records may be official tags or other official documentation issued by the certifying agency and representing each lot planted. These records must include the potato variety name, certification number and certifying agency. These records are to be made available to a Department representative upon request. ()
- 461. – 999. (RESERVED)**

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.06.16 – RULES GOVERNING HONEY STANDARDS
DOCKET NO. 02-0616-2301 (ZBR CHAPTER REWRITE)
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 22-2808, 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 18, 2023.

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

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

This rule is being presented for authorization as part of the ISDA’s plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor’s [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

These rules apply to all honey produced by honey bees and to incorporate by reference the United States Standards for Grades of Extracted Honey as a quality control program.

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

There is no fee associated with this rule.

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

There is no fiscal impact 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 May 3, 2023 Idaho Administrative Bulletin, [Vol. 23-5, Page 11](#).

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

United States Standards for Grades of Extracted Honey, Effective Date May 23, 1985. The United States Standards for Grades of Extracted Honey adopted by the Agriculture Marketing Service, United States Department of Agriculture effective May 23, 1985 are hereby adopted for the purposes of this rule for extracted honey grades.

It is the intent of the Idaho Honey Commission to ensure that honey sold in Idaho meets these basic standards.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), for any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, the director shall identify the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal government. The following sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

The federal government sets a standard for the definition of “honey”, but does not provide for application of that standard at the state level.

The detailed 22-101A analysis can be found on the agency’s website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

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 25, 2023.

DATED this 4th day of October, 2023.

Lloyd B. Knight
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, ID 83707
Phone: (208) 332-8615
Email: lloyd.knight@isda.idaho.gov

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0616-2301
(ZBR Chapter Rewrite)**

02.06.16 – RULES GOVERNING HONEY STANDARDS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 22-2808, Idaho Code. ()

001. ~~TITLE AND SCOPE.~~

~~01. Title. The title of this chapter is IDAPA 02.06.16, “Rules Governing Honey Standards.” (3-31-22)~~

~~02. Scope. These rules apply to all honey produced by honey bees from nectar and covers all styles of honey presentation that are processed and ultimately intended for direct consumption, and to all honey packed, processed or intended for sale in bulk containers as honey that may be repacked for retail sale or for sale or use as an ingredient in other foods and to incorporate by reference the United States Standards for Grades of Extracted Honey as a quality control program. (3-31-22)()~~

002. – 003. (RESERVED)

004. INCORPORATION BY REFERENCE.

01. United States Standards for Grades of Extracted Honey, Effective Date May 23, 1985. The United States Standards for Grades of Extracted Honey adopted by the Agriculture Marketing Service, United States Department of Agriculture effective May 23, 1985 are hereby adopted for the purposes of this rule for extracted honey grades. See Section 016 of this rule. A copy of such federal standards is available at the following USDA

Website https://www.ams.usda.gov/sites/default/files/media/Extracted_Honey_Standard%5B1%5D.pdf. ()

~~005.—009.~~ (RESERVED)

010. DEFINITIONS.

The Department adopts the definitions set forth in Section 22-2803, Idaho Code. In addition, as used in this chapter, the following definitions apply: (3-31-22)

~~01. Air Bubble.~~ The small visible pockets of air in suspension that may be numerous in the honey and contribute to the lack of clarity in filtered style. (3-31-22)

~~02. Bees.~~ Honey producing insects of the genus *Apis* and includes the adults, eggs, larvae, pupae or other immature stages thereof. (3-31-22)

~~03. Comb.~~ The wax like cellular structure that bees use for retaining their brood or as storage for pollen and honey. (3-31-22)

~~04. Crystallize.~~ The spontaneous solidification of the natural glucose content from solution as the monohydrate. (3-31-22)

~~05. Floral Source.~~ The flower from which the bees gather nectar to make honey. (3-31-22)

~~06. Food.~~ (3-31-22)

~~a.~~ Articles used for food or drink, including ice, for human consumption or food for dogs and cats; (3-31-22)

~~b.~~ Chewing gum; and (3-31-22)

~~e.~~ Articles used for components of any such article. (3-31-22)

~~07. Food Additive.~~ Any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component of or otherwise affecting the characteristics of any food, including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food. It also includes any source of radiation intended for any such use, if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures or experience based on common use in food to be safe under the conditions of its intended use. 'Food additive' does not include: (3-31-22)

~~a.~~ A pesticide chemical in or on a raw agricultural commodity; (3-31-22)

~~b.~~ A pesticide chemical to the extent that it is intended for use, or is used in the production, storage or transportation of any raw agricultural commodity; or (3-31-22)

~~e.~~ A color additive. (3-31-22)

~~08. Granulate.~~ The initial formation of crystals in honey. (3-31-22)

~~09. Honey.~~ The natural sweet substance produced by bees resulting from the harvest of plant nectar or plant secretions that has been collected and transformed by the deposition, dehydration, and storage in comb to ripen and mature. (3-31-22)

~~10. Pollen Grain.~~ The granular, dust like microspores that bees gather from flowers. Pollen grains in suspension contribute to the lack of clarity in filtered style. (3-31-22)

011. COMPLAINT PROCESS.

~~01. **Complaint Contents.** Complaints shall be directed to the department, in writing, and contain the following information: (3-31-22)~~

~~a. The name, address and contact information of the complainants; and (3-31-22)~~

~~b. The location and brand name of the product which is the subject of complaint. (3-31-22)~~

~~02. **Initial Review.** The department will forward written complaints to the commission for initial review. (3-31-22)~~

~~03. **Sampling and Analysis.** Upon review, the commission may request the department to acquire an official sample of the product, in accordance with Title 22, Chapter 28, Idaho Code, and send it to an analytical laboratory that possesses the ability to analyze honey for adulteration, or other testing deemed appropriate in accordance with the nature of the complaint. The laboratory analysis will be reviewed by the commission and the department for compliance with Title 22, Chapter 28, Idaho Code, and these rules. (3-31-22)~~

~~04. **Violations.** If, after investigation, the commission and the department find that a violation of title 22, Chapter 28, Idaho Code and/or these rules has occurred the commission and the department shall confer and agree on an appropriate course of action as authorized by Section(s) 22-2811 or 22-2812, Idaho Code. (3-31-22)~~

~~012.—014. (RESERVED)~~

~~015. **STANDARDS OF IDENTITY—HONEY.**~~

~~Honey sold as such shall not have added to it any food additives, nor any other additions be made other than honey. It shall not have begun to ferment or effervesce and no pollen or constituent unique to honey may be removed except where unavoidable in the removal of foreign matter. (3-31-22)~~

~~01. **Treatments.** Chemical or biochemical treatments shall not be used to influence honey crystallization. (3-31-22)~~

~~02. **Moisture Content.** Honey shall not have a moisture content exceeding twenty three percent (23%). (3-31-22)~~

~~03. **Sugars Content.** (3-31-22)~~

~~a. The ratio of fructose to glucose shall be greater than zero point nine (0.9). (3-31-22)~~

~~b. Fructose and glucose (Sum of Both) shall not be less than 60g/100g. (3-31-22)~~

~~c. Sucrose content for honey not listed below shall not be more than 5g/100g. (3-31-22)~~

~~i. Honey from Alfalfa (*Medicago sativa*), Citrus spp., False Acacia (*Robinia pseudoacacia*), French Honeysuckle (*Hedysarum*), Menzies Banksia (*Banksia menziesii*), Red Gum (*Eucalyptus camaldulensis*), Leatherwood (*Eucryphia lucida*), and Eucryphia milligani shall have sucrose levels not to exceed 10g/100g. (3-31-22)~~

~~ii. Honey from Lavender (*Lavandula* spp.) and Borage (*Borago officinalis*) shall have sucrose levels not to exceed 15g/100g. (3-31-22)~~

~~04. **Name of the Food.** Products conforming to the standard of identity as adopted in this rule are designated "honey". Foods containing honey and any flavoring, spice, or other added ingredient or honey that is processed in such a way that materially changes the flavor, color, viscosity or other material characteristics of pure honey, shall be distinguished from honey in the food name by declaration of the food additive or modification. (3-31-22)~~

~~a. Honey may be designated according to floral or plant source if it comes predominately from that particular source and has the organoleptic and physicochemical properties corresponding with that origin. (3-31-22)~~

~~b. Where honey has been designated according to floral or plant source, as stated in Paragraph 015.04.a., then the common name or the botanical name of the floral source is used in conjunction with or joined with the word "honey". (3-31-22)~~

~~e. Honey may be designated according to the following styles, which style shall be declared on packaging: (3-31-22)~~

~~i. "Honey"—this is honey in liquid or crystalline state or a mixture of the two (2); (3-31-22)~~

~~ii. "Comb Honey"—this is honey stored by bees in the cells of freshly built brood less combs and which is sold in sealed whole combs or sections of such combs. (3-31-22)~~

~~iii. "Cut Comb in Honey," "Honey with Comb," or "Chunk Honey"—this is honey containing one (1) or more pieces of comb honey. (3-31-22)~~

016. TYPES AND STYLES OF HONEY.

~~01. **Extracted Honey.** Honey that has been separated from the comb by centrifugal force, gravity, straining, or other means. It is identified in the following types: (3-31-22)~~

~~a. **Liquid Honey.** Honey that is free of visible crystals; (3-31-22)~~

~~b. **Crystallized Honey.** Honey that is solidly granulated or crystallized, irrespective of whether candied, fondant, creamed or spread types of crystallized honey; and (3-31-22)~~

~~e. **Partially Crystallized Honey.** Honey that is a mixture of liquid honey and crystallized honey. (3-31-22)~~

~~02. **Styles.** Extracted honey styles are: (3-31-22)~~

~~a. **Filtered Honey.** Honey of any type defined in these standards that has been filtered to the extent that all or most of the fine particles, pollen grains, air bubbles, or other materials normally found in suspension, have been removed. Honey shall not be filtered to less than one point zero (1.0) micron. (3-31-22)~~

~~b. **Strained Honey.** Honey of any type defined in these standards that has been strained to the extent that most of the particles, including comb, propolis, or other defects normally found in honey, have been removed. Pollen grains, small air bubbles, and very fine particles are not normally removed from strained honey. (3-31-22)~~

~~e. **Unfiltered/Unstrained—Unfiltered/Unstrained Honey.** Honey that has not been filtered or strained by United States Standards for Grades of Extracted honey and may include extracted or non-extracted honey. (3-31-22)~~

~~d. **Raw Honey.** Honey that has not been pasteurized. (3-31-22)~~

~~017.—022. (RESERVED)~~

023. MISBRANDING.

~~Food labeled as a honey product, but not meeting the provisions of this rule may be subject to a stop sale order as authorized under Section 22-2812, Idaho Code. (3-31-22)~~

~~02405. -- 999. (RESERVED)~~

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.06.33 – ORGANIC FOOD PRODUCTS RULES

DOCKET NO. 02-0633-2301

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-1103, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 includes an update to the publication date for the federal National Organic Program Regulations that were updated effective March 20, 2023. This rule needs to be current with the national regulation in order to ensure that organic certification is valid for those customers wishing to utilize the agency for certification services.

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

No changes have been made to fees for these rules.

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

There is no fiscal impact due to these changes.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these changes are to the publication dates of documents that were already incorporated into these 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:

National Organic Program Regulations – the minimum official standard for organic certification.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), for any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, the director shall identify the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal government. The following sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

This rule regulates an activity that is not regulated by the federal government; therefore the entire rule is broader in scope or more stringent than federal law.

The detailed 22-101A analysis can be found on the agency's website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

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 25, 2023.

DATED this 4th day of October, 2023.

Lloyd B. Knight
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, ID 83707
Phone: (208) 332-8615
Email: lloyd.knight@isda.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0633-2301
(Only Those Sections With Amendments Are Shown.)

004. INCORPORATION BY REFERENCE.

The Code of Federal Regulations, Title 7, Part 205, National Organic Program Regulations (~~April 2, 2021~~March 20, 2023), except sections 205.620 through 205.622, is incorporated by reference and can be viewed online at <https://www.ecfr.gov/current/title-7/subtitle-B/chapter-I/subchapter-M/part-205/subpart-G/subject-group-ECFR370552c56dd7aef>. Copies of this document may be obtained from the Idaho State Department of Agriculture (ISDA), 2270 Old Penitentiary Road, Boise, Idaho 83712. (~~3-15-22~~)()

IDAPA 05 – IDAHO DEPARTMENT OF JUVENILE CORRECTIONS
05.01.02 – RULES AND STANDARDS FOR SECURE JUVENILE DETENTION CENTERS
DOCKET NO. 05-0102-2301 (ZBR 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(s) 20-504(3), Idaho Code.

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

Wednesday, October 25, 2023, at 2:00 p.m. MT
954 W. Jefferson St, Boise, Idaho, Conference Room 1, and virtually by BlueJeans meeting Meeting URL https://bluejeans.com/975592637/9404 Meeting ID 975 592 637 Participant Passcode 9404
E-mail Estela.Cabrera@idjc.idaho.gov or call 208.577.5451 for assistance.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 rulemaking is done in compliance with [Executive Order 2020-01: Zero-Based Regulation](#). The department is repealing this chapter and intends to incorporate standards for county juvenile detention centers in the chapter rewrite under ZBR companion docket 05-0104-2301. The department held collaborative meetings with county partners to develop updates to both sets of standards.

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

FISCAL IMPACT: There is no negative fiscal impact on the state general fund 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 June 7, 2023 Idaho Administrative Bulletin, [Volume 23-6, pages 35-36](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 Estela Cabrera at (208) 577-5451.

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 25, 2023.

DATED this 4th day of October, 2023.

Monty Prow, Director
Idaho Department of Juvenile Corrections
954 W. Jefferson St., P.O. Box 83720, Boise, ID 83720-0285
Phone: 208.334.5100, Fax: 208.334.5120

IDAPA 05.01.02 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 05 – IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

05.01.04 – UNIFORM STANDARDS FOR JUVENILE PROBATION SERVICES

DOCKET NO. 05-0104-2301 (ZBR CHAPTER REWRITE)

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) 20-504(10), 20-504(12) and 20-504(15), Idaho Code.

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

Wednesday, October 25, 2023, at 2:00 p.m. MT
954 W. Jefferson St, Boise, Idaho, Conference Room 1, and virtually by BlueJeans meeting Meeting URL https://bluejeans.com/975592637/9404 Meeting ID 975 592 637 Participant Passcode 9404
E-mail Estela.Cabrera@idjc.idaho.gov or call 208.577.5451 for assistance

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 rulemaking is done in compliance with [Executive Order 2020-01: Zero-Based Regulation](#). The department intends to repeal chapter 05.01.02 and this rule consolidates the standards for county detention centers and county probation departments into one chapter as well as updates the standards. Subchapter B of the rule incorporates content previously held in chapter 05.01.02. Definitions previously in 05.01.02 were also added. Collaborative meetings were held with county partners to develop updates to both sets of standards that form this 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 as a result of this rulemaking:

There is no negative fiscal impact on the state general fund, as this rulemaking does not implement changes to existing probation department or detention center operations.

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 5, 2023, Idaho Administrative Bulletin, [Volume 23-4, pages 12-13](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 Estela Cabrera at (208) 577-5451.

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 25, 2023.

DATED this 4th day of October, 2023.

Monty Prow, Director
Idaho Department of Juvenile Corrections
954 W. Jefferson St., P.O. Box 83720, Boise, ID 83720-0285
Phone: 208.334.5100, Fax: 208.334.5120

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 05-0104-2301
(ZBR Chapter Rewrite)

05.01.04 – ~~UNIFORM STANDARDS FOR~~ RULES GOVERNING COUNTY
JUVENILE PROBATION ~~AND DETENTION~~ SERVICES

000. LEGAL AUTHORITY.

These rules are adopted pursuant to Title 20, Chapter 5, Idaho Code. ()

001. SCOPE.

These rules ~~are established to~~ ensure that all county juvenile probation ~~services~~ departments and county juvenile detention centers operate under consistent standards based on the principles of accountability, community protection, and competency development with oversight by the Department. (3-31-22)()

~~002. ADMINISTRATIVE APPEALS.~~

~~This chapter does not provide for appeal of the administrative requirements for agencies.~~ (3-31-22)

~~003~~ ~~2~~ -- ~~0109~~. (RESERVED)

SUBCHAPTER A – RULES FOR JUVENILE PROBATION DEPARTMENTS

~~010~~ **10. DEFINITIONS.**

In addition to the definitions in Section 20-502, Idaho Code, ~~the following definitions apply~~ the definition in Section 110 apply to the interpretation and enforcement of Subchapter A only: (3-31-22)()

01. Balanced Approach. An approach to juvenile justice that gives balanced attention to holding offenders accountable, developing competencies, and protecting the community. ()

02. Case Management Plan. A plan developed in collaboration with those directly involved in a juvenile's case to address criminogenic risk factors and identified needs. ()

03. Evidence-Based Practices. Practices that are demonstrated to be effective through empirical research. ()

04. Graduated ~~Sanctions Responses.~~ ~~An evidence based model for juvenile offenders that combines accountability and sanctions with increasingly intensive treatment and rehabilitation services~~ A system of graduated incentives and sanctions to respond to juvenile offender's behavior. (3-31-22)()

05. Juvenile Probation Department. Any public or private agency, made up of one (1) or more staff, administered by or contracted with the court or county to provide juvenile probation and supervision services to a

county at the expense and concurrence of the county commissioners. ~~Services may include intake, diversion, supervision, restitution, and community service work.~~ (3-31-22)()

06. Juvenile Probation Officer. An employee, who is POST-certified or working towards POST certification, of a juvenile probation department ~~who is~~ responsible for preparing reports to the court, making recommendations regarding conditions of probation, and the supervision of juvenile offenders' compliance with court orders. (3-31-22)()

07. Probation. A legal status created by a court order that permits a juvenile offender to remain in the community with conditions and restrictions imposed by the court. ()

08. Recidivism. A measure ~~that counts the number~~ of juvenile offenders who are adjudicated of a new misdemeanor or felony offense within a specified time period. (3-31-22)()

09. Validated Risk/Needs Assessment. ~~A validated instrument that measures a juvenile's criminal risk factors and specific needs that, if addressed, should reduce the juvenile's likelihood to reoffend.~~ (3-31-22)

~~0111.~~ – ~~099119.~~ (RESERVED)

1020. REVIEW PROVISIONS.

The ~~Idaho~~ Department of ~~Juvenile Corrections~~ will collaborate with the courts and the counties to visit and review all juvenile probation departments to assess compliance with these rules. ~~A written report of each review will be prepared by the Department and provided to the appropriate juvenile probation administrator with copies to the county commissioners and the administrative judge.~~ (3-31-22)()

01. Frequency. Each juvenile probation department should be reviewed triennially. ()

02. Review of Records and Staff. All case files and related documents, policy and procedures manuals, and training records should be available for review excluding personnel records and personnel action reports. Review team members may privately interview juvenile offenders, parents/guardians of juvenile offenders, and staff concerning any matter pertaining to these standards. ()

03. Consultation with Judges. Judges assigned to preside over juvenile cases in the county should be contacted for information related to compliance with the standards. ()

121. CONFORMITY WITH APPLICABLE LAWS AND REGULATIONS.

Juvenile probation departments shall conform to applicable laws, rules, and regulations adopted by the federal government, state of Idaho, the county, and the municipality in which such probation department is located. ()

122. WRITTEN REPORT.

The Department prepares a written report of each review within ninety (90) days following such review that is provided to the appropriate juvenile probation administrator with copies to the county commissioners and the judges presiding over juvenile cases. ()

~~10423.~~ – ~~1929.~~ (RESERVED)

200130. ADMINISTRATION.

01. ~~Department~~ Mission Statement. Juvenile probation departments should have a department mission statement that incorporates the principles of the balanced approach and guides the operations of the department. (3-31-22)()

02. Policies and Procedures. Juvenile probation departments ~~shall~~ will have policies and procedures for the operation of the department that are consistent with existing laws, local rules, and evidence-based practices. All written policies, procedures, and rules and regulations should be dated, reviewed at least annually, and made available to department employees. Policies will include administrative procedures for the following:

~~(3-31-22)~~()

- a. Roles of employees and organizational authority within the department; ()
- b. Communication and dissemination of pertinent information to staff; ()
- c. Records management in accordance with Idaho Court Administrative Rule 32; and ()
- d. Internal case review to ensure the quality of supervision and compliance with standards. ()

~~03. Fidelity. Juvenile probation departments should demonstrate that practices adhere to department protocols and program models. (3-31-22)~~

~~043. Data. Juvenile probation departments should have policies and procedures to collect and analyze data on at least an annual basis that allows for an analysis of local trends in juvenile justice, measures recidivism, and evaluates any other identified department objectives. ()~~

~~201131. – 299139.(RESERVED)~~

~~300140. STAFF QUALIFICATIONS AND STAFF DEVELOPMENT.~~

All juvenile probation departments will have written policy and procedures governing staffing, to include: ()

~~01. Minimum Qualifications: ()~~

~~a. Juvenile probation officers should meet and maintain the minimum standards of employment as provided in IDAPA 11.11.01, “Rules of the Idaho Peace Officer Standards and Training Council.” ()~~

~~b. Juvenile probation officers should adhere to the Idaho Juvenile Probation Officer Code of Ethics and the Code of Ethics/Standards of Conduct as provided in IDAPA 11.11.01. (3-31-22)()~~

~~02. Training and Staff Development: ()~~

~~a. All juvenile probation officers will earn the juvenile probation officer certificate as mandated in IDAPA 11.11.01. ()~~

~~a.b. Juvenile probation departments should ensure staff training based on their written policy and procedures. The training should meet staff needs, be reviewed regularly, and address current trends. The training should also ensure that all juvenile probation officers earn the juvenile probation officer certificate as mandated in IDAPA 11.11.01. (3-31-22)()~~

~~b.c. Juvenile probation officers should obtain at least twenty (20) hours of continuing education each year after certification as a juvenile probation officer. At least six (6) hours of annual continuing education should be on evidence-based/best practices in juvenile justice. ()~~

~~e.d. Each juvenile probation department will maintain accurate documentation of continued training hours for each juvenile probation officer. ()~~

~~301141. – 399149.(RESERVED)~~

~~400150. JUVENILE PROBATION SERVICES.~~

All juvenile probation departments ~~shall operate in accordance with IDAPA 05.01.04 and~~ will have policies and procedures regarding the following: ~~(3-31-22)()~~

~~01. Balanced Approach Model. Supervision of juvenile offenders and services provided to juvenile offenders and their families should be based on the Balanced Approach Model. ()~~

~~02. Engaging and Involving Families. Juvenile probation officers should document efforts to engage~~

and involve a juvenile offender's family and/or other supportive individuals. ()

03. Validated Risk Assessment. A validated risk assessment should be utilized to determine the criminogenic risk factors and needs of the juvenile offender, assist in making recommendations to the court, and in developing individualized case plans to include length of probation and to determine level and type of supervision, frequency of contact, and intensity of services. (3-31-22)()

04. Assessments. Assessments by other qualified providers should be utilized when applicable to assist in making recommendations to the Court and in developing individualized case plans. (3-31-22)()

~~**05. Risk and Need Classification.** Risk assessment and supplemental assessment results should be used to recommend length of probation and to determine level and type of supervision, frequency of contact, and intensity of services.~~ (3-31-22)

~~**06.5 Case Management Plans.** Individualized case management plans should focus on the most significant criminogenic risks as identified by the risk assessment and supplemental assessments. The plan should prioritize and address es moderate or higher criminogenic risks, needs, and responsivity factors, rated moderate or higher, with special emphasis on addressing anti-social attitudes, values, and beliefs, other individual factors. Case management plans should be are reviewed with the juvenile and/or their parent/guardian and updated, as needed, per department policy.~~ (3-31-22)()

~~**07.6 Collateral Contacts.** Juvenile probation officers should conduct collateral contacts and verify information about juvenile offenders that is important to the supervision process.~~ ()

~~**08.7 Documentation.** Juvenile probation officers should maintain timely and accurate records of each juvenile offender under supervision, consistent with the juvenile probation department policies.~~ (3-31-22)()

~~**09.8 Evidence Based/Best Practices and Programs.** Evidence-based/best practices and programs should be utilized to promote a greater likelihood of positive outcomes.~~ ()

~~**10.9 Collaboration with Community Partners.** Juvenile probation officers should collaborate with public and private agencies to assist juveniles and their families to obtain services and utilize community resources. These partners may include, but are not limited to, treatment providers, employment agencies, law enforcement, school systems, and other government and non-profit organizations.~~ (3-31-22)()

~~**11.0 Court Reports.** Reports should provide the Court pertinent information as well as sufficient detail regarding the risks and needs of the juvenile.~~ ()

~~a. Any recommendations contained in the reports should be based on the Balanced Approach Model. Recommendations should address the risk and needs of the juvenile and the juvenile's family including supervision, treatment, and any other special conditions applicable based on the juvenile's risk.~~ (3-31-22)()

~~b. Information in reports should be verified to ensure accuracy and credibility of the information.~~ ()

~~c. Juvenile probation departments should have procedures to review and approve reports to ensure quality control and consistency.~~ ()

~~d. All reports should be filed in a timely manner as determined by the Court and department policies.~~ ()

~~**12.1 Use of Detention for Status Offenders.** Policies should reflect the risk/needs principle and the use of graduated sanctions. Alternatives to detention should be sought out for low risk offenders. Detention placement for status offenses should not be used unless court ordered by a judge pursuant to Idaho Juvenile Rule 17(e). Discretionary detention time is not imposed for status offenses.~~ (3-31-22)()

~~**13.2 Physical Intervention.** In the event a juvenile probation department authorizes the use of chemical~~

~~agents or other weapons, juvenile probation officers must be certified for their use by a certified instructor. Physical force used in instances of justifiable protection of the juvenile or others must be documented.~~ Policies regarding physical interventions should include direction on allowable interventions, training required, the use of chemical agents or other weapons, and documentation of any physical force used. (3-31-22)()

143. Reporting of Abuse/Neglect. Physical and sexual abuse and neglect must be reported and documented in accordance with Section 16-1605, Idaho Code. ()

154. Transfer of Cases. Transfer of cases should occur in accordance with chapter 5, Title 20, Idaho Code, and Idaho Juvenile Rule 10. ()

a. Juvenile probation officers should communicate with the county where a juvenile will reside regardless of whether or not supervision will be requested. Such communication should occur as soon as a change in residence is determined. ()

b. The juvenile probation department in the sending county should communicate, in writing, to the juvenile probation department in the receiving county regarding the supervision request. Information provided should include juvenile and guardian name, address, phone, school (if known), criminal history, disposition and terms, and conditions of supervision. ()

c. In the event a juvenile is relocating to or from another state, the juvenile probation officer should comply with the provisions of the Interstate Compact for Juveniles, Chapter 19, Title 16, Idaho Code. ()

165. Absconders. Reasonable steps should be taken to locate juvenile offenders who fail to report for probation supervision and whose whereabouts are unknown. ()

176. Transportation of Juveniles. All juvenile probation officers who transport a juvenile will have a valid driver's license in good standing and valid proof of insurance. ()

187. Release of Information. Information contained in probation files is confidential and may only be released in accordance with Idaho Court Administrative Rule 32 and state and federal laws. Written policy and procedures should include what information can be provided, who should provide the information, and how it should be provided. (3-31-22)()

198. Additional Policy and Procedures. Juvenile probation departments will establish written policy and procedures in accordance with their county policies regarding the following (if applicable): ()

a. Diversions; ()

b. Victim and community restoration; ()

c. Search and seizure; ()

d. Drug testing; ()

e. Graduated responses; ()

ef. Probation violations; ()

f. Medical emergencies; and (3-31-22)

g. Use of detention; and ()

gh. Termination of cases. ()

~~401~~151. -- ~~999~~209.(RESERVED)

SUBCHAPTER B – RULES FOR JUVENILE DETENTION CENTERS

210. DEFINITIONS.

In addition to the definitions in Section 20-502, Idaho Code, the definitions in Section 210 apply to the interpretation and enforcement of Subchapter B only. ()

01. Body Cavity Search. The manual internal examination into the rectal or vaginal cavities to detect contraband, performed only by a medical authority. ()

02. Chemical Agent. An active substance, such as oleoresin capsicum, used to deter disturbances that might cause personal injury or property damage. ()

03. Classification. A process for determining the needs and requirements of those for whom confinement has been ordered and for assigning them to housing units and/or programs according to their needs and existing resources, while addressing the safety and security of all detained juveniles. ()

04. Contact Visitation. A program that permits juvenile offenders to visit with designated person(s) in an area free of obstacles or barriers that prohibit physical contact. ()

05. Contraband. Any item not issued or authorized by the detention center. ()

06. Corporal or Unusual Punishment. Any act of inflicting punishment directly on the body, causing pain or injury. ()

07. Day Room/Multi-Purpose Room. That portion of the housing unit used for varied juvenile offender activities that is separate and distinct from the sleeping rooms. ()

08. Detention Center. A facility established pursuant to Title 20, Chapter 5, Sections 20-517 and 20-518, Idaho Code, for the temporary placement of juvenile offenders who require secure confinement. ()

09. Detention Records. Information regarding the maintenance and operation of the detention center including but not limited to correspondence, memorandums, complaints regarding the detention center, daily activity logs, security and fire safety checks, headcounts, health inspection records, and safety inspection records, use of physical force records and use of restraints records, incident reports, employee training and certification for use of security equipment. ()

10. Direct Care Staff. Any care staff member charged with day-to-day supervision of juvenile offenders housed in a juvenile detention center. ()

11. Electroshock Device. A device which delivers an electric shock designed to temporarily disrupt muscle function. ()

12. Emergency Plans. Written documents that address specific actions to be taken in an institutional emergency or catastrophe such as a medical emergency, fire, flood, riot or other major disruption. ()

13. Health Appraisal. An evaluation of a patient's current physical and mental condition and medical histories conducted by the health authority or medical employee. ()

14. Health Authority. The physician, health administrator, or agency responsible for the provision of health care services at the detention center. ()

15. Health-Trained Employee. A person who operates within the limits of any license or certification to aid a physician, nurse, physician's assistant, or other professional medical staff ()

16. Housing Unit. The total living area available to a group or classification of juvenile offenders in a detention center. This area may consist of a dormitory or a combination of the space in each sleeping room and day room/ multi-purpose room. ()

- 17. Incident Report.** A written document reporting any occurrence or event, or an incident which threatens the safety and security of direct care staff, juvenile offenders, or others, or which threatens the security of the program and which requires a staff response. ()
- 18. Juvenile Detention Officer.** Responsible for the safety, care, protection, and monitoring of juvenile offenders. ()
- 19. Juvenile Detention Records.** Information maintained in hard copy or electronic format concerning the individual's delinquent or criminal, personal, and medical history and behavior and activities while in detention. ()
- 20. Mechanical Restraints.** Devices used to restrict physical activity. ()
- 21. Medical Personnel.** A certified or licensed person such as a physician, nurse, physician's assistant, or emergency medical technician who works under the supervision and authority of the health authority consistent with their respective levels of licensure, certification, training, education and experience. ()
- 22. Medical Records.** Records maintained by the health authority, to include medical examinations, diagnoses, and any medical care provided. ()
- 23. Medical Screening.** A system of structured observation and initial health assessment of newly arrived juvenile offenders. Medical screenings may be performed by a medical employee or health-trained employee, or by a juvenile detention officer using a checklist approved by the Health Authority. ()
- 24. Pat Search.** The running of the hands over the clothed body of a juvenile by an employee to determine whether the individual possesses contraband. ()
- 25. Perimeter Security Check.** Physical inspection of the perimeter of the detention center performed for the purpose of discovering or preventing security breaches. May include the inspection of the perimeter of the detention center and adjacent containment fence or areas, as designated by detention center policy and procedures. ()
- 26. Petition for Exemption.** A formal written document addressed to the Director of the Idaho Department of Juvenile Corrections requesting exception from a detention center standard. ()
- 27. Physical Intervention.** Physical contact to guide, restrict, or prevent movement in order to take immediate control of a situation. ()
- 28. Prison Rape Elimination Act of 2003 (PREA).** Public Law No. 108-79, including all subsequent amendments thereto as codified in 34 U.S.C. §§ 30301-30309, and all federal rules and standards promulgated thereunder, which promote zero (0) tolerance of sexual abuse of juvenile offenders by staff or by other juvenile offenders. ()
- 29. Rated Capacity.** The maximum number of juvenile offenders which may be housed in a particular room, housing unit, or detention center based upon available square footage, sanitation fixtures, and other physical plant features specified in these rules. ()
- 30. Renovation.** The alteration of the structure of any existing juvenile detention center, or portion thereof, for the purposes of changing or improving its function. This may include, but not be limited to, altering the physical layout of essential areas within the detention center or reconstruction of the existing structure, areas, or interior features. ()
- 31. Rule Infraction.** A violation of detention center rules of conduct or policy and procedures, as governed by detention center policy and procedures. ()
- 32. Safety Equipment.** Devices primarily used for safety purposes such as but not limited to

firefighting equipment, for example, chemical extinguishers, hoses, nozzles, water supplies, alarm systems, sprinkler systems, portable breathing devices, gas masks, fans, first aid kits, stretchers, and emergency alarms. ()

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

34. Staffing Plan. A documented schedule which includes staffing of direct care staff, staffing ratios, resident activities, and the certification level of staff. ()

35. Strip Search. A search that requires a juvenile to remove or arrange some or all clothing so as to permit a visual inspection of the juvenile's breasts, buttocks, or genitalia. ()

36. Volunteer. A person who freely chooses to provide services to juvenile offenders or staff at a juvenile detention center, and is not compensated for their services or time. Volunteers will not be unsupervised with juvenile offenders and will be supervised by direct care staff at the detention center. ()

211. -- 219. (RESERVED)

220. INSPECTION PROVISIONS.

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

01. Annual Visits. Each juvenile detention center is subject to announced or unannounced visits by Department representatives on at least an annual basis. ()

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

221. Department Prepared Written Report Or Their Agents.

Department representatives will prepare a written report of each inspection within ninety (90) days following such inspection and provide copies to the appropriate detention center administrator and the governing body. The report is submitted to the Director for review of the issuance or renewal of a certificate of compliance. ()

222. Compliance With Standards Enforced.

Upon completion of an inspection, the Department will send notice of such compliance or noncompliance to the detention center administrator, governing body responsible for the detention center, and Idaho County Risk Management Program, where applicable. ()

01. Development of a Plan of Corrective Action. Upon receipt of a notice of noncompliance from the Department, the detention center administrator and governing body shall develop a plan of corrective action to correct the deficiencies cited in the report. The plan will include a description of the nature of noncompliance for each standard cited, the steps to be taken to correct the deficiency, and a projected completion date. Inspection representatives will be available to advise and consult concerning an appropriate corrective action. The plan is submitted to the Department for approval no later than sixty (60) days from receipt of notice. ()

02. Demonstration of Meaningful Progress Toward Achieving Compliance. Meaningful progress toward achieving compliance, according to the submitted plan, demonstrated during the time frame approved by the Department in the corrective action plan. ()

223. CONFORMITY WITH APPLICABLE LAWS AND REGULATIONS.

Juvenile detention centers shall conform to laws, rules, and regulations adopted by the federal government, state of Idaho, the county, and the municipality in which such detention center is located including, but not limited to, all applicable public health, safety, fire codes, building regulations, and interstate compact regulations. ()

224. STANDARDS COMMITTEE.

A standards committee will be created for the purpose of reviewing the standards, petitions for exemption from standards, and requests for modification of standards. The committee will be comprised of county juvenile detention administrators or their designees, and representative(s) from the Department. The committee should strive for regional representation when possible. The final appointment of all Standards Committee members is made by the Director. ()

01. Terms. Committee members serve terms of two (2) years starting on October 1 of the year in which the member is nominated and approved. ()

02. Abstain from Voting. If a petition for exemption or request for modification is initiated from the same district as a Committee representative, that Committee representative will abstain from voting and the alternate will serve in place of said representative. ()

03. Standards Committee Meetings. The Standards Committee will meet at least biennially to review the Juvenile Detention Center Standards, requests for modification of standards, or petitions for exemptions. The Standards Committee will also meet when the Director determines that a special meeting is necessary to review the juvenile detention center standards, requests for modification of standards, or petitions for exemptions. ()

04. Requests for Modification of Standards. In the event a standard becomes obsolete or unworkable, a request for modification may be filed with the Director. The request is submitted by the juvenile detention administrators of the Idaho Association of County Juvenile Justice Administrators. The Director makes determinations as to the necessity, scheduling and convening of a special meeting of the Standards Committee. If convened, the Standards Committee reviews the request and submits its written recommendations to the Director. The Director retains the authority to make the final decision to promulgate rules or allow the standards to remain unmodified. ()

05. Modification of Standards by the Standards Committee. In the event that the Standards Committee determines that a standard is obsolete, unworkable, unclear, or otherwise unreasonable, the committee may submit written recommendations to the Director for changes to the standards, along with explanations regarding the reasons for the requested changes. The Director retains the authority to make the final decision to promulgate rules or allow the standards to remain unmodified. Any modification of the standards must be promulgated as rules in accordance with the Idaho Administrative Procedures Act. ()

225. -- 229. (RESERVED)

230. DETENTION CENTER ADMINISTRATION.

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

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

03. Detention Center Administrator. The detention center will have a designated administrator who is responsible for all detention center operations. ()

04. Mission Statement. The detention center will have a written mission statement which describes its philosophy and goals. ()

05. Policy and Procedures. The detention center administrator will develop and maintain written policy and procedures which safeguard the basic rights of juvenile offenders and safeguard the juvenile offenders'

freedom from discrimination based upon sex, race, creed, religion, national origin, disability, or political belief and establish practices that are consistent with fundamental legal principles, sound correctional practices, and humane treatment. These written policies and procedures are reviewed on a regular basis, updated as needed and made available to all detention center employees. The policy and procedures manual is submitted to the prosecuting attorney, or other legal authority, for review, and to county commissioners, or other governing authority, for approval. After such approval, a copy of the policy and procedures manual is submitted to the Department. ()

231. -- 239. (RESERVED)

240. STAFF REQUIREMENTS AND STAFF DEVELOPMENT.

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

02. Staffing. The detention center will have staff to perform all functions relating to security, supervision, services and programs as needed to operate the detention center. The detention center will have policies and procedures in place governing staffing and submit a staffing plan to the Department as requested. It is recommended that each secure juvenile facility maintain staff ratios of a minimum of one to eight (1:8) plus one (1) during resident waking hours and one to sixteen (1:16) during resident sleeping hours, except during limited and discrete exigent circumstances, which need full documentation. ()

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

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

03. Gender of Employees. At least one (1) of the detention center employees on duty should be female when females are housed in the detention center and at least one (1) should be male when males are housed in the detention center. During the admission process, an employee of the same gender as the juvenile offender should be present. ()

04. Minimum Qualifications. ()

a. Direct care staff, at the time of employment, must meet the minimum criminal history background and certification requirements as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council." ()

b. Volunteers, before starting volunteer services, must meet the minimum criminal history background requirements as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council." ()

c. The agency will conduct criminal background records checks at least every five (5) years of current employees, contractors, and volunteers who may have contact with residents as outlined in PREA Standard Section 115.317. ()

05. Training and Staff Development Plan. Each juvenile detention center will develop a staff training and development plan based on the policies and procedures of the detention center. The plan will also ensure that all full-time juvenile detention officers earn the juvenile detention officer certificate, as mandated in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council." ()

a. All new full-time direct care staff are provided training that addresses areas including, but not limited to: ()

i. First aid/CPR; ()

- ii. Security procedures; ()
- iii. Supervision of juvenile offenders; ()
- iv. Suicide prevention; ()
- v. Fire and emergency procedures; ()
- vi. Safety procedures; ()
- vii. Appropriate use of physical intervention, and demonstrate an adequate level of proficiency as determined by a P.O.S.T. certified use of force instructor using the juvenile detention officer use of force lesson plan; ()
- viii. Report writing; ()
- ix. Juvenile offender rules of conduct; ()
- x. Rights and responsibilities of juvenile offenders; ()
- xi. Key control; ()
- xii. Interpersonal relations; ()
- xiii. Social/cultural lifestyles of the juvenile population; ()
- xiv. Communication skills; ()
- xv. Mandatory reporting laws and procedures; ()
- xvi. Professional boundaries; and ()
- xvii. All training as outlined in section 115.331 of the PREA Standards. ()
- b.** All direct care staff who are considered part-time, on-call, or working fewer than forty (40) hours per week will obtain a part-time juvenile detention officer certification, as mandated by IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council." ()
- c.** Any staff who works in a facility classified as Rural Exception or a collocated facility will obtain a part-time juvenile detention officer certificate of completion from the Department. ()
- d.** Ongoing training is provided at the minimum rate of twenty-eight (28) hours for each subsequent year of employment, which include, but are not limited to: ()
 - i. At least eight (8) hours of use of force, and demonstrate an adequate level of proficiency as determined by a P.O.S.T. certified use of force instructor using the juvenile detention officer lesson plan; and ()
 - ii. All ongoing training as outlined in section 115.331 of the PREA Standards; and ()
 - iii. All other trainings that require recertification. ()
- e.** Volunteers and contractors are trained commensurate to their level of contact with juvenile offenders. ()
- f.** Each facility maintains accurate training documentation. ()

241. -- 249. (RESERVED)

250. DETENTION CENTER INFORMATION SYSTEMS.

01. Records. The detention center will have written policies and procedures to govern the collection, management, and retention of information pertaining to juvenile offenders and the operation of the detention center. Written policy and procedures will address, at a minimum, the following: ()

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

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

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

251. DOCUMENTATION.

01. Shift Log. The detention center maintains documentation including time notations on each shift which includes the following information, at a minimum: ()

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

- i. Notations and times of any use of emergency or restraint equipment; and ()
- j. Notation and times of perimeter security checks. ()
- 02. Housing Assignment Roster. The detention center maintains a master file or roster board indicating the current housing assignment and status of all juvenile offenders detained. ()**
- 03. Visitor’s Register. The detention center maintains a visitor’s register in which the following will be recorded: ()**

 - a. Name of each visitor; ()
 - b. Time and date of visit; ()
 - c. Juvenile offender to be visited; and ()
 - d. Relationship of visitor to juvenile offender and other pertinent information. ()
- 04. Juvenile Detention Records. The detention center will classify, retain and maintain an accurate and current record for each juvenile offender detained, in accordance with the provisions of Title 31, Chapter 8, Section 31-871, Idaho Code. The record will contain, at a minimum, the following: ()**

 - a. Booking and intake records; ()
 - b. Record of court appearances; ()
 - c. Documentation of authority to hold; ()
 - d. Probation officer or caseworker, if assigned; ()
 - e. Itemized inventory forms for all clothing, property, money, and valuables taken from the juvenile offender; ()
 - f. Classification records and information about a resident’s personal history and behavior to reduce the risk of sexual abuse by or upon a resident; ()
 - g. Documentation of education as outlined in PREA Standard Section 115.333; ()
 - h. Rule infraction reports; ()
 - i. Records of disciplinary actions; ()
 - j. Grievances filed and their dispositions; ()
 - k. Release records; ()
 - l. Personal information and emergency contact information; ()
 - m. Documentation of a completed intake medical screening; ()
 - n. Visitor records; ()
 - o. Incident reports; ()
 - p. Photographs. ()

05. Incident Reports. Any person involved in or witness to an incident will write an individual incident report. The incident report includes, at a minimum, who, what, when, where, why, how, and action taken. Incidents reports are written for situations including, but not limited to, the following: ()

- a.** Any criminal act: ()
- b.** Use of force: ()
- c.** Use of restraints, except for transfer: ()
- d.** Suicide or attempted suicide: ()
- e.** Escape or attempted escape: ()
- f.** Emergencies: ()
- g.** Serious rule violations: ()
- h.** Cross-gender searches: ()
- i.** Body cavity searches: ()
- j.** Seizure and disposition of contraband; and ()
- k.** Any incident deemed serious enough to disrupt or disturb the security, safety, and orderly operations or well-being of the center, staff, juveniles, or public. ()

06. Incident Report Review. All incident reports are reviewed by the detention center administrator, or designee, and be maintained as part of the detention center records. ()

252. MEDICAL INFORMATION.

01. Medical Files. The health authority will maintain medical records for each juvenile offender which are kept separate from other records. ()

02. Access to Medical Files. The detention center administrator, in conjunction with the health authority, will establish procedures to determine access to medical files in accordance with privacy laws. ()

253.-- 254. (RESERVED)

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

01. Sexual Abuse of Juvenile Offenders. Juvenile detention centers shall be compliant with federal PREA Standards. ()

556. SAFETY AND EMERGENCY PROCEDURES.

01. Emergency Plan. The detention center will have written policies and procedures that address safety plans for responding to emergency situations. ()

02. Compliance with Fire Code. The detention center shall comply with local and state fire codes. A request for an annual inspection is made to the local fire marshal or authorized agency. The detention center maintains documentation of this inspection. ()

257. DETENTION CENTER SECURITY.

01. Security and Control Policy. The detention center's policy and procedures manual contains all

procedures for detention center security and control, with detailed instructions for implementing these procedures, and are reviewed at least annually and updated as needed. The manual is made available to all staff. ()

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

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

04. Head Counts. The detention center will have written policy and procedures which outline a system to physically count or account for all juvenile offenders, including juvenile offenders on work release, educational release, or other temporary leave status who may be absent from the detention center for certain periods of the day. At least three (3) documented counts will be conducted every twenty-four (24) hours. At least one (1) count will be conducted each shift with at least four (4) hours between each count. ()

05. Camera Surveillance. Camera surveillance equipment will not be used in place of personal observation of juvenile offenders. ()

258. PHYSICAL INTERVENTION.

01. Appropriate Use of Physical Intervention. The detention center will have written policy and procedures which govern the use of physical intervention ()

a. The use of physical intervention will be restricted to the following situations, and then only to the degree necessary to restore order: ()

i. Instances of justifiable self-protection; ()

ii. The protection of others; ()

iii. The protection of property; ()

iv. The prevention of escapes; and ()

v. The suppression of disorder. ()

b. Physical intervention is not used as punishment. ()

02. Use of Chemical Agents. The detention center will have written policy and procedures which govern the use of chemical agents, if approved for use in the detention center. ()

a. The use of chemical agents is restricted to the following situations, and then only to the degree necessary to restore order: ()

i. Instances of justifiable self-protection; ()

ii. The protection of others; ()

iii. The prevention of escapes; and ()

iv. The suppression of disorder. ()

b. Chemical agents will only be administered by an individual who has been certified in its use by a qualified instructor. ()

c. Oleoresin Capsicum is the only chemical agent approved for use in juvenile detention centers. ()

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

04. Use of Mechanical Restraints. The detention center will have written policy and procedures which govern the use of mechanical restraints, including notification of medical or mental health professionals. ()

a. The use of restraints is restricted to: ()

i. Instances of transfer; ()

ii. Instances of justifiable self-protection; ()

iii. The protection of others; ()

iv. The protection of property; ()

v. Medical reasons under the direction of medical staff; ()

vi. The prevention of escapes; and ()

vii. The suppression of disorder. ()

b. Restraints will not be used as punishment or for the convenience of staff. ()

c. Juvenile offenders in mechanical restraints are not left unattended except in documented exigent circumstances. ()

d. Eliminate the use of restraints on known pregnant juveniles housed in secure juvenile detention and correction facilities, during labor, delivery, and post-partum recovery, unless credible, reasonable grounds exist in accordance with Juvenile Justice and Delinquency Prevention Act Sec. 233. 34 U.S.C. 11133. ()

259. PERIMETER SECURITY CHECKS AND SECURITY INSPECTIONS.

01. Perimeter Security Checks. The detention center will have written policy and procedures which govern the frequency and performing of perimeter security checks. ()

02. Security Inspections. The detention center will have written policy and procedures that require timely notification to the detention center administrator, or designee, of any structural or security deficiencies. The detention center administrator shall promptly correct any identified problems. The facility maintains documentation of any corrective action. ()

260. SEARCH AND SEIZURE.

01. Detention Center Search Plan. The detention center will have written policy and procedures which outline a detention center search plan for the control of contraband and weapons and provides for unannounced and irregularly timed searches of juvenile offenders' rooms, day rooms, and activity, work, or other areas accessible to juvenile offenders and searches of all materials and supplies coming into the detention center. ()

02. Personal Searches. The detention center will have written policy and procedures governing the

personal searches of juvenile offenders, to include pat, strip, visual body cavity, and body cavity searches for the control of contraband and weapons and provides for unannounced and irregularly timed searches of juvenile offenders. Said policies and procedures include, at a minimum, requirements that: ()

a. All searches be performed under sanitary conditions in a manner which protects the dignity of the juvenile to the greatest extent possible; ()

b. All pat searches be performed by direct care personnel of the same sex as the juvenile, except under exigent circumstances; ()

c. All strip or visual body cavity searches be performed by direct care personnel of the same sex as the juvenile with the exception of medical personnel; ()

d. No person of the opposite sex of the juvenile, with the exception of medical personnel, will observe any unclothed search of the juvenile, including strip, visual body cavity, or body cavity searches; ()

e. All body cavity searches are conducted only by medical personnel; ()

f. An initial pat search is performed at the intake process prior to the removal of any mechanical restraints. A second pat search should be performed after the removal of any mechanical restraint; and ()

g. Any search or physical examination of transgender or intersex residents for the sole purpose of determining genital status is prohibited. ()

03. Documentation of Certain Searches. The detention center will have policy and procedures which govern the documentation of certain searches. Documentation is maintained in detention center records and in the juvenile offender's record, and include justification and any exigent circumstances concerning the search. Searches which must be documented include, but are not limited to; ()

a. Any search performed by direct care personnel of the opposite sex as the juvenile; ()

b. Any strip or visual body cavity search performed or observed by direct care personnel of the opposite sex of the juvenile; ()

c. Any body cavity search observed by direct care personnel of the opposite sex of the juvenile; or ()

d. Any strip, visual body cavity or body cavity search performed. ()

04. Seizure and Disposition of Contraband. The detention center will have written policy and procedures which explains the chain of custody to govern the handling and/or disposal of contraband. All contraband found during detention center or juvenile offender searches is seized and processed according to detention center policy, including involvement of law enforcement, if appropriate. The seizure and disposition of the contraband is documented. When a crime is suspected to have been committed within the detention center, all evidence is maintained and made available to the proper authorities. ()

261. SECURITY DEVICES.

01. Key Control. The detention center will have policy and procedures in place to govern key and tool control. ()

02. Security Devices. The detention center will have written policy and procedures that govern the use of security devices. Detention center employees use only security equipment on which they have been properly trained and is issued through, or authorized by, the detention center administrator. The facility maintains documentation of proper training. ()

03. Weapons Locker. The detention center provides a weapons locker or similar arrangement at

security perimeter entrances for the temporary storage of weapons belonging to law enforcement officers who enter the detention center. ()

262. FOOD SERVICES.

The detention center will have written policy and procedures which govern food service. If food is not obtained through a food service contract from an outside source, the detention center's food service operation is supervised by a designated employee who has experience and/or training in meal preparation, menu planning, staff supervision, ordering procedures, health and safety policies, theft precautions, and inventory control. If food is obtained through a food service contract from an outside source, provisions are made to assure that the contractor complies with the applicable section of these rules. ()

263. MEALS.

01. Providing Meals. The detention center will have written policy and procedures which govern the provision of meals. Three (3) meals, at least two (2) of which includes a hot entree, are served daily. ()

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

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

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

d. Medical personnel is notified when a juvenile offender does not eat three (3) consecutive meals. ()

02. Withholding of Meals as Disciplinary Sanction Prohibited. The detention center will have written policy and procedures which dictate that meals are never withheld from juvenile offenders, nor the menu varied, as a disciplinary sanction. ()

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

264. SPECIAL DIETS.

The detention center will have written policy and procedures which govern special diets. ()

01. Special Diets, Medical. Special diets prescribed by a physician are followed according to the orders of the treating physician or dentist. ()

02. Special Diets, Religious. Provisions should be made for special diets when a juvenile offender's religious beliefs require adherence to particular dietary practices. ()

265. DIETARY RECORDS.

01. Food Service Records. The detention center maintains an accurate record of all meals served to juvenile offenders, including special diets. All menus are planned, dated, and available for review at least one (1) week in advance. Notations are made of any changes in the menu. Menus are retained at least one (1) year after use. ()

02. Review of Menus. Menus and records of meals served are reviewed on a regular basis at least annually by a licensed dietitian, physician or nutritionist to verify nutritional adequacy or will meet the current guidelines of the National School Lunch Program. The detention center maintains documentation of the dietitian's, physician's or nutritionist's review and verification. Subsequent menus are promptly revised to eliminate any

deficiencies noted. ()

266. FOOD SERVICE SANITATION.

01. Written Policy and Procedures. The detention center will have written policy and procedures to govern food service sanitation. Food service and related sanitation practices comply with the requirements of the state health department or other appropriate regulatory body. The detention center's food service operation is inspected in the manner and frequency mandated by local health authorities. The detention center administrator will solicit at least an annual sanitation inspection by a qualified entity. The results of such inspections are documented and the detention center administrator takes prompt action to correct any identified problems. ()

267. SANITATION AND HYGIENE.

01. Sanitation Inspections. Written policy and procedures provide that the detention center be maintained in a clean and healthful condition and that the detention center administrator, or designee, will conduct monthly sanitation and maintenance inspections of all areas of the detention center. ()

02. Vermin Control. The detention center will have a plan for the control of vermin and pests which includes inspections and fumigations, as necessary, by a licensed pest control professional. ()

03. Housekeeping Plan. The detention center will have a written housekeeping plan for all areas of the physical plant which provides for daily housekeeping and maintenance by assigning specific duties to juvenile offenders and staff. All work is assigned and supervised by detention center employees. No juvenile offender is allowed to assign work to other juvenile offenders. ()

04. Maintenance and Repair. The detention center will have written policy and procedures to provide that all plumbing, lighting, heating and ventilation equipment, furnishings, and security hardware in juvenile offender living areas is kept in good working order. Any broken fixture, equipment, furnishings, or hardware is promptly repaired or replaced. Painted surfaces are not allowed to become scaled or deteriorated. ()

05. Water Quality. The water will meet all current standards set by the applicable state and local authority as to bacteriological, chemical, and physical tests for purity. ()

268. -- 269. (RESERVED)

270. PERSONAL HYGIENE.

01. Personal Hygiene Items. The detention center will have written policy and procedures which govern the provision of, without charge, the following articles necessary for maintaining proper personal hygiene: ()

- a.** Soap; ()
- b.** Toothbrush; ()
- c.** Toothpaste; ()
- d.** Comb or brush; ()
- e.** Shaving equipment; ()
- f.** Products for female hygiene needs; and ()
- g.** Toilet paper. ()

02. Removal of Personal Hygiene Items. The detention center will have written policy and procedures that govern the removal of personal hygiene items from juvenile offenders' sleeping areas. Removal must

be based upon sufficient reason to believe that the juvenile offender's access to the items poses a risk to the safety of juvenile offenders, staff, or others, or poses a security risk to the detention center. ()

03. Clothing and Linens. The detention center provides for the issue of clean clothing, bedding, linens, and towels to new juvenile offenders held overnight. At a minimum, the following is provided: ()

a. A set of standard detention center clothing or uniform; ()

b. A set of standard detention center bedding and linens; ()

c. Fire-retardant mattress; ()

d. Sufficient blankets to provide comfort under existing temperature conditions; and ()

e. One (1) clean towel. ()

04. Laundry Services. Laundry services is sufficient to allow required clothing, bedding, and towel exchanges for juvenile offenders. ()

a. Clothing and towels used by the juvenile offender while in the detention center are laundered or exchanged at least twice each week. ()

b. Linen is changed and laundered or exchanged at least once weekly or more often, as necessary. ()

c. Blankets in use are laundered or exchanged at least monthly, or before re-issue to another juvenile offender. ()

05. Clothing and Linen Supplies. The detention center inventory of clothing, bedding, linen, and towels will exceed the maximum population to ensure that a reserve is always available. ()

271. HEALTH SERVICES.

01. Health Care. The detention center will have written policy and procedures to govern the delivery of reasonable medical, dental, and mental health services. These written policies and procedures address, at a minimum, but not limited to, the following: ()

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

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

ii. The screening should also include observations of the physical condition, mental condition, and/or behavior. ()

b. Handling of juvenile offenders' requests for medical treatment; ()

c. Non-emergency medical services; ()

d. Emergency medical and dental services; ()

e. Use of a vehicle for emergency transport; ()

f. Emergency on-call physician and dental services when the emergency health care facility is not located nearby; ()

- g. The availability of first-aid supplies; ()
- h. Screening, referral, and care of juvenile offenders who may be suicide-prone, or experience physical, mental or emotional disabilities; ()
- i. Arrangements for providing close medical supervision of juvenile offenders with special medical or psychiatric problems; ()
- j. Delousing; ()
- k. Medical isolation, and proper examination of juvenile offenders suspected of having contagious or infectious diseases; ()
- l. Management of pharmaceuticals, including storage in a secure location; and ()
- m. Notification of next of kin or appropriate authorities in case of serious illness, injury or death. ()

02. **Medical Judgments.** Except for regulations necessary to ensure the safety and order of the detention center, all matters of medical, mental health, and dental care needs are determined by the medical personnel, who have final responsibility for decisions related to medical judgments. ()

03. **Informed Consent.** Permission to perform medical, surgical, dental or other remedial treatment should be obtained from a parent, spouse, guardian, court or custodian, as stated in Title 16, Chapter 16, Section 16-1627, Idaho Code. ()

04. **Health Appraisal.** Juvenile offenders are provided a health appraisal by the medical personnel within fourteen (14) days of admission. ()

272. -- 274. (RESERVED)

275. **RULES AND DISCIPLINE.**

01. **Behavioral Management.** The detention center will have written policy and procedures for maintaining discipline and regulating juvenile offenders' conduct. The following general principle apply: ()

a. The conduct of juvenile offenders is regulated in a manner which encourages and supports appropriate behavior, with penalties for negative behavior; ()

b. The detention center has written rules of conduct which specify prohibited acts, the penalties that may be imposed for various degrees of violation, and the disciplinary procedures to be followed; ()

c. Disciplinary action is of a nature to regulate juvenile offenders' behavior within acceptable limits and is taken at such times and in such degrees, as necessary to accomplish this objective; ()

d. The behavior of juvenile offenders is controlled in an impartial and consistent manner; ()

e. Disciplinary action is not arbitrary, capricious, retaliatory, or vengeful; ()

f. Corporal or unusual punishment is prohibited. Care is taken to ensure juvenile offenders are free from personal abuse, humiliation, mental abuse, personal injury, disease, property damage, harassment, or punitive interference with daily functions of living, such as eating or sleeping; ()

g. Juvenile offenders will not be subject to any situation in which juvenile offenders impose discipline on each other. ()

02. Resolution of Rule Infractions. The detention center will have written policy and procedures to define and govern the resolution of rule infractions. ()

03. Grievance Procedures. The detention center will have written policy and procedures for juvenile offenders which will identify grievable issues and define the grievance process. ()

04. Criminal Law Violations. The detention center will have written policy and procedures to govern the handling of incidents that involve the violation of federal, state, or local criminal law, including prompt referral to the appropriate authority for possible investigation and prosecution. ()

276. COMMUNICATION AND CORRESPONDENCE.

01. Mail, Visiting, Telephone. The detention center will have written policy and procedures that govern the practices of handling mail, visitation, use of the telephone, and any limitations or restriction on these privileges. Juvenile offenders will have the opportunity to receive visits and to communicate and correspond with persons, representatives of the media or organizations, subject to the limitations necessary to maintain detention center security and order. ()

02. Resident Access to Outside Support Services. The facility provides residents with access to outside victim advocates for emotional support services related to sexual abuse, as outlined by PREA Standard Section 115.353. ()

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

04. Telephone Service. All juvenile offenders, except those restricted as a result of disciplinary action, are provided the opportunity to complete at least two (2) telephone calls weekly to maintain family and community ties. ()

a. Telephone calls may be monitored and notification is provided to the juvenile. ()

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

c. Written policy and procedures grant all juvenile offenders the right to make at least one (1) telephone call to family members, attorneys, or other approved individuals during the admissions process. ()

d. Juveniles are allowed a reasonable number of telephone calls to their attorneys that: ()

i. Are of reasonable duration; ()

ii. Are not monitored; and ()

iii. Are not revoked as a disciplinary measure. ()

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

06. Search of Visitors. Written policy and procedures will specify that visitors register upon entry into the detention center and the circumstances under which visitors are searched and supervised during the visit. ()

07. Confidential Visits. The detention center provides juvenile offenders adequate opportunities for confidential access to courts, attorneys, and their authorized representatives, probation and parole officers, law enforcement, counselors, caseworkers, and the clergy. ()

08. Visitation. Attorneys, probation and parole officers, law enforcement, counselors, caseworkers,

and clergy are permitted to visit juvenile offenders at reasonable hours other than during regularly scheduled visiting hours. ()

a. Visits with attorneys, probation and parole officers, law enforcement, counselors, caseworkers, and clergy are not monitored, except that detention center employees may visually observe the visitation, as necessary to maintain appropriate levels of security. ()

b. Visits with attorneys, probation and parole officers, law enforcement, counselors, caseworkers, or clergy should be of the contact type unless otherwise indicated by the juvenile offender or visitor, or the detention center administrator determines there is a substantial security justification to restrict the visit to a non-contact type. ()

277. ADMISSION.

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

02. Procedures for Admission. The detention center will have written policies and procedures for admission of juvenile offenders that address, but is not limited to, the following: ()

a. Determination that the juvenile offender is lawfully detained in the detention center, in accordance with Title 20, Chapter 5, Section 20-516, Idaho Code; ()

b. The classification of juvenile offenders in regard to sleeping, housing arrangements, and programming; ()

c. Any juvenile offender showing signs of impairment should not be admitted to the detention center without documentation from medical personnel or a physician of examination, treatment, and fitness for confinement; ()

d. A complete search of the juvenile offender and possessions; ()

e. Pat searches are performed before mechanical restraints are removed at the admissions process. A second pat search should be performed after the removal of any mechanical restraint; ()

f. The care and disposition of personal property; ()

g. Provision of shower and the issuance of detention clothing and personal hygiene articles; ()

h. The provision of medical, dental and mental health screening; ()

i. Male and female juvenile offenders will not occupy the same sleeping room; ()

j. The recording of basic personal data and information; ()

k. Aiding juvenile offenders in notifying their families of their admission and the discussion of procedures for mail and visitation; ()

l. The fingerprinting and photographing in accordance with Title 20, Chapter 5, Section 20-516(8), Idaho Code; and ()

m. The administration of the MAYSI or other approved assessment tool. ()

03. Court Appearance Within Twenty-Four Hours. Written policy and procedures ensure that, according to Title 20, Chapter 5, Section 20-516(4), Idaho Code, any juvenile offender placed in detention or shelter care be brought to court within twenty-four (24) hours, excluding Saturdays, Sundays and holidays, for a detention

hearing to determine where the juvenile offender will be placed until the next hearing. ()

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

278. RELEASE.

01. Release of Offender. Written policy and procedures will govern the release of any juvenile offender and the release process including, but not limited to: ()

a. Verification of juvenile offender's identity; ()

b. Verification of release papers; ()

c. Completion of release arrangements, including the person or agency to whom the juvenile offender is being released; ()

d. Return of personal effects; and ()

e. Completion of any pending action. ()

02. Temporary Release. Written policy and procedures will govern escorted and unsecured day leaves into the community. ()

03. Personal Property Complaints. Written policy and procedures will govern a process for handling complaints about personal property. ()

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

279. PROGRAMS AND SERVICES AVAILABLE.

01. Programs and Services. The detention center will have written policy and procedures which govern what programs and services will be available to juvenile offenders. These programs and services include, at a minimum, the following: ()

a. Access or referral to counseling; ()

b. Religious services on a voluntary basis; ()

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

d. Passive recreational activities; ()

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

f. Work assignments; and ()

g. Educational programs according to the promulgated rules of the Idaho State Department of Education. ()

02. Records of Participation in Programs and Services. Records of participation in programs and services is recorded in daily shift log, juvenile offender's file, or program records. ()

03. Limitations and Denial of Services. Access to services and programs will be afforded to all juvenile offenders, subject to the limitations necessary to maintain detention center security and order. Any denial of

services is documented. ()

280. -- 284. (RESERVED)

285. DETENTION CENTER DESIGN, RENOVATION, AND CONSTRUCTION.

01. Applicability. All standards in this section, except where exceptions are stated, apply to new juvenile detention centers, renovation of existing juvenile detention centers, and renovation of any existing building for use as a juvenile detention center. In the case of a partial renovation of an existing detention center, it is intended that these rules should apply only to the part of the detention center being added or renovated. ()

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

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

04. General Conditions. All newly constructed or renovated juvenile detention centers will conform to the following general conditions: ()

a. Light levels in all housing areas are appropriate for the use and type of activities which occur. Night lighting will permit adequate illumination for supervision; ()

b. All living areas will provide visual access to natural light; ()

c. HVAC systems are designed to provide that temperatures in indoor living and work areas are appropriate to the summer and winter comfort zones, and healthful and comfortable living and working conditions exist in the detention center; ()

d. All locks, detention hardware, fixtures, furnishings, and equipment have the proper security value for the areas in which they are used. The use of padlocks in place of security locks on sleeping room or housing unit doors is prohibited; ()

e. Juvenile offenders' rights to privacy from unauthorized or degrading observation is protected without compromising the security and control of the detention center. Privacy screening for all toilet and shower areas which still allows adequate supervision of those areas should be incorporated into the design; ()

f. The detention center has a perimeter which is secured in such a way that juvenile offenders remain within the perimeter and that access by the general public is denied without proper authorization; ()

g. The security area of the detention center will have an audio communication system equipped with monitors in each sleeping room and temporary holding room designed to allow monitoring of activities and to allow juvenile offenders to communicate emergency needs to detention center employees. Closed-circuit television should primarily be used to verify the identity of persons where direct vision is not possible. Closed circuit television will not be used to routinely monitor the interior of sleeping rooms; and ()

h. All newly constructed or renovated detention centers will provide an emergency source of power to supply electricity for entrance lighting, exit signs, circulation corridors, fire alarm, electrically operated locks and the heating and ventilation system. ()

i. When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the agency will consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect residents from any harm including sexual abuse, as outlined by

PREA Standard Section 115.318. ()

05. Admission and Release Area. The detention center will have an intake and release area that is located within the security perimeter, but apart from other living and activity areas. ()

a. Adequate space is allocated for, at least, but not limited to: ()

i. Reception; ()

ii. Booking; ()

iii. Search; ()

iv. Shower and clothing exchange; ()

v. Medical screening; ()

vi. Storage of juvenile offender's personal property and detention center clothing; ()

vii. Telephone calls; ()

viii. Interviews; and ()

ix. Release screening and processing. ()

b. If a detention center has temporary holding rooms, the rooms may be designed to detain juvenile offenders for up to eight (8) hours pending booking, court appearance, housing assignment, transfer, or release. Temporary holding rooms may be designed for multiple purposes and, at capacity, provide thirty-five (35) square feet of unencumbered floor space for each juvenile offender. ()

c. Temporary holding rooms have access to a toilet and wash basin with hot and cold water. ()

06. Single Occupancy Rooms. Single occupancy sleeping rooms or cells have a minimum of thirty-five (35) square feet of unencumbered space and are equipped with at least a bed above the floor. ()

07. Multiple Occupancy Rooms. Multiple occupancy sleeping rooms or cells have at least thirty-five (35) square feet of unencumbered floor space per juvenile offender at the room's rated capacity and are equipped with at least a bed off the floor for each juvenile offender. ()

08. Sanitation and Seating. All single or multiple occupancy sleeping rooms are equipped with or have twenty-four (24) hours per day access, without detention center staff assistance, to toilets, wash basins with hot and cold running water, and drinking water at the following ratios: ()

a. One (1) shower and one (1) toilet for every eight (8) juvenile offenders or fraction thereof; ()

b. One (1) wash basin with hot and cold water for every twelve (12) juvenile offenders or a fraction thereof; and ()

c. Tables and seating sufficient for the maximum number expected to use the room at one (1) time. ()

09. Day Room and Multi-Purpose Room. The detention center will have at least one (1) day room and multi-purpose room that provides a minimum of thirty-five (35) square feet of floor space per juvenile offender for the maximum number expected to use the room at one (1) time. ()

10. Program Space. Adequate space is allocated for, but not limited to: ()

- a.** Educational programs; ()
- b.** Individual and group activities; ()
- c.** Exercise and recreation, indoor and outdoor; ()
- d.** Visitation; ()
- e.** Confidential attorney and clergy interviews; and ()
- f.** Counseling. ()

11. Interview Space. A sufficient number of confidential interview areas to accommodate the projected demand of visits by attorneys, counselors, clergy, or other officials is provided. At least one (1) confidential interview area is required. ()

12. Medical Service Space. Space is provided for routine medical examinations, emergency first-aid, emergency equipment storage, and secure medicine storage. ()

13. Food Service. The kitchen or food service area will have sufficient space for food preparation, serving, disposal, and clean-up to serve the detention center at its projected capacity. The kitchen or food service area should be properly equipped and have adequate storage space for the quantity of food prepared and served. ()

14. Laundry. Where laundry services are provided in-house, there will be sufficient space available for heavy duty or commercial type washers, dryers, soiled laundry storage, clean laundry storage, and laundry supply storage. ()

15. Janitor's Closet. At least one (1) secure janitor's closet containing a mop sink and sufficient space for storage of cleaning supplies and equipment is provided within the secure perimeter of the detention center. ()

16. Security Equipment Storage. A secure storage area is provided for all chemical agents, weapons, and security equipment. ()

17. Administration Space. Adequate space is provided that includes, but is not limited to, administrative, security, professional and clerical staff, offices, conference rooms, storage rooms, a public lobby, and toilet facilities. ()

18. Public Lobby. A public lobby or waiting area is provided that includes sufficient seating and toilets. Public access to security and administrative work areas will be restricted. All parts of the detention center that are accessible to the public will be accessible to, and usable by, persons with disabilities in compliance with ADA standards. ()

401286. -- 999. (RESERVED)

IDAPA 05 – IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

05.02.01 – RULES FOR RESIDENTIAL TREATMENT PROVIDERS

DOCKET NO. 05-0201-2301 (ZBR 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(s) 20-504(10), Idaho Code.

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

Wednesday, October 25, 2023, at 2:00 p.m. MT
954 W. Jefferson St, Boise, Idaho, Conference Room 1, and virtually by BlueJeans meeting Meeting URL https://bluejeans.com/975592637/9404 Meeting ID 975 592 637 Participant Passcode 9404
E-mail Estela.Cabrera@idjc.idaho.gov or call 208.577.5451 for assistance.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 rulemaking is done in compliance with [Executive Order 2020-01: Zero-Based Regulation](#). The department is repealing this chapter and intends to include expectations for contracted residential treatment providers as part of the contract language. Since not all providers have the same expectations, the contract will be an adequate and enforceable tool to communicate expectation. Contracted residential treatment providers will be audited annually for compliance with expectations.

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

FISCAL IMPACT: There is no negative fiscal impact on the state general fund 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 June 7, 2023 Idaho Administrative Bulletin, [Volume 23-6, pages 37-38](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 Estela Cabrera at (208) 577-5451.

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 25, 2023.

DATED this 4th day of October, 2023.

Monty Prow, Director
Idaho Department of Juvenile Corrections
954 W. Jefferson St., P.O. Box 83720, Boise, ID 83720-0285
Phone: 208.334.5100, Fax: 208.334.5120

IDAPA 05.02.01 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 08 – STATE BOARD OF EDUCATION

08.01.02 – RULES GOVERNING THE POSTSECONDARY CREDIT SCHOLARSHIP PROGRAM

DOCKET NO. 08-0102-2301 (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 33-105, 33-4601A, 33-4605, and Chapter 46, Title 33, 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 18, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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: Recently enacted legislative amendments will sunset Section 33-4605, Idaho Code, on July 1, 2023. The intent of this rulemaking is to repeal this chapter of administrative rules as it will be considered null and void effective July 1, 2023, as a result of the changes in governing law.

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: 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 June 2023 Idaho Administrative Bulletin, [Volume 23-6, page 39](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Nicholas Wagner at rules@osbe.idaho.gov or (208)-488-7586.

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 25, 2023.

DATED this 25th day of August, 2023.

Nicholas Wagner
Administrative Rules Coordinator
Idaho State Board of Education
650 W State St.
PO Box 83720
Boise, Idaho 83720-0037
Phone: (208)488-7586
fax: (208)334-2632

IDAPA 08.01.02 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 08 – STATE BOARD OF EDUCATION

08.01.13 – RULES GOVERNING THE OPPORTUNITY SCHOLARSHIP PROGRAM

DOCKET NO. 08-0113-2302

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, 33-4303, and 33-4304, 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 18, 2023.

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

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

Amendments would move the deadline for initial awards from July 1 to December 31 each year. This will ensure that applicants will be informed of the Opportunity Scholarship and Launch Grant Program at the same time. The proposed rule would also allow the Board to make awards pending financial need verification should student access to the Free Application for Federal Student aid (FAFSA) be delayed in a future year.

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: 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 2023 Idaho Administrative Bulletin, [Volume 23-7, page 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Nicholas Wagner at rules@osbe.idaho.gov or (208)-488-7586.

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 25, 2023.

DATED this 25th day of August, 2023.

Nicholas Wagner
Administrative Rules Coordinator
Idaho State Board of Education
650 W State St.
PO Box 83720
Boise, Idaho 83720-0037
Phone: (208)488-7586
fax: (208)334-2632

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0113-2302
(Only Those Sections With Amendments Are Shown.)

101. ELIGIBILITY.

Applicants must meet all of the eligibility requirements to be considered for the scholarship award. (4-6-23)

01. Academic Eligibility. To be eligible for an opportunity scholarship, an applicant must meet minimum academic eligibility criteria, as follows: (4-6-23)

a. A student who has not yet graduated from an eligible secondary school or its equivalent in the state of Idaho must have an un-weighted minimum cumulative grade point of average of two point seven (2.7) 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 (4-6-23)

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 (4-6-23)

c. A student currently enrolled in an eligible Idaho postsecondary educational institution must have a minimum cumulative grade point average of two point seven (2.7) 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. (4-6-23)

d. An Adult Learner must have a minimum cumulative grade point average of two point five (2.5) 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. (4-6-23)

02. Financial Eligibility. The financial need of an applicant for an opportunity scholarship will be based upon ~~the verified expected family contribution~~ Student Aid Index, as identified by the free application for federal student aid (FAFSA) ~~Student Aid report. The Student Aid report used to calculate financial need will be the report generated on the scholarship application deadline~~ Submission Summary. (4-6-23)()

03. Additional Eligibility Requirements. (4-6-23)

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. (4-6-23)

b. If a student has attempted or completed more than one hundred and twenty (120) postsecondary credits, then such student must identify a 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 credit received to the Board office. A student shall not be eligible for an opportunity scholarship if: (4-6-23)

i. The student has completed more than one hundred fifty percent (150%) of the courses and academic credit necessary to graduate in such major; or (4-6-23)

ii. Upon review of the student's academic transcript(s), the student cannot complete a degree/certificate in the major 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. (4-6-23)

102. -- 201. (RESERVED)

202. APPLICATION PROCESS.

01. **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 the~~ deadline set by the executive director each year. Adult Learner applications will be processed and awarded on a monthly basis up to the application deadline. 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 that must be postmarked not later than the applicable application deadline. The FAFSA must be completed on or prior to the application deadline unless federal delays prohibit an applicant from completing the FAFSA prior to the deadline. (4-6-23)()

02. **Announcement of Award.** Announcement of the award of initial scholarships will be made no later than ~~June 1~~ December 31 of each year, with awards to be effective at the beginning of the first full term ~~following July 1 of that year of the next fiscal year.~~ Announcements must clearly state the award is part of the state's scholarship program and is funded through state appropriated funds. Additional award announcements may be made after this date based on the availability of funds ~~and the acceptance rate of the initial awards.~~ (4-6-23)()

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 scholarship unless extenuating circumstances are involved and approved by the executive director or designee. (4-6-23)

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: (4-6-23)

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 an application to the Board earlier in time will be assigned a higher rank. (4-6-23)

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. (4-6-23)

02. **Monetary Value of the Opportunity Scholarship.** (4-6-23)

a. 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: (4-6-23)

i. The amount of the assigned student responsibility, established by the Board annually; (4-6-23)

ii. The amount of federal grant aid, as identified by the ~~Student Aid Report (SAR) that is~~ FAFSA Submission Summary if known at the time of award determination; (4-6-23)()

iii. The amount of other financial aid awarded the student, from private or other sources that is known at the time of award determination. (4-6-23)

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:

(4-6-23)()

- (1) Enrolled in six (6) to eight (8) credits or its equivalent per term - fifty percent (50%) of the maximum; (4-6-23)
- (2) Enrolled in nine (9) to eleven (11) credits or its equivalent per term - seventy-five percent (75%) of the maximum; and (4-6-23)
- (3) Enrolled in twelve (12) or more credits or its equivalent per term - one hundred percent (100%) of the maximum. (4-6-23)

b. The amount of an opportunity scholarship award to an individual student shall not exceed the actual cost of tuition and fees at the 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. (4-6-23)

c. The Board may determine monetary value without the FAFSA Submission Summary if the delay is due only to federal delay and may modify any final award or payment upon receipt of the FAFSA Submission Summary. ()

301. OPPORTUNITY SCHOLARSHIP AWARD.

01. Payment. Payment of opportunity scholarship awards will be made in the name of the recipient and will be sent to a designated official at the eligible Idaho postsecondary educational institution in which the recipient is enrolled. The official must transmit the payment to the recipient within a reasonable time following receipt of the payment. (4-6-23)

02. Duration. Scholarships will be awarded on an annual basis and payments will correspond to academic terms, semesters, quarters, or equivalent units. In no instance will the entire amount of a scholarship be paid in advance to, or on behalf of, a scholarship recipient. The scholarship may cover up to four (4) educational years, or eight (8) semesters or equivalent for attendance at an eligible Idaho postsecondary educational institution. Awards are contingent on annual appropriations by the legislature and continued eligibility of the student. (4-6-23)

03. Eligibility. If a student receives an opportunity scholarship payment and it is later determined that the student did not meet all of the Opportunity Scholarship Program eligibility requirements, then the student is considered in overpayment status, and must return program funds in accordance with the eligible Idaho postsecondary educational institution's refund policy. (4-6-23)

04. New Scholarships for Community College. The Board may not award any new scholarship, excluding renewals, to any student attending community college on or after July 1, 2023. ()

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. (4-6-23)

01. Credit Hours. To remain eligible for renewal of an opportunity scholarship, the scholarship recipient attending a four (4) 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 (2) 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 who has received the Opportunity Scholarship as an Adult Learner may retain eligibility by completing 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. (4-6-23)()

02. Academic Progress. To remain eligible for renewal of an opportunity scholarship, the scholarship recipient must have maintained a minimum cumulative grade point average of two point seven (2.7) on a scale of four

point zero (4.0), and must be maintaining satisfactory academic progress toward their identified postsecondary credential as determined by the institution they are enrolled in. Students receiving an Opportunity Scholarship award as an Adult Learner must make satisfactory progress on their graduation plan established with the eligible institution at the time of admission. (4-6-23)

03. 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 thirty (30) 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 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 thirty (30) days prior to the start of the succeeding academic year. (4-6-23)

IDAPA 08 – STATE BOARD OF EDUCATION

08.02.03 – RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-2301

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, 33-116, 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 18, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 rulemaking will consider the removal of a duplicative satisfaction and engagement survey for alternative high schools. This rulemaking will also consider any technical edits identified as part of the negotiated rulemaking process.

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: 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 June 2023 Idaho Administrative Bulletin, [Volume 23-6, page 46](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Nicholas Wagner at rules@osbe.idaho.gov or (208)-488-7586.

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 25, 2023.

DATED this 25th day of August, 2023.

Nicholas Wagner
Administrative Rules Coordinator
Idaho State Board of Education
650 W State St.
PO Box 83720
Boise, Idaho 83720-0037
Phone: (208)488-7586
fax: (208)334-2632

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0203-2301
(Only Those Sections With Amendments Are Shown.)

112. ACCOUNTABILITY.

School district, charter district and public charter school accountability will be based on multiple measures aimed at providing meaningful data showing progress toward interim and long-term goals set by the State Board of Education for student achievement and school improvement. The state accountability framework will be used to meet both state and federal school accountability requirements and will be broken up by school category and include measures of student academic achievement and school quality as determined by the State Board of Education. In addition to those measures identified in the state accountability framework, all school categories will administer an annual satisfaction and engagement survey to parents, students, and teachers. (4-6-23)

01. School Category. (3-15-22)

a. Kindergarten through grade eight (K-8): Schools in this category include elementary and middle schools as defined in Subsection 112.05.f. (3-15-22)

b. High Schools, not designated as alternative high schools, as defined in Subsection 112.05.f. (3-15-22)

c. Alternative High Schools. (3-15-22)

02. Academic Measures. (4-6-23)

a. K-8, High School, and Alternative High School: (4-6-23)

i. Idaho Standards Achievement Tests (ISAT) Proficiency. (3-15-22)

ii. ISAT growth toward proficiency based on a trajectory model approved by the State Board of Education. At the high school and alternative high school level growth will be measured for students who remain in the testing cohort in both grade 8 and high school. (4-6-23)

iii. ISAT proficiency gap closure. (3-15-22)

iv. English Learners achieving English language proficiency. (3-15-22)

v. English Learners achieving English language growth toward proficiency. (3-15-22)

b. K-8 only: (4-6-23)

i. Idaho statewide reading assessment proficiency as applicable to the grades served. (4-6-23)

c. High School and Alternative High School specific: (4-6-23)

i. Four (4) year cohort graduation rate, including students who complete graduation requirements prior to the start of the school district or charter schools next fall term. (3-15-22)

ii. Five (5) year cohort graduation rate, including students who complete graduation requirements prior to the start of the school district or charter schools next fall term. (3-15-22)

03. School Quality Measures by School Category. (3-15-22)

a. K-8, High School, and Alternative High School: (4-6-23)

- i. Communication with parents on student achievement (4-6-23)
 - ii. Chronic absenteeism (4-6-23)
 - b. K-8 Only (4-6-23)
 - i. Students in grade 8 enrolled in pre-algebra or higher. (3-15-22)
 - c. High School and Alternative High School: (4-6-23)
 - i. College and career readiness determined through a combination of students participating in advanced opportunities, earning industry recognized certification, and/or participation in recognized high school apprenticeship programs. (3-15-22)
 - ii. Credit recovery and accumulation. (4-6-23)
 - d. High School only: (4-6-23)
 - i. Students in grade 9 enrolled in algebra I or higher. (3-15-22)
 - ~~e. Alternative High School only: (4-6-23)~~
 - ~~f. State satisfaction and engagement survey administered to parents, students, and teachers. (4-6-23)~~
- 04. Reporting.** Methodologies for reporting measures and determining performance will be set by the State Board of Education. (3-15-22)
- 05. Annual Measurable Progress Definitions.** For purposes of calculating and reporting progress, the following definitions shall be applied. (3-15-22)
- a. Annual Measurable Progress. (3-15-22)
 - i. The State Department of Education will make determinations for schools and districts each year. Results will be given to the districts at least one (1) month prior to the first day of school. (3-15-22)
 - ii. The State Board of Education will set long-term goals and measurements of interim progress targets toward those goals. The baseline for determining measurable student progress will be set by the State Board of Education and shall identify the amount of growth (percentage of students reaching proficiency) required for each intermediate period. (3-15-22)
 - b. Full Academic Year (continuous enrollment). (3-15-22)
 - i. A student who is enrolled continuously in the same public school from the end of the first eight (8) weeks or fifty-six (56) calendar days of the school year through the state approved spring testing administration period, not including the make-up portion of the test window, will be included in the calculation to determine if the school achieved progress in any statewide assessment used for determining proficiency. A student is continuously enrolled if the student has not transferred or dropped-out of the public school. Students who are serving suspensions are still considered to be enrolled students. (3-15-22)
 - ii. A student who is enrolled continuously in the school district from the first eight (8) weeks or fifty-six (56) calendar days of the school year through the state approved spring testing administration period, not including the make-up portion of the test window, will be included when determining if the school district has achieved AYP. (3-15-22)
 - iii. A student who is enrolled continuously in a public school within Idaho from the end of the first eight (8) weeks or fifty-six (56) calendar days of the school year through the state approved spring testing

administration period, not including the make-up portion of the test window, will be included when determining if the state has achieved progress in any statewide assessment used for determining proficiency. (3-15-22)

c. Participation Rate. (3-15-22)

i. Failure to include ninety-five percent (95%) of all students and ninety-five percent (95%) of students in designated subgroups automatically identifies the school as not having achieved measurable progress in ISAT proficiency. The ninety-five percent (95%) determination is made by dividing the number of students assessed on the Spring ISAT by the number of students reported on the class roster file for the Spring ISAT. (3-15-22)

(1) If a school district does not meet the ninety-five percent (95%) participation target for the current year, the participation rate can be calculated by the most current three (3) year average of participation. (3-15-22)

(2) Students who are absent for the entire state-approved testing window because of medical reasons or are homebound are exempt from taking the ISAT if such circumstances prohibit them from participating. Students who drop out, withdraw, or are expelled prior to the beginning of the final makeup portion of the test window are considered exited from the school. (3-15-22)

ii. For groups of ten (10) or more students, absences for the state assessment may not exceed five percent (5%) of the current enrollment or two (2) students, whichever is greater. Groups of less than ten (10) students will not have a participation determination. (3-15-22)

d. Schools. As used in this section, schools refers to any school within a school district or charter district and public charter schools. (3-15-22)

i. An elementary school includes a grade configuration of grades Kindergarten (K) through six (6) inclusive, or any combination thereof. (3-15-22)

ii. A middle school is a school that does not meet the definition of an elementary school and contains grade eight (8) but does not contain grade twelve (12). (3-15-22)

iii. A high school is any school that contains grade twelve (12). (3-15-22)

iv. An alternative high school is any school that contains grade twelve (12) and meets the requirements of Section 110 of these rules. (3-15-22)

v. The accountability of public schools without grades assessed by this system (i.e., K-2 schools) will be based on the third grade test scores of the students who previously attended that feeder school. (3-15-22)

vi. A “new school” for purposes of accountability is a wholly new entity receiving annual measurable progress determinations for the first time, or a school with a significant student population change as a result of schools being combined or geographic boundaries changing, or a result of successful school restructuring sanctioned by the Office of the State Board of Education. (3-15-22)

e. Subgroups. Scores on the ISAT must be disaggregated and reported by the following subgroups: (3-15-22)

i. Race/Ethnicity - Black/African American, Asian, Native Hawaiian/Pacific Islander, White, Hispanic/Latino Ethnicity, American Indian/Alaska Native. (3-15-22)

ii. Economically disadvantaged - identified through the free and reduced lunch program. (3-15-22)

iii. Students with disabilities - individuals who are eligible to receive special education services through the Individuals with Disabilities Education Act (IDEA). (3-15-22)

iv. Limited English Proficient - individuals who do not score proficient on the state-approved language proficiency test and meet one (1) of the following criteria: (3-15-22)

- (1) Individuals whose native language is a language other than English; or (3-15-22)
- (2) Individuals who come from environments where a language other than English is dominant; or (3-15-22)
- (3) Individuals who are American Indian and Alaskan natives and who come from environments where a language other than English has had a significant impact on their level of English language proficiency, and who, by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny such individuals the opportunity to learn successfully in classrooms, where the language of instruction is English. (3-15-22)

f. Graduation Rate. The graduation rate will be based on the rate of the cohort of students entering grade nine (9) during the same academic year and attending or exiting the school within a four (4) year or five (5) year period as applicable to the measure being determined. In determining the graduation cohort the school year shall include the students who complete graduation requirements prior to the start of the school district or charter schools next fall term. School districts may only report students as having graduated if the student has met, at a minimum, the state graduation requirements, pursuant to Section 105, and will not be returning to the school in following years to complete required academic course work. The State Board of Education will establish a target for graduation. All high schools must meet the target or make sufficient progress toward the target each year, as determined by the State Board of Education. The graduation rate will be disaggregated by the subgroups listed in Subsection 112.05.g. (3-15-22)

g. Additional Academic Indicator. The State Board of Education will establish a target for all additional academic and school quality measures. All schools must maintain or make progress toward the additional academic and school quality measure target each year. The additional academic and school quality measure targets will be disaggregated by the subpopulations listed in Subsection 112.05.g. (3-15-22)

IDAPA 08 – STATE BOARD OF EDUCATION
08.04.01 – RULES OF THE IDAHO DIGITAL LEARNING ACADEMY
DOCKET NO. 08-0401-2301 (ZBR CHAPTER REWRITE)
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 33-5504, 33-5505, 33-5507, and Chapter 55, Title 33, 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 18, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 accordance with Executive Order 2020-01, this rulemaking will be a review of the chapter for evaluation on how it can be improved, simplified, and streamlined. Additional amendments include the restructured language to subsection 102.01, to allow for proctored exams to be complete with the added discretion of the LEA, also added that an exam can be allowed as a comprehensive final project. Amendments to remove language from sections and add them to IDLA policy.

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: 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 June 2023 Idaho Administrative Bulletin, [Volume 23-6, 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Nicholas Wagner at rules@osbe.idaho.gov or (208)-488-7586.

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 25, 2023.

DATED this 25th day of August, 2023.

Nicholas Wagner
Administrative Rules Coordinator
Idaho State Board of Education
650 W State St.
PO Box 83720
Boise, Idaho 83720-0037
Phone: (208)488-7586
fax: (208)334-2632

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0401-2301
(ZBR Chapter Rewrite)

08.04.01 – RULES OF THE IDAHO DIGITAL LEARNING ACADEMY

000. LEGAL AUTHORITY.

~~In accordance with Sections 33-5504, 33-5505, and 33-5507, Idaho Code, the Board is authorized to promulgate rules implementing the provisions of Title 33, Chapter 55, Idaho Code.~~ (3-15-22)()

001. SCOPE.

These rules provide the requirements for the governance and administration of the Idaho Digital Learning Academy's Board of Directors. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. **Acceptable Use Policy (AUP).** An Acceptable Use Policy ~~is a policy that~~ governs behavior in a ~~computer or online~~ virtual environment. ~~An Acceptable Use Policy outlines by establishing guidelines for appropriate and inappropriate behavior, including specific examples of inappropriate behavior as well as the and establishing consequences of violating the policy.~~ violation. ~~Acceptable use AUP guidelines include, but are not limited to, guidelines those~~ pertaining to the use of profanity or threatening language, copyright violations, revealing personal information (~~either their one's~~ own or someone else's), disrupting the ~~use of a~~ school network, or importation of sexually explicit, drug-related, ~~and or~~ other offensive materials into the ~~course~~ virtual environment. (3-15-22)()

011. -- 100. (RESERVED)

101. ACCREDITATION.

IDLA must maintain accreditation by an organization recognized by the State Board of Education. ()

102. ACCOUNTABILITY.

01. **Exams.** Each IDLA course will require the student to ~~take complete, at the discretion of the LEA,~~ either a comprehensive final exam at an approved site under proctored conditions or a comprehensive final project. (3-15-22)()

02. **Student Work and Ethical Conduct.** ()

a. IDLAs board of directors will adopt an acceptable use policy. ()

ab. IDLA will ~~inform~~ provide students ~~in writing of the consequences of plagiarism and parents a copy of the IDLA AUP prior to beginning each class.~~ The consequences for plagiarism are set out in the IDLA student handbook which is made available online at all times and is communicated to each student and parent prior to the beginning of each class. IDLA will investigate suspected ~~eases of plagiarism~~ policy violations and inform parents, students, and the local school district when a suspected case arises. (3-15-22)()

bc. Acceptable use and behavior in a ~~distance learning~~ virtual environment is determined by local school district's policies ~~IDLA students and parents will be informed by the IDLA AUP specifically governing behavior in an online school and supplemented by the IDLA AUP.~~ IDLA will provide a copy of the IDLA AUP to the Idaho State Board of Education in the IDLA Annual Report. (3-15-22)()

ed. In a case of violation of the ~~acceptable use policy~~ **AUP** or other disciplinary issues, IDLA will notify the local school district. The local school district is responsible for the appropriate disciplinary action. IDLA should be notified by the local school district of any disciplinary action resulting from a student's participation in an IDLA course. (3-15-22)()

~~d.~~ The IDLA Director or designee reserves the right to deny disruptive students access to IDLA courses in the future or remove them from participating in an existing course. Appeals to the denial or removal from a course may be made in writing to the IDLA Board of Directors discussing the circumstances for removal or denial. The IDLA Board of Directors will review the appeal and hold a special board meeting to allow the student an opportunity to speak to the issue. The IDLA Board of Directors will issue a final decision within ten (10) days of the board meeting. (3-15-22)

03. ~~Teacher Interaction~~ Academic Reporting. IDLA faculty are required to contact students within the first twenty four (24) hours of class. Contact includes phone, e mail, web conferencing, or other technological means. IDLA is required to submit periodic progress reports and final course percentages for individual students' grades which are then reported for each student to the local school district for transcription to the student's academic record. (3-15-22)()

103. FEES.
The IDLA fee schedule will be provided to the Idaho State Board of Education in the IDLA Annual Report to the State Board of Education. ()

104. -- 999. (RESERVED)

IDAPA 11 – IDAHO STATE POLICE STATE BRAND BOARD

11.02.01 – RULES OF THE IDAHO STATE BRAND BOARD

DOCKET NO. 11-0201-2301 (FEE RULE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 25-1102, 25-1110, 25-1160, and 25-1161 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 18, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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:

On July 18, 2022, the Idaho State Brand Board received a cooperative request from the Livestock Industries asking for formulation of a Brand Fee Working Group comprised of stakeholders, to study the need for fee adjustments, the potential to improve efficiencies and reduce costs within administration and operation of the brand inspector's office, and to develop recommendations for a long-range plan to address anticipated budget shortfalls within the Idaho Brand Board. Since that time, the formulated stakeholder group held multiple meetings to evaluate the foregoing. As a mutual result, the Brand Board initiated and carried out negotiated rulemaking to pursue an increase in the per head fee(s) charged for cattle brand inspection and any alternative as brought forth through the negotiated rulemaking process. This proposed rule is the collective outcome of the negotiated rulemaking.

The Brand Board experienced an \$85,000 financial deficit in FY2023 and will face an ongoing budgetary shortfall if this fee is not increased. The Brand Board has not imposed a cattle brand inspection fee increase since FY2017.

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 \$0.06 per head inspected; changing the total fee charged from \$01.19 to \$1.25 per head of cattle inspected. The fee increase moves the Brand Board cattle brand inspection fee to the statutory cap of \$1.25 per head set in Section 25-1160(1)(a), Idaho Code. For clarification purposes, the increase in cattle brand inspection fee also affects the fee charged for the cattle courtesy brand inspection fee, increasing it from \$1.19 to \$1.25 and the Idaho livestock to pasture fee for cattle from \$0.60 to \$0.63.

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:

There is no negative impact to the State General Fund. An estimated \$126,000 will be generated to the Idaho State 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 July 5, 2023, Idaho Administrative Bulletin, [Volume 23-7 Page 22](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 State Brand Inspector, Cody Burlile at (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 25, 2023.

DATED this 29th day of August, 2023.

Cody D. Burlile
 State Brand Inspector
 Idaho State Brand Board
 700 S. Stratford Dr.
 P.O. Box 1177
 Meridian, ID 83680-1177
 (208) 884-7070 phone, (208) 884-7097 fax

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 11-0201-2301
(Only Those Sections With Amendments Are Shown.)

034. SCHEDULE OF FEES.

01. Fees. Fees authorized by the Board and to be collected by the Brand Inspector are as follows:

SCHEDULE OF FEES		
Recording of a Brand	\$50 initial recording fee plus a \$20 per year prorated staggered recording fee every year thereafter	
Transfer of a recorded brand	\$50.00	
Renewal of a recorded brand (every five years)	\$100.00	
Duplicate brand registration certificate	\$1.50	
Lifetime ownership and transportation certificate	\$50.00	
Duplicate lifetime ownership and transportation certificate	\$5.00	
Annual inspection equine or bovine	\$5.00	
	CATTLE	HORSES
Brand inspection (per head)	\$1.49 1.25	\$5.00
Idaho livestock to pasture (per head)	\$.60 63	\$2.50
Minimum auction fee (per day)	\$50.00	\$50.00
Minimum field brand inspection fee	\$20.00	\$20.00
Equine farm service fee		\$45.00
Courtesy brand inspection	\$1.49 1.25	\$5.00

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 Disease Control (per head)	\$.22
Animal Damage Control (per head)	\$.05
Wolf Control Assessment	\$25/brand renewal \$5/staggered recording fee every year thereafter

(3-15-22)()

02. Due and Payable. 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 and approved by the state brand inspector to pay for all accumulated brand inspection fees to be paid at least monthly. Failure to comply with the payment arrangement makes all fees immediately due and payable. (3-15-22)

03. Minimum Fees. 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. (3-15-22)

IDAPA 12 – IDAHO DEPARTMENT OF FINANCE
12.01.04 – RULES PURSUANT TO THE IDAHO CREDIT UNION ACT
DOCKET NO. 12-0104-2301 (ZBR CHAPTER REWRITE)
NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 26-2144, 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 18, 2023. The hearing site(s) will be accessible to persons with disabilities. Requests for 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 was conducted pursuant to the [Executive Order 2020-01](#), “Zero-Based Rulemaking”, for the purpose of engaging in a thorough retrospective review of the cost and benefit of an existing rule. As a result, the proposed changes reduce regulatory burden by removing outdated requirements and providing clarity to industry regarding certain transactions.

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:

This rulemaking will not impact the state general fund.

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 August 2023 Idaho Administrative Bulletin, [Volume 23-8, pages 12 and 13](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 Anthony Polidori at (208)-332-8060.

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 25, 2023.

DATED this 1st day of September 1, 2023.

Anthony Polidori
Deputy Director
Idaho Department of Finance
11341 West Chinden Blvd., Suite A300
Boise, ID 83714
Phone: (208) 332-8060
Fax: (208) 332-8099
Email: anthony.polidori@finance.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 12-0104-2301
(ZBR Chapter Rewrite)

12.01.04 – RULES PURSUANT TO THE IDAHO CREDIT UNION ACT

000. LEGAL AUTHORITY.

This chapter is promulgated pursuant to Section 26-2144, Idaho Code. ()

001. SCOPE.

These rules implement statutory intent with respect to the regulation and supervision of state chartered credit unions in the state of Idaho. ()

002. -- 004. (RESERVED)

005. DEFINITIONS.

The definitions ~~used in this chapter are as follows~~ found in Section 26-2104, Idaho Code are incorporated herein and those defined terms have the same meaning in these rules. These rules have the following additional defined terms: (3-31-22)()

- 01. Act.** Means the Idaho Credit Union Law, Chapter 21, Title 26, Idaho Code. (3-31-22)
- 02. Applicant.** Means a group of persons applying for a credit union charter. (3-31-22)
- 03. Department.** Means the Idaho Department of Finance. (3-31-22)
- 04. Director.** Means the Director of the Department. (3-31-22)
- 05. Corporate Credit Union.** Means a corporate credit union chartered under the provisions of the act. (3-31-22)
- 06. Credit Union.** Means a credit union chartered under the provisions of the act. (3-31-22)
- 01. Associated Borrower.** As that term is defined in Section 26-2120(1)(b), Idaho Code. ()
- 02. Immediate Family Member.** As that term is defined in Section 26-2109(4)(c), Idaho Code. ()
- 03. Member Business Loan.** Means any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial, business, or agricultural purpose, except: ()
- a.** A loan or loans secured by a 1 to 4 family residential property. ()
- b.** A loan that is fully secured by shares in the credit union or shares or deposits in other financial institutions. ()
- c.** A loan, the proceeds of which are used for a commercial, business, or agricultural purpose, made to a borrower or an associated borrower, which, when added to such other loans to the borrower, is less than fifty thousand dollars (\$50,000). ()
- d.** A loan, the repayment of which is fully insured or fully guaranteed by, or where there is an advance commitment to purchase in full by, an agency of the federal government or a state or any of its political subdivisions. ()

()

04. **Loan or Loans Secured by a 1 to 4 Family Residential Property.** Means a loan that, at origination, is secured wholly or substantially by a lien on a 1- to 4-family residential property for which the lien is central to the extension of the credit; that is, the borrower would not have been extended credit in the same amount or on terms as favorable without the lien. A loan is wholly or substantially secured by a lien on a 1- to 4-family residential property if the estimated value of the real estate collateral at origination (after deducting any senior liens held by others) is greater than 50 percent of the principal amount of the loan. ()

075. NCUA. Means the National Credit Union Administration. ()

~~006.—009.~~ (RESERVED)

010. CHARTER APPLICATIONS.

~~01.~~ **Guidelines for Approval of Credit Union Charters.** Each application for a credit union shall set forth or show: (3-31-22)

~~a.~~ The proposed name of the credit union; (3-31-22)

~~b.~~ The city, county, or area in which the proposed credit union is to hold its charter; (3-31-22)

~~e.~~ A description of the common bond for the field of membership of the potential members of the credit union. Said field of membership should indicate that there are enough potential members to allow the proposed credit union to successfully carry on credit union operations; (3-31-22)

~~d.~~ That the stability of employment of the potential members of the credit union or that the stability of membership in the association which comprises the common bond of membership is sufficient to allow the credit union to maintain a stable level of participation by members; (3-31-22)

~~e.~~ The economic characteristics of the proposed field of membership indicating the ability of members to provide funds in sufficient amounts to carry out the purposes for which the credit union is formed; (3-31-22)

~~f.~~ That the persons who form the common bond and potential field of membership of the credit union have indicated sufficient interest in the credit union that the Director may reasonably believe that credit union operations may be carried out successfully. (3-31-22)

~~011.—019.~~ (RESERVED)

020. SERVICES, ADVERTISING, REPORTING CRIMES, BONDS.

~~01.~~ **Credit Union Services.** (3-31-22)

~~a.~~ A credit union shall not allow, by contract or otherwise, any credit union bookkeeping or record keeping services for itself, whether on or off premises, unless assurances satisfactory to the Director are provided by both the credit union and the party performing such services, which indicate that the performance thereof will be subject to rule and examination by the Director or his duly authorized representative to the same extent as if such services were being performed by the credit union itself on its own premises. If this service is "on premises" then prior written approval of the Director must be obtained before service is sold or otherwise made available to any outside customer. (3-31-22)

~~b.~~ The assurances referred to above shall be submitted prior to the time the contract or agreement becomes effective in the form of letters from both parties and signed by a duly authorized officer of the credit union and by the party, or duly authorized officer or representative of such party, stating they will perform the services for the credit union, that the credit union and the party performing such services have entered into an agreement, that the performance of the services will be subject to rule and examination by the Director, and that such performance of

~~services will be made available for examination. A copy of the contract or agreement covering these services shall accompany these letters. (3-31-22)~~

~~**02. Advertising. (3-31-22)**~~

~~**a.** A credit union shall not issue, circulate, or publish any advertisement which misrepresents the nature of its shares, stocks, investments, certificates, or the rights of shareholders in respect thereto. (3-31-22)~~

~~**b.** No credit union may in any advertisement: (3-31-22)~~

~~**i.** Use the words “chartered by the state of Idaho” unless said credit union has been issued a charter by the Director; (3-31-22)~~

~~**ii.** Use the words “National Credit Union Share Insurance Fund” or any facsimile thereof; nor use any insignia, seal, or device whatsoever which represents that the shares or deposits of the credit union are insured by the Administrator, NCUA, unless, in fact, the credit union is so insured. (3-31-22)~~

~~**e.** The Director upon written notification to any or all credit unions may require that a true copy of the text of any advertisement be filed with his office at least five (5) days prior to the issuance, circulation, or publication of such advertisement. (3-31-22)~~

~~**021006. -- 039. (RESERVED)**~~

040. MEMBER BUSINESS LOANS REQUIREMENTS.

~~**01. Definitions.** For the purposes of this rule, the following definitions apply: (3-31-22)~~

~~**a.** The term “member business loan” means any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial, business, or agricultural purpose, except the following are not considered member business loans for the purpose of this rule: (3-31-22)~~

~~**i.** A loan or loans fully secured by a lien on a one to four family dwelling that is either the member’s primary residence, or the member’s secondary residence. (3-31-22)~~

~~**ii.** A loan that is fully secured by shares in the credit union or deposits in other financial institutions. (3-31-22)~~

~~**iii.** A loan, the proceeds of which are used for a commercial, business, or agricultural purpose, made to a borrower or an associated member, which, when added to such other loans to the borrower, is less than fifteen thousand dollars (\$15,000). (3-31-22)~~

~~**iv.** A loan, the repayment of which is fully insured or fully guaranteed by, or where there is an advance commitment to purchase in full by, an agency of the federal government or a state or any of its political subdivisions. (3-31-22)~~

~~**b.** “Reserves” means all reserves including the allowance of loan losses account and undivided earnings or surplus. (3-31-22)~~

~~**e.** “Associated Member” means any member with a common ownership, investment or other pecuniary interest in a business or commercial endeavor. (3-31-22)~~

~~**d.** “Immediate Family Member” means a spouse or other family members, related by blood or operation of law, living in the same household. (3-31-22)~~

~~**021. Requirements.** A credit union may make member business loans only in accordance with the following requirements The following requirements apply in addition to Sections 26-2119, 26-2120, 26-2120A, Idaho Code: (3-31-22)(_____)~~

~~a. Written Loan Policies. Except as provided in this section, the board of directors must adopt specific business loan policies within sixty (60) days of the effective date of this rule and review them at least annually.~~ Submission to Director and NCUA. A credit union must submit the proposed written policies, and any future amendments to the policies, to the Director for approval at least thirty (30) days prior to the proposed date of implementation of the member business loan program or amendments. Any credit union that is NCUA insured must also provide notice and a copy of the loan policies or amendments to the appropriate NCUA regional office within thirty (30) days before adoption and implementation of the policies or amendments. (3-31-22)()

~~b. Loan Policy Review. The board will review and approve the loan policies annually.~~ ()

~~b.c. Minimum Business Loan Policy Requirements. Credit unions that do not intend to make member business loans do not have to adopt and implement these policies. However, if such a credit union decides to begin making member business loans at some time in the future, the requirements of this section will apply, except that the specific business loan policies must be adopted and implemented no less than thirty (30) days before any member business loan is made.~~ that, at a minimum, address Pursuant to Section 26-2119, Idaho Code, member business loan policies must contain the following: (3-31-22)()

i. Types of business loans that will be made. ()

ii. The credit union's trade area for business loans. ()

iii. Maximum amount of the credit union's assets in relationship to ~~reserves net worth~~ that will be invested in business loans, not to exceed three hundred percent (300%). (3-31-22)()

iv. Maximum amount of credit union assets in relationship to ~~reserves net worth~~ that will be invested in a given category or type of business loan. (3-31-22)()

v. Maximum amount of credit union assets, in relation to ~~reserves net worth~~, that will be loaned to any one (1) ~~member borrower~~ or group of associated ~~members borrowers~~. (3-31-22)()

vi. Qualifications and experience of personnel involved in making and administering business loans. ()

vii. Analysis of ability of the borrower to repay the loan. ()

viii. The following considerations shall be addressed unless the board of directors finds that they are not appropriate for a particular type of business loan and states the reasons for those findings in the credit union's written policies: balance sheet, trend and structure analysis; ratio analysis of cash flow, income and expenses, and tax data; leveraging; comparison with industry averages; receipt and periodic updating of financial statements and other documentation, including tax returns. ()

ix. Collateral requirements, including loan-to-value ratios; appraisals, title search and insurance requirements; steps to be taken to secure various types of collateral; and how often the value and marketability of collateral is to be reevaluated. ()

x. Appropriate interest rates and maturities of business loans. ()

xi. Loan monitoring, servicing, and follow-up procedures, including collection procedures. ()

~~ed.~~ Loans to One (1) Member Borrower. The following restrictions apply to credit unions loans to one (1) ~~member borrower~~. (3-31-22)()

i. The aggregate amount of outstanding member business loans to any one (1) ~~member borrower~~ or group of associated ~~members borrowers~~ shall not exceed twenty percent (20%) of the credit union's ~~reserves net worth~~. (3-31-22)()

ii. ~~If any portion of a member business loan or loans is fully~~ secured by a one (1) to four (4) family dwelling residential property that is the member's primary residence or secondary residence, or loans secured by shares in the credit union or deposits in another financial institution, or loans insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the federal government or of a state or any of its political subdivisions, such portion shall not be calculated in determining the twenty percent (20%) limit. (3-31-22)()

iii. Credit unions seeking an exception from the twenty percent (20%) limit must present to the Director the higher limit sought, an explanation of the need to raise the limit, an analysis of the credit union's prior experience making member business loans, and a copy of its business lending policy. In addition, at the same time this information is presented to the Director, any credit union that is NCUA insured must also submit a copy of the information to the appropriate NCUA regional office for its review and comment. ()

iv. Any decision by the Director to grant any request to exceed the twenty percent (20%) loan-to-one borrower's limit will be made only after consultation and coordination with NCUA. ()

~~de. Allowance for Loan Losses. The determination of whether a member business loan will be classified as substandard, doubtful, or loss will rely on factors not limited to the delinquency of the loan. Non-delinquent loans may be classified, depending on an evaluation of factors including, but not limited to, the adequacy of analysis and documentation~~Credit risk rating system. Credit risk ratings must be assigned to commercial loans at inception and reviewed as frequently as necessary to satisfy the credit union's risk monitoring and reporting policies, and to ensure adequate reserves as required by generally accepted accounting principles. At a minimum, the following credit risk ratings must be used: Pass; Special Mention; Substandard; Doubtful; and Loss. (3-31-22)()

~~e. Loans classified shall be reserved as follows:~~ (3-31-22)

~~i. Loss loans at one hundred percent (100%) of outstanding amount;~~ (3-31-22)

~~ii. Doubtful loans at fifty percent (50%) of outstanding amount; and~~ (3-31-22)

~~iii. Substandard loans at ten percent (10%) of outstanding amount, unless other factors (e.g., history of such loans at the credit union) indicate that a greater or lesser amount is appropriate.~~ (3-31-22)

032. Prohibitions Ineligible Borrowers. A credit union may not ~~make grant~~ member business loans to the following ~~nonvolunteer, senior management employees, or to any associated member or immediate family member of such employees:~~ (3-31-22)()

a. ~~The credit union's chief executive officer; typically this individual holds the title of president, treasurer, or manager.~~Any senior management employee directly or indirectly involved in the credit union's commercial loan underwriting, servicing, and collection process, and any of their immediate family members; (3-31-22)()

b. ~~Any assistant chief executive officers; often the assistant manager.~~Any person meeting the definition of an associated borrower with respect to persons identified in Subsection 040.02.a. of this rule; or (3-31-22)()

c. ~~The chief financial officer or comptroller. The credit union shall not grant a member business loan where any provision for the payment, or the amount of the payment, on the loan is conditioned on the profitability or success of the business or commercial endeavor for which the loan is made.~~Any compensated director, unless the credit union's board of directors approves granting the loan and the compensated director was recused from the board's decision making process. (3-31-22)()

d. The credit union shall not grant a member business loan where any requirement for the payment, or the amount of the payment, on the loan is conditioned on the profitability or success of the business or commercial endeavor for which the loan is made. ()

041. -- 049. (RESERVED)

050. NONPREFERENTIAL TREATMENT.

01. **Nonpreferential Treatment.** ~~The rates, terms, and conditions on any loan or line of credit either made to, or endorsed or guaranteed by~~ requirement of extending credit on “substantially the same terms as those prevailing...”, found in Section 26-2119(2), Idaho Code, is also applicable to: (3-31-22)(____)

a. ~~An official~~ Immediate family members of those persons listed in Section 26-2119(2), Idaho Code; (3-31-22)(____)

b. ~~An immediate family member of an official; or~~ Any business entity or venture owned, in whole or in part, by those persons listed in Section 26-2119(2), Idaho Code, or their immediate family members. (3-31-22)(____)

e. ~~Any individual having a common ownership, investment, or other pecuniary interest in a business enterprise with an official or with an immediate family member of an official, cannot be more favorable than the rates, terms, and conditions for comparable loans or lines of credit to other credit union members. “Official” means any member of the board of directors, credit committee, or supervisory committee. “Immediate family member” means a spouse or other family members, related by blood or operation of law, living in the same household.~~ (3-31-22)

051. -- 059. (RESERVED)

060. ~~PROHIBITED FEES, COMMISSIONS, COMPENSATION~~ **PROHIBITION ON COMMISSION FOR MAKING LOANS.**

~~A credit union may not make any loan or extend any line of credit if, either directly or indirectly, any commission, fee, or other compensation is to be received by the credit union’s directors, committee members, senior management employees, loan officers, or any immediate family members of such individuals, in connection with underwriting, insuring, servicing, or collecting the loan or line of credit. However, salary for employees is not prohibited by this section. “Senior management employees” refers to those employees described in Subsection 040.03 of these rules. “Immediate family member” means a spouse, or other family members, related by blood or operation of law, living in the same household.~~ No officer, director, or employee of any credit union, or immediate family thereof, shall demand, accept or receive, directly or indirectly, any commission or other consideration on account of the making, extension, or renewal by said credit union of any loan, or extension of credit, to any person, firm or corporation. This prohibition shall not apply to consideration paid by a credit union to its employees. (3-31-22)(____)

061. -- 999. (RESERVED)

IDAPA 12 – IDAHO DEPARTMENT OF FINANCE

12.01.08 – RULES PURSUANT TO THE UNIFORM SECURITIES ACT (2004)

DOCKET NO. 12-0108-2301 (ZBR CHAPTER REWRITE, FEE RULE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 30-14-605(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 18, 2023. The hearing site(s) will be accessible to persons with disabilities. Requests for 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 was conducted pursuant to the [Executive Order 2020-01](#), “Zero-Based Rulemaking”, for the purpose of engaging in a thorough retrospective review of the cost and benefit of an existing rule. As a result, the proposed changes reduce regulatory burden by removing outdated requirements.

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

No fee changes have resulted from this rulemaking. The existing iteration of the rule included the following fees which have been retained through this rulemaking.

Rule 004.01: \$50 fee with each request for no-action position or interpretive opinion letter. Authorized pursuant to Sections 30-14-605(d) and 30-14-605(a), Idaho Code.

Rule 040.03: \$300 fee for annual renewal of registration statement. Authorized pursuant to Sections 30-14-305(b) and 30-14-605(a), Idaho Code.

Rule 053.01.b and 01.c: \$300 fee for filing of notice of offering and annual renewal of mutual funds by investment companies, and \$100 filing fee for notice of offering and annual renewal of unit investment trusts. Authorized pursuant to Sections 30-14-302(b) and 30-14-605(a), Idaho Code.

Rules 053.02.b and 02.c: \$50 fee for Regulation D Rule 506 notice filings. Authorized pursuant to Sections 30-14-302(c) and 30-14-605(a), Idaho Code.

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

This rulemaking will not negatively impact the state General Fund.

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 August 2023 Idaho Administrative Bulletin, [Volume 23-8, pages 12 and 13](#).

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

The Department seeks to provide a level playing field for all affected financial professionals by incorporating various policy statements of the North American Securities Administrators Association (NASAA) in order to promote uniformity among state regulators. This approach provides industry participants with a uniform approach to regulation (more certainty) while reducing compliance costs with the application of broadly accepted standards of conduct.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Anthony Polidori at (208)-332-8060.

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 25, 2023.

DATED this 1st day of September, 2023.

Anthony Polidori
Deputy Director
Idaho Department of Finance
11341 West Chinden Blvd., Suite A300
Boise, ID 83714
Phone: (208) 332-8060
Fax: (208) 332-8099
Email: anthony.polidori@finance.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 12-0108-2301
(ZBR Chapter Rewrite)

12.01.08 – RULES PURSUANT TO THE UNIFORM SECURITIES ACT (2004)

000. LEGAL AUTHORITY.

This chapter is promulgated pursuant to Section 30-14-605, Idaho Code. ()

001. SCOPE.

These rules relate to the offer and sale of securities and the giving of investment advice in the state of Idaho by licensed individuals and others. ()

002. -- 003. (RESERVED)

004. ~~SECURITIES EXEMPTIONS, OPINIONS, AND NO ACTION LETTERS~~ INTERPRETIVE OPINIONS.

01. Written Requests. ~~Interpretative Opinions.~~ The Administrator, ~~in his discretion,~~ may honor requests ~~from interested persons~~ for formal interpretive opinions ~~and no action positions, including consideration of waivers, relating to an actual specific factual circumstance where appropriate and in the public interest, on the basis of facts stated and submitted~~ in writing, with respect to the provisions of the Act or any rule or statement of policy adopted thereunder, ~~provided such requests satisfy and conform to the following requirements:~~ Each request for interpretive opinion letter shall be made in writing and include all information required by the administrator, accompanied by payment of a fee in the amount of fifty dollars (\$50). (3-23-22)()

01. ~~Written Requests.~~ Such requests shall be in writing and include or be accompanied by all information and material required by any statute, rule or statement of policy under which an exception or exemption may be claimed, including but not limited to, copies of prospectuses or offering circulars if applicable or appropriate. (3-23-22)

02. ~~Narrative.~~ The letter should contain a brief narrative of the fact situation and should set out all of the facts necessary to reach a conclusion in the matter; however, such narratives should be concise and to the point.

~~(3-23-22)~~

~~032.~~ **Hypotheticals Not Considered.** The names of the company or companies, organization or organizations and all other persons involved should be stated and should relate and be limited to a particular factual circumstance. Letters relating to hypothetical situations will not warrant a formal response. ()

~~04.~~ **Fee.** Each request for a no-action position or interpretive opinion letter shall be accompanied by payment of a fee in the amount of fifty dollars (\$50). ~~(3-23-22)~~

005. INCORPORATION BY REFERENCE.

01. Incorporated Documents. IDAPA 12.01.08, “Rules Pursuant to the Uniform Securities Act (2004),” adopts and incorporates by reference the full text of the following Statements of Policy and guidelines adopted by the North American Securities Administrators Association (NASAA): ()

- a. “Loans and Other Material Affiliated Transactions,” as adopted with amendments through March 31, 2008; ()
- b. “Options and Warrants,” as adopted with amendments through March 31, 2008; ()
- c. “Corporate Securities Definitions,” as adopted with amendments through March 31, 2008; ()
- d. “Impoundment of Proceeds,” as adopted with amendments through March 31, 2008; ()
- e. “Preferred Stock,” as adopted with amendments through March 31, 2008; ()
- f. “Promotional Shares,” as adopted with amendments through March 31, 2008; ()
- g. “Promoters’ Equity Investment,” as adopted with amendments through March 31, 2008; ()
- h. “Specificity in Use of Proceeds,” as adopted with amendments through March 31, 2008; ()
- i. “Underwriting Expenses, Underwriter’s Warrants, Selling Expenses, and Selling Securities Holders,” as adopted with amendments through March 31, 2008; ()
- j. “Unsound Financial Condition,” as adopted with amendments through March 31, 2008; ()
- k. “Unequal Voting Rights,” as adopted March 31, 2008; ()
- l. “Debt Securities,” as adopted April 25, 1993; ()
- m. “NASAA Guidelines Regarding Viatical Investments,” as adopted October 1, 2002; ()
- n. “NASAA Statement of Policy Regarding Small Company Offering Registrations (SCOR),” as adopted April 28, 1996. ()

02. Availability of Referenced Documents. Copies of ~~the current~~ “NASAA Statements of Policy” are available at the Department of Finance, ~~800 Park Blvd., Suite 200, Boise, ID 83712~~ 11341 West Chinden Blvd., Suite A300 Boise, ID 83714 and NASAA Web site at ~~http://www.nasaa.org/regulatory-activity/statements-of-policy/~~ https://www.nasaa.org/statements-of-policy/. ~~(3-23-22)()~~

006. -- 009. (RESERVED)

010. DEFINITIONS.

~~01.~~ **Act.** The Uniform Securities Act (2004) set forth in Chapter 14, Title 30, Idaho Code. ~~(3-23-22)~~

- ~~02.~~ ~~Administrator.~~ The Director of the Department of Finance. (3-23-22)
- ~~03.~~ ~~Agent of Issuer.~~ The term “agent of issuer” is used interchangeably with the term “issuer agent” through these rules. (3-23-22)
- ~~04~~1. ~~CRD.~~ Central Registration Depository. ()
- ~~05~~2. ~~Department.~~ The Idaho Department of Finance. ()
- ~~06.~~ ~~EFD.~~ Electronic Filing Depository. (3-23-22)
- ~~07~~3. ~~FINRA.~~ Financial Industry Regulatory Authority. ()
- ~~08.~~ ~~Form ADV.~~ The Uniform Application for Investment Adviser Registration. (3-23-22)
- ~~09.~~ ~~Form ADV-H.~~ The Uniform Application for a Temporary or Continuing Hardship Exemption. (3-23-22)
- ~~10.~~ ~~Form ADV-W.~~ The Uniform Request for Withdrawal of Investment Adviser Registration. (3-23-22)
- ~~11.~~ ~~Form BD.~~ The Uniform Application for Broker-Dealer Registration. (3-23-22)
- ~~12.~~ ~~Form BDW.~~ The Uniform Request for Withdrawal from Registration as a Broker-Dealer. (3-23-22)
- ~~13.~~ ~~Form BR.~~ The Uniform Application for Broker-Dealer Branch Registration. (3-23-22)
- ~~14.~~ ~~Form D.~~ The federal form entitled “Notice of Sale of Securities Pursuant to Regulation D, Section 4(6) and or Uniform Limited Offering Exemption.” (3-23-22)
- ~~15.~~ ~~Form NF.~~ The Uniform Notice Filing Form. (3-23-22)
- ~~16.~~ ~~Form 1-A.~~ A federal securities registration form of that number. (3-23-22)
- ~~17.~~ ~~Form S-18.~~ A federal securities registration form of that number. (3-23-22)
- ~~18.~~ ~~Form U-1.~~ The Uniform Application to Register Securities. (3-23-22)
- ~~19.~~ ~~Form U-2.~~ The Uniform Consent to Service of Process. (3-23-22)
- ~~20.~~ ~~Form U-4.~~ The Uniform Application for Securities Industry Registration or Transfer. (3-23-22)
- ~~21.~~ ~~Form U-5.~~ The Uniform Request for Withdrawal of Securities Industry Registration or Transfer. (3-23-22)
- ~~22.~~ ~~Form U-7.~~ The Uniform Small Company Offering Registration Form. (3-23-22)
- ~~23~~04. ~~IARD.~~ Investment Adviser Registration Depository. ()
- ~~24~~05. ~~NASAA.~~ The North American Securities Administrators Association, Inc. ()
- ~~25~~06. ~~NASD.~~ The National Association of Securities Dealers, Inc. ()
- ~~26~~07. ~~NASDAQ.~~ The National Association of Securities Dealers Automated Quotations. ()

~~2708.~~ SEC. The U.S. Securities and Exchange Commission. ()

~~2809.~~ **Transact Business.** For purposes of the Act, to “transact business” means to buy or to sell or contract to buy or to sell or dispose of a security or interest in a security for value. It also means any offer to buy or offer to sell or dispose of, and every solicitation of clients or of any offer to buy or to sell, a security or interest in a security for value. With respect to investment advisers and investment adviser representatives, “transact business” includes preparation of financial plans involving securities, recommendations to buy or sell securities or interests in a security for value, and solicitation of investment advisory clients. ()

~~29.~~ ~~USA. The Uniform Securities Act (2004).~~ (3-23-22)

~~3010.~~ **Unsolicited Order or Offer.** ()

a. As used in these rules, an order or offer to buy is considered “unsolicited” if: ()

i. The broker-dealer has not made a direct or indirect solicitation or recommendation that the customer purchase the security; and ()

ii. The broker-dealer has not recommended the purchase of the security to the customer, either directly or in a manner that would bring its recommendation to the customer; and ()

iii. The broker-dealer has not volunteered information on the issuer to the customer; and ()

iv. The customer has previously, and independent of any information furnished by the broker-dealer, decided to buy the security. ()

b. Any offer or order to buy from a customer whose first knowledge of the specific security or issuer was volunteered to him by the broker-dealer is regarded as a solicited order. ()

c. Any claim of exemption pursuant to Section 30-14-202(6), Idaho Code, shall be supported by the broker-dealer’s certificate that the transaction in question was, in fact, unsolicited. ()

011. -- 019. (RESERVED)

020. APPLICATION FOR REGISTRATION OF SECURITIES.

01. Registration by Coordination. A registration statement to register securities by coordination shall contain the following: ()

a. ~~The~~ Form U-1 ~~application~~ and accompanying documents (including subscription agreement); (3-23-22)()

b. A consent to service of process ~~(Form U-2)~~ in compliance with Section 30-14-611, Idaho Code; (3-23-22)()

~~e.~~ ~~A copy of the prospectus, including financial statements where:~~ (3-23-22)

~~i.~~ ~~The prospectus for a securities registration by coordination under Section 30-14-303, Idaho Code, shall be prepared using the forms required under the Securities Act of 1933, and~~ (3-23-22)

~~ii.~~ ~~All historical financial statements in the registration statement shall be in conformity with generally accepted accounting principles (GAAP) and financial statements filed with a registration statement by coordination that complies with the requirements of the United States Securities and Exchange Commission.~~ (3-23-22)

~~d.~~ ~~All exhibits filed with the United States Securities and Exchange Commission in connection with the registration statement;~~ (3-23-22)

- ec.** The filing fee specified in Section 30-14-305(b), Idaho Code; and ()
- f.d** Any additional information or documents requested by the Department. ()
- 02. Registration by Qualification.** A registration statement to register securities by qualification shall contain the following in addition to the requirements of Section 30-14-304, Idaho Code: ()
- a.** Financial Statements. Except for SCOR applications, registration statements filed pursuant to Section 30-14-304, Idaho Code, shall contain audited financial statements of the issuer for its last two (2) fiscal years. An issuer with less than one (1) year of operations may file reviewed financial statements until the end of its first fiscal year. ~~Registration statements filed with SCOR applications on the Form U-7 shall contain the financial statements specified in the instructions to the Form U-7.~~ (3-23-22)()
- b.** Unaudited Interim Financial Statements. If the audited financial statements or unaudited financial statements required in Subsection 020.02.a. of this rule are not current to within four (4) months of the date of filing of the registration statement, additional unaudited financial statements as of the issuer's last fiscal quarter or any later date designated by the Administrator shall be included. ()
- c.** Small Company Offering Registration (SCOR). A SCOR registration statement shall contain the following: ()
- i. ~~The~~ A Form U-1 application and accompanying documents (including subscription agreement); (3-23-22)()
- ii. An executed ~~Form D~~; "Notice of Sale of Securities Pursuant to Regulation D, Section 4(6) and or Uniform Limited Offering Exemption;" (3-23-22)()
- iii. A consent to service of process (~~Form U-2~~) in compliance with Section 30-14-611, Idaho Code; (3-23-22)()
- iv. For SCOR offerings, the prospectus to be used shall be the ~~Form U-7~~ Uniform Small Company Offering Registration Form, as adopted and revised by NASAA in September 1999; (3-23-22)()
- v. The filing fee specified in Section 30-14-305(b), Idaho Code; and ()
- vi. Any additional information or documents requested by the Department. ()
- d.** Registration statements by qualification shall contain the following: ()
- i. ~~The~~ A Form U-1 application and accompanying documents (including subscription agreement); (3-23-22)()
- ii. A consent to service of process (~~Form U-2~~) in compliance with Section 30-14-611, Idaho Code; (3-23-22)()
- iii. Financial statements prepared in accordance with Subsection 020.02.a. of this rule; ()
- iv. A copy of the prospectus containing the information or records specified in Sections 30-14-304(b)(1) through 304(b)(18), Idaho Code; ()
- v. The prospectus shall be prepared using one of the following forms: Part II of Form 1-A of Regulation A of the Securities Act of 1933; Parts I and II of Form SB-2 of the Securities Act of 1933; ~~Form U-7~~ The Uniform Small Company Offering Registration Form; or any other applicable form used to prepare a prospectus under the Securities Act of 1933, if approved by the department. (3-23-22)()
- 03. Other Forms.** Any other applicable form used to prepare a prospectus under the Securities Act of 1933, if approved by the Department, containing: ()

- a. The filing fee specified in Section 30-14-305(b), Idaho Code; and ()
- b. Any additional information or documents requested by the Department. ()

021. AMENDMENTS TO REGISTRATION STATEMENT.

01. Amendments Required. ~~The submission of a~~ correcting amendment to an effective registration statement ~~shall be prepared and submitted to the Department~~ **is required** any time that the information contained therein becomes inaccurate or incomplete in any material respect. ~~The responsibility for identifying and reporting a material change lies with the registrant.~~ (3-23-22)()

02. Contents of Amendment Filing. Each filing of a correcting amendment to a registration statement shall contain a copy of each item of the registration statement ~~which that~~ has been changed, with all changes clearly marked. To be complete, a filing of a correcting amendment to the registration statement shall contain a report of material changes setting forth a summary of each material change and indicating the location of such change in the documents filed. ~~Neither the Administrator nor any member of his staff shall be held to have taken notice of any item of material change not summarized in such a report.~~ (3-23-22)()

03. Time of Filing and Undertaking. ~~Every registration statement shall contain an undertaking by the applicant to file correcting amendments to the registration statement whenever the information in the registration statement becomes inaccurate or incomplete in any material respect.~~ **An amendment required under this section must be submitted** by the earlier of: (3-23-22)()

- a. Two (2) business days after filing such amendment with the SEC; or ()
- b. Fifteen (15) business days following the event giving rise to the amendment. ()
- c. If not registered with the SEC, registrants shall file an amended registration statement if required within fifteen (15) business days following the event giving rise to the amendment. ()

04. Effect of Failure to Amend. Solicitation of prospective investors through utilization of a prospectus containing information which is inaccurate or incomplete in any material respect ~~is a violation of Section 30-14-501, Idaho Code;~~ **represents a violation of the Act** and constitutes a basis for the suspension or revocation of the registration ~~under Section 30-14-306(a)(1), Idaho Code.~~ Nothing in ~~Section 021, of these rules,~~ **in this section** shall be construed to require any open-end investment company registered under the 1940 Act and the Act to disclose fluctuations in its investment portfolio. (3-23-22)()

022. FINANCIAL STATEMENTS.

~~**01. Application of Regulation S-X.** As to definitions, qualifications of accountants, content of accountant's certificates, requirements for consolidated or combined statements, and actual form and content of financial statements, the Administrator shall apply Regulation S-X of the SEC (17 CFR Part 210) in its most currently amended form as of the date of the filing of the application to all financial statements filed with the Department in connection with the registration of securities.~~ (3-23-22)

~~**02. Financial Statements Incorporated by Reference.** Where financial statements in a prospectus are incorporated by reference from another document, the Administrator may require that such other document be filed with the Department and be delivered to investors with the prospectus.~~ (3-23-22)

~~**03. Application of Antifraud Provisions.** Any financial statement distributed in connection with the offer or sale of securities under the Act is subject to the provisions of Section 30-14-501, Idaho Code. Any financial statement filed with the Department is subject to the provisions of Section 30-14-505, Idaho Code.~~ (3-23-22)

~~023~~2. -- 035. (RESERVED)

036. NASAA STATEMENTS OF POLICY -- REGISTERED OFFERINGS.

The Department will apply the applicable statement(s) of policy adopted by NASAA ~~and incorporated herein by reference pursuant to Section 005, of these rules,~~ to an offering seeking registration in Idaho when conducting a review to determine whether an offering is fair, just and equitable. ~~Such an offering must comply with the requirements of such policy or policies, unless waived by the Administrator.~~ (3-23-22)()

037. REGISTRATION OF DEBT SECURITIES.

In addition to the requirements contained in the NASAA Statement of Policy Regarding Debt Securities, ~~as adopted on April 25, 1993,~~ the issuer of debt securities will incorporate the following standards: (3-23-22)()

01. Suitability. In establishing standards of fairness and equity, the Department has established the following investor suitability guidelines for debt offerings registered under the Act: ()

a. No more than ten percent (10%) of any one (1) Idaho investor's net worth (exclusive of home, home furnishings, and automobiles) shall be invested in the securities being registered with the Department; and either ()

b. A gross income of forty-five thousand dollars (\$45,000) and a net worth of forty-five thousand dollars (\$45,000) (exclusive of home, home furnishings and automobiles); or ()

c. A net worth of one hundred fifty thousand dollars (\$150,000) (exclusive of home, home furnishings and automobiles). ()

02. Department May Establish Standards. The suitability standard in Subsection 037.01 of this rule is a guideline. Higher or lower suitability standards may be established or may be required by the Department as a condition of registration. ()

03. Standards To Be Disclosed. The suitability standards must be disclosed in the prospectus. ()

038. WITHDRAWAL/ABANDONMENT OF A REGISTRATION STATEMENT.

01. Withdrawal. The withdrawal of an application (prior to effectiveness) may be permitted by the Administrator upon the written request of the applicant. ()

02. Abandonment. The abandonment of an application, where there has been no activity on the application by the applicant for a period of six (6) months or more, may be considered to signify a request for withdrawal. ()

03. Time Limit. An application for registration of securities pursuant to Section 30-14-303 or 30-14-304, Idaho Code, is deemed abandoned if such registration is not effective in the state of Idaho within one (1) year from the date of receipt by the Department of the initial filing of the application for registration. ()

04. Abandoned Applications Not Reinstated. Once deemed abandoned, the original application shall not be reinstated. A new application including the registration statement, appropriate exhibits and filing fees is required. ()

039. REPORT OF COMPLETION OF OFFERING.

01. Completion Statement. Within thirty (30) days of the completion of a registered offering in Idaho, the registrant shall provide a written statement to the Department that states the following: ()

a. The date the offering was completed in Idaho; and ()

b. The number and amount of registered securities sold in Idaho, for SCOR offerings and offerings registered by qualification. ()

02. Signatures. The written statement must be signed by an officer, director or agent of the issuer or by

an authorized signatory of the registrant. ()

040. ANNUAL REPORT FOR THE RENEWAL OF A REGISTRATION STATEMENT.

To renew a registration statement for an additional year, the registrant shall file the following with the Department before the anniversary of the effective date of the registration statement in Idaho: ()

01. Cover Letter. A cover letter requesting renewal; ()

02. Consent to Service. A consent to service of process (~~Form U-2~~) in accordance with Section 30-14-611, Idaho Code; and ~~(3-23-22)~~()

03. Filing Fee. A filing fee of three hundred dollars (\$300) for all registered offerings. ()

041. SUBSCRIPTION AGREEMENT.

The subscription agreement shall contain, among other things, an acknowledgment by the subscriber that he has received a copy of the prospectus. Each completed subscription agreement shall be kept in the office of the issuer or broker-dealer for a period of five (5) years and be subject to inspection by the Department. ()

042. DELIVERY OF PROSPECTUS.

As a condition of registration, an applicant shall comply with the following: ()

01. Registration by Qualification. A person offering or selling a security under a registration by qualification, other than through a broker-dealer, shall deliver a copy of the final prospectus to each prospective purchaser before or at the time of the confirmation of a sale made by or for the account of the person. ()

02. Registration by Coordination. A person offering or selling a security under a registration by coordination shall deliver a copy of the prospectus as required by the Securities Act of 1933. ()

043. REGISTRATIONS -- NOTICE OF INTENDED IDAHO BROKER -- DEALER OR AGENT.

At the time of filing of an application for registration of any security required to be registered in Idaho, written notice shall be provided to the Department of the name of at least one (1) broker-dealer or agent, registered as such in this state, that is intended or qualified to offer or sell such security in Idaho. The Administrator may deny or revoke effectiveness of any registration pending receipt of the notice or may hold the application without further review until the notice has been received. ()

044. RECORDS TO BE PRESERVED BY ISSUERS.

01. Required Records. All issuers who effect sales of registered securities, other than through a broker-dealer, shall preserve the following records for at least three (3) years following the expiration of the registration: ()

a. Copies of all documents contained in the registration statement; ()

b. Copies of all advertisements, including a record of the dates, names and addresses of media carrying those advertisements; ()

c. Copies of all communications received and sent by the issuer pertaining to the offer, sale and transfer of the securities, including purchase agreements and confirmations; and ()

d. A list of the name, address and telephone number of each investor to whom the securities were sold, and for each such person, information regarding: ()

i. The type of securities sold; ()

ii. The number and amount of securities sold; ()

iii. The type of consideration paid; and ()

iv. The name of the agent that sold the securities. ()

02. Retention Period. An issuer will need to retain the records set forth in Subsection 044.01 of this rule for each investor at least three (3) years after the investor's investment has terminated, even if more than three (3) years has lapsed since the expiration of the registration. ()

03. Form. Records may be stored in paper form or electronically. ()

~~045. EXAMINATION OF APPLICATION.~~

~~The Department shall conduct a special examination of each application for registration under Sections 30-14-303 and 30-14-304, Idaho Code, to determine the adequacy of disclosure and to fulfill the Department's obligations under Section 30-14-306, Idaho Code. This examination shall be based upon material contained in the registration statement and any other documentation which the applicant may be required to submit. Each application for registration shall be accompanied by the filing fee set forth in Section 30-14-305(b), Idaho Code. The examination report shall consist of the Department's written comments regarding the filing. (3-23-22)~~

~~046. ON SITE EXAMINATION OF ISSUERS.~~

~~The business and records of issuers offering and/or selling securities in, or out of, Idaho may be subject to periodic on-site examinations by the Administrator, or his designee, at such times as the Administrator determines necessary for the protection of the public. (3-23-22)~~

~~047. ADVERTISING.~~

~~**01. Definitions.** The following words and terms, when used in Section 047, of these rules, have the following meaning, unless the context clearly indicates otherwise: (3-23-22)~~

~~**a.** "Sales literature" means material published, or designed for use, in a newspaper, magazine or other periodicals, radio, television, telephone solicitation or tape recording, videotaped display, signs, billboards, motion pictures, telephone directories (other than routine listings), other public media and any other written communication distributed or made generally available to customers or the public including, but not limited to, prospectuses, pamphlets, circulars, form letters, seminar texts, research reports, surveys, performance reports or summaries and reprints or excerpts of other sales literature or advertising to include publications in electronic format. (3-23-22)~~

~~**b.** "Sales literature package" means all submissions of sales literature to the Department under one (1) posting or delivery relating to a specific issue of securities. (3-23-22)~~

~~**02. Filing Requirement.** Pursuant to Section 30-14-504, Idaho Code, this rule requires the filing of all sales literature for review and response by the Administrator before use or distribution in Idaho. A complete filing shall consist of the sales literature package and a representation by the applicant, issuer or broker-dealer, that reads substantially as follows: "I hereby attest and affirm that the enclosed sales literature or advertising package contains no false or misleading statements or misrepresentations of material facts, and that all information set forth therein is in conformity with the Company's most recently amended registration statement as filed with the Department on or about _____." (3-23-22)~~

~~**03. Exemption From Filing.** The following types of sales literature are excluded from the filing requirements set forth herein: (3-23-22)~~

~~**a.** Sales literature which does nothing more than identify a broker-dealer or investment adviser, and/or offer a specific security at a stated price; (3-23-22)~~

~~**b.** Internal communications that are not distributed to the public; (3-23-22)~~

~~**c.** Prospectuses, preliminary prospectuses, prospectus supplements and offering circulars which have been filed with the Department as part of a registration statement, including a final printed copy if clearly identified as such; (3-23-22)~~

~~d. Sales literature solely related to changes in a name, personnel, location, ownership, offices, business structure, officers or partners, telephone or teletype numbers; (3-23-22)~~

~~e. Sales literature filed with and approved by FINRA, the SEC, or other regulatory agency with substantially similar requirements; (3-23-22)~~

~~f. Sales literature relating to certain federal covered securities as set forth in Section 30-14-504(b), Idaho Code. (3-23-22)~~

~~04. **Piecemeal Filings.** The Department will not approve any sales literature package until a complete filing is received. Piecemeal filings will not be accepted and will result in the disapproval of any materials submitted therewith. (3-23-22)~~

~~05. **Application of Antifraud Provisions.** Sales literature used in any manner in connection with the offer or sale of securities is subject to the provisions of Section 30-14-501, Idaho Code, whether or not such sales literature is required to be filed pursuant to Section 30-14-504, Idaho Code, or Section 047 of these rules. Further, sales literature filed with the Department is subject to the provisions of Sections 30-14-501 and 30-14-505, Idaho Code. Sales literature should be prepared accordingly and should not contain any ambiguity, exaggeration or other misstatement or omission of material fact, which might confuse or mislead an investor. (3-23-22)~~

~~06. **Prohibited Disclosures.** Unless stating that the Administrator or Department has not approved the merits of the securities offering or the sales literature, no sales literature shall contain a reference to the Administrator or Department unless such reference is specifically requested by the Administrator. (3-23-22)~~

~~048. **DEPARTMENT ACCESS.**~~

~~Each issuer examined shall provide the personnel of the Department access to business books, documents, and other records. Each issuer shall provide personnel with office space and facilities to conduct an on-site examination, and assistance in the physical inspection of assets and confirmation of liabilities. Failure of any issuer to comply with any provision here of shall constitute a violation of Section 048, of these rules, and shall be a basis for denial, suspension or revocation of the registration or application for registration or other administrative or civil action by the Department. (3-23-22)~~

~~049~~5. -- 051. (RESERVED)

052. ISSUER AGENT REGISTRATION.

Any individual not exempted pursuant to Sections 30-14-402(b)(3), (4) or (5), Idaho Code, must be registered as an issuer agent or comply with the registration requirement of Section 30-14-402(a), Idaho Code, if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities. ()

053. FEDERAL COVERED SECURITIES (RULE 53).

01. Investment Company Notices. ()

a. Notice Requirement. Pursuant to Section 30-14-302, Idaho Code, prior to the offer in this state of a series or portfolio of securities of an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940, that is not otherwise exempt under Sections 30-14-201 through 30-14-203, Idaho Code, the issuer must file a notice with the Administrator relating to such series or portfolio of securities. ()

b. Content of Notice. Each required notice shall include the following: ()

i. A properly completed ~~Form NF~~ filing notice; (3-23-22)()

ii. A consent to service of process ~~(Form U-2); (3-23-22)()~~

iii. A filing fee of three hundred dollars (\$300) for mutual funds and one hundred dollars (\$100) for

- unit investment trusts; and ()
- iv. Notification of SEC effectiveness. ()
 - c. Renewal of Notice. The effectiveness of a notice required pursuant to Subsection 053.01.a. of this rule may be renewed each year for an additional one (1) year period of effectiveness by filing on or before the expiration of the effectiveness of such notice: ()
 - i. A properly completed Form NF clearly indicating the state file number of the Notice to be renewed; ()
 - ii. A consent to service of process (Form U-2) in accordance with Section 30-14-611, Idaho Code; and ()
 - iii. A renewal fee of three hundred dollars (\$300) for mutual funds and one hundred dollars (\$100) for unit investment trusts. ()
 - d. Amendments. Amendment filings are required for the following: ()
 - i. Issuer name change; ()
 - ii. Address change for contact person; and ()
 - iii. Notification of termination or completion. ()
 - e. Other Documents. Documents other than those required in Subsections 053.01.b., 053.01.c., and 053.01.d. of this rule, unless specifically requested by the Department, should not be filed with the Department. Documents that should be filed with the Department only if specifically requested include, but are not limited to, registration statements, prospectuses, amendments, statements of additional information, quarterly reports, annual reports, and sales literature. ()

02. Regulation D Rule 506 Notice Filing. ()

- a. Notice Requirement. Issuers offering a security in this state in reliance upon Section 30-14-301, Idaho Code, by reason of compliance with Regulation D, Rule 506, adopted by the United States Securities and Exchange Commission, are required to file a notice with the Department or with ~~EPD~~ Electronic Filing Depository pursuant to the authority of Section 30-14-302(c), Idaho Code, if a sale of a security in this state occurs as a result of such offering. ~~(3-23-22)~~()
- b. Terms of Notice Filing. The issuer shall file with the Department or with ~~EPD~~ Electronic Filing Depository no later than fifteen (15) days after the first sale of a security in this state for which a notice is required under Subsection 053.02.a. of this rule: ~~(3-23-22)~~()
 - i. One (1) copy of a “Notice of Sale of Securities Pursuant to Regulation D, Section 4(6) and or Uniform Limited Offering Exemption” filed with the SEC-filed ~~Form D~~; and ~~(3-23-22)~~()
 - ii. The notice filing fee of fifty dollars (\$50). ()
 - iii. A cover letter should be included in the notice filing which states the date in which the first sale of securities occurred in Idaho. ()
- ~~e. Terms of Late Notice Filing. An issuer failing to file with the Administrator as required by Subsection 053.02.b. of this rule may submit its notice filing with an additional fifty dollars (\$50) late filing payment within thirty (30) days after the first sale of a security in this state. Failure to file a notice on or before the thirtieth day after the first sale of a securities in Idaho will result in the inability of the issuer to rely on Section 30-14-302(c), Idaho Code, for qualification of the offering in Idaho. (3-23-22)~~

~~4. Issuer Agent Registration. Pursuant to Section 30-14-402(b)(5), Idaho Code, an individual who represents an issuer who effects transactions in a federal covered security under Section 18(b)(4)(F) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)(F)) is not exempt from the registration requirements of Section 30-14-402(a), Idaho Code, if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities. In addition, if such person is registered as a broker-dealer or agent in another state or with FINRA, or affiliated with a broker-dealer registered in another state, with the SEC or FINRA, then such person must also be similarly registered in Idaho. (3-23-22)~~

054. NOT FOR PROFIT DEBT SECURITIES NOTICE FILING.

01. Securities Exempt. With respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness, such issuers relying upon the exemption from registration provided in Section 30-14-201(7), Idaho Code, shall file a notice with the Administrator at least thirty (30) days prior to the first offering of sale pursuant to such claim. Such exemption shall become effective thirty (30) days after the filing of a complete notice if the Administrator has not disallowed the exemption. ()

02. Notice Information. The notice required in Subsection 054.01 of this rule shall specify, in writing, the material terms of the proposed offer or sale to include, although not limited to, the following: ()

- a. The identity of the issuer; ()
- b. The amount and type of securities to be sold pursuant to the exemption; ()
- c. A description of the use of proceeds of the securities; and ()
- d. The person or persons by whom offers and sales will be made. ()

03. Notice Requirements. The following items must be included as a part of the notice in Subsection 054.01 of this rule: ()

- a. The offering statement, if any; and ()
- b. A consent to service of process ~~(Form U-2)~~. (3-23-22)()

04. Sales and Advertising Literature. All proposed sales and advertising literature to be used in connection with the proposed offer or sale of the securities shall be filed with the Administrator only upon request. ()

05. NASAA Statements of Policy or Guidelines. The Statements of Policy or guidelines adopted by NASAA may be applied, as applicable, to the proposed offer or sale of a security for which a notice must be filed pursuant to this rule. Failure to comply with the provisions of an applicable Statement of Policy or guideline promulgated by NASAA may serve as the grounds for disallowance of the exemption from registration provided by Section 30-14-201(7), Idaho Code. ()

06. Waiver. The Administrator may waive any term or condition set forth in this rule. ()

055. MORTGAGE NOTE EXEMPTION.

01. Investment Contract or Profit-Sharing Agreement. The exemption specified in Section 30-14-202(11), Idaho Code, shall not extend to any transaction in a security in the nature of an investment contract or profit-sharing agreement. ()

02. Definition "Offered and Sold as a Unit." As used in Section 30-14-202(11), Idaho Code, "offered and sold as a unit" means an offer and sale of the entire mortgage or other security agreement to a single purchaser at a single sale. ()

056. MANUAL EXEMPTION.

For the purpose of the manual exemption (Section 30-14-202(2), Idaho Code), the following securities manuals or portions of the manuals are recognized. ()

- a. Best's Insurance Reports- Life-Health. ()
- b. Mergent's Industrial Manual. ()
- c. Mergent's International Manual. ()
- d. ~~Walkers Manual of Western Corporations~~ OTCOX Best Market. (3-23-22)()

057. MINING, OIL OR GAS EXPLORATION EXEMPTION REQUIREMENTS.

01. Legal Opinion for Extractive Industries. If the Department deems it necessary or advisable in the public interest or for the protection of investors, it may require an issuer engaged in mining, gas, or oil exploration or extraction to submit an opinion of counsel on the nature of the title held to the property noting any defects or liens or both, and the principal terms of any lease or option with respect to the property. If continued possession of the property by the issuer depends upon the satisfaction of certain working conditions, describe these conditions and state the extent to which they have been met. The Department may require other issuers to submit a status of title to any real estate which is material to the business of the issuer. ()

02. Quarterly Reports. The issuer shall file quarterly reports, on the "Quarterly Report Form for Small Mining Issues." during the time the securities remain registered. Such reports are due within thirty (30) days following the end of the issuer's quarter. Failure to comply with this rule could be grounds for suspension or revocation of a permit. ()

03. Advertising. The only advertising of exempt mining securities, whether on radio, television, print media, or other medium, shall be restricted to announcing the securities offering and stating the name and address of the issuer, the type of security, the underwriter, and where additional information may be obtained. ()

04. Offering Circulars. All offers of the security must be accompanied by a complete, current offering circular previously reviewed by the Administrator adequate to satisfy the antifraud provisions of the Act. ()

058. STOCK EXCHANGE LISTED SECURITIES.

Stock exchanges specified by or approved under Section 30-14-201(6), Idaho Code, are as follows: ()

- 01. The New York Stock Exchange;** ()
- 02. The American Stock Exchange;** ()
- 03. The NASDAQ Global Market and Global Select Market;** ()
- ~~04. The Chicago Stock Exchange;~~ (3-23-22) ()
- 05. The Chicago Board Options Exchange;** ()
- 06. Tier I of the Pacific Stock Exchange; and** ()
- ~~07. Tier I of the Philadelphia Stock Exchange, Inc.~~ ()

059. (RESERVED)

060. REGISTRATION OR EXEMPTION OF "BLIND POOL" OFFERINGS PROHIBITED.

An offering in which it is proposed to issue stock or other equity interest without an allocation of proceeds to sufficiently identifiable properties or objectives shall be considered a "blind pool" offering and one in which the duty to provide full disclosure cannot be met. Because of the inability or failure to make full disclosure, the Department is of the position that the offering would work a fraud upon purchasers and, therefore, the offering may not be registered

or qualify for an exemption from registration in Idaho. ()

061. CROSS-BORDER TRANSACTIONS EXEMPTION.

By authority delegated to the Administrator in Section 30-14-203, Idaho Code, transactions effected by a Canadian broker-dealer and its agents that meet the requirements for exemption from registration pursuant to Section 084 of these rules, are determined to be classes of transactions for which registration is not necessary or appropriate for the protection of investors and are exempt from Sections 30-14-301 and 30-14-504, Idaho Code. ()

062. DESIGNATED MATCHING SERVICES.

~~01. In General. Sections 30-14-301 through 30-14-305, Idaho Code, shall not apply to any offer or sale of a security by an issuer in a transaction that meets the requirements of this rule. A designated matching service shall not be deemed a broker-dealer subject to registration within the meaning of the Act or the rules thereunder. (3-23-22)~~

~~02. Definitions. The following words and terms, when used in this rule, shall have the following meanings, unless the context clearly indicates otherwise. (3-23-22)~~

~~a. Designated Matching Service. Means a matching service designated by the Administrator under Section 062 of these rules. (3-23-22)~~

~~b. Designated Matching Service Facility. Means a computer system operated, or a seminar or meeting conducted, by a designated matching service. (3-23-22)~~

~~c. Individual Accredited Investor. Means any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his or her purchase, exceeds one million dollars (\$1,000,000) or any natural person who had an individual income in excess of two hundred thousand dollars (\$200,000) in each of the two (2) most recent years or joint income with that person's spouse in excess of three hundred thousand dollars (\$300,000) in each of those years and has a reasonable expectation of reaching the same income level in the current year. In addition each purchaser must evidence such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment. The term "individual accredited investor" also includes any self-directed employee benefit plan with investment decisions made solely by persons that are "individual accredited investors" as defined in Subsection 062.02.e. of this rule, and the individual retirement account of any such individual accredited investor. (3-23-22)~~

~~d. Investor Member. Means an investor who has been properly qualified by and uses a designated matching service. Either of the following investors may be properly qualified: any institutional investor as described in Section 30-14-102(11), Idaho Code, or an individual accredited investor as defined in this rule. (3-23-22)~~

~~e. Issuer Member. Means an issuer who uses a designated matching service facility. (3-23-22)~~

~~f. Summary Business Plan. Means a brief statement specifically describing the issuer, its management, its products or services, and the market for those products or services. Other information, including, specifically, financial projections, must not be included in a summary business plan. (3-23-22)~~

~~03. Application. A person may apply to the Administrator to be a designated matching service by filing such forms as required by the Administrator. No designation will be made unless the applicant demonstrates that it: (3-23-22)~~

~~a. Owns, operates, sponsors, or conducts a matching service facility limited to providing investor members with the summary business plans and identities of issuer members; (3-23-22)~~

~~b. Will not be involved in any manner in the sale, offer for sale, solicitation of a sale or offer to buy, a security other than as set forth in Subsection 062.03.a. of this rule; (3-23-22)~~

~~c. Will make a reasonable factual inquiry to determine whether an investor member is properly qualified; (3-23-22)~~

~~d. Is a governmental entity, quasi-governmental entity, an institution of higher education or an Idaho nonprofit corporation that is associated with a governmental or quasi-governmental entity or an institution of higher education; (3-23-22)~~

~~e. Does not employ any person required to be registered under the Act as a broker-dealer, investment adviser, agent, or investment adviser representative; (3-23-22)~~

~~f. Does not have, and does not employ any person who has a business relationship with any investor member or issuer member other than to provide such member access to the matching service facility; (3-23-22)~~

~~g. Charges fees only in an amount necessary to cover its reasonable operating costs and that are unrelated to the amount of money being raised by any issuer member or the amount of securities sold by any issuer member; (3-23-22)~~

~~h. Agrees to not use any advertisement of its matching service facility that advertises any particular issuer or any particular securities or the quality of any securities or that is false or misleading or otherwise likely to deceive a reader thereof; and (3-23-22)~~

~~i. Meets such other conditions as the Administrator considers appropriate for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act, and the rules thereunder. (3-23-22)~~

~~04. **Designation Consistent with Act.** Designation under this rule is not available to any matching service formed in a manner that constitutes part of a scheme to violate or evade the provisions of the Act or rules thereunder. (3-23-22)~~

~~05. **Withdrawal of Designation.** The Administrator, upon ten (10) days notice and hearing before the Administrator or a hearing officer, may withdraw a person's designation as a matching service if the person does not meet the standards for designation provided in this rule. (3-23-22)~~

~~06. **Disqualifications.** (3-23-22)~~

~~a. No exemption under this rule is available for the securities of any issuer if the issuer: (3-23-22)~~

~~i. Within the last five (5) years, has filed a registration statement which is the subject of a currently effective registration stop order entered by the United States Securities and Exchange Commission or any state securities administrator; (3-23-22)~~

~~ii. Within the last five (5) years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit or a misdemeanor involving financial fraud; (3-23-22)~~

~~iii. Is the subject of any state or federal administrative enforcement order, entered within the last five (5) years, finding fraud or deceit in connection with the purchase or sale of any security; or (3-23-22)~~

~~iv. Is the subject of any order, judgment or decree of any court of competent jurisdiction, entered within the last five (5) years, temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security. (3-23-22)~~

~~b. For purposes of this rule, the term "issuer" includes: (3-23-22)~~

~~i. Any of the issuer's predecessors or any affiliated issuer; (3-23-22)~~

~~ii. Any of the issuer's directors, officers, general partners, or beneficial owners of ten percent (10%) or more of any class of its equity securities (beneficial ownership meaning the power to vote or direct the vote or the~~

~~power to dispose or direct the disposition of such securities); (3-23-22)~~

~~iii. Any of the issuer's promoters presently connected with the issuer in any capacity, including: (3-23-22)~~

~~(1) Any person who, acting alone or in conjunction with one (1) or more other persons, directly or indirectly takes initiative in founding and organizing the business or enterprise of an issuer; or (3-23-22)~~

~~(2) Any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, ten percent (10%) or more of any class of securities of the issuer or ten percent (10%) or more of the proceeds from the sale of any class of such securities; however, a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of Subsection 062.06.b.iii. of this rule, if such person does not otherwise take part in founding and organizing the enterprise. (3-23-22)~~

~~iv. Any underwriter of the issuer. (3-23-22)~~

~~e. The exemption under this rule is not available to an issuer that is in the development stage that either has no specific business plan or purpose or had indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person. (3-23-22)~~

~~**07. Notice of Transaction.** The issuer shall file with the Administrator a notice of transaction, consent to service of process (Form U-2), and a copy of its summary business plan within fifteen (15) days after the first sale in this state. (3-23-22)~~

~~0632. -- 077. (RESERVED)~~

078. IMPLEMENTATION OF CRD.

~~**01. Designation and Use of CRD System.** Pursuant to Section 30-14-406, Idaho Code, the Administrator designates the web-based ~~Central Registration Depository (CRD) operated by FINRA~~ to receive and store filings and collect related fees from broker-dealers, agents and investment adviser representatives on behalf of the Administrator. Forms U-4, U-5, BD, BR, and BDW shall be used to register or terminate agents, investment adviser representatives or broker-dealers, respectively, in the state of Idaho through the CRD system. The CRD system will be utilized to effect FINRA registration as well as registration, termination, and renewal in the state. (3-23-22)(____)~~

~~**02. Registrations Not Automatic.** A filing of Form U-4, BD, or BR with the CRD system does not constitute an automatic registration in Idaho. Broker-dealers and investment advisers should not consider agents or investment adviser representatives registered until such approval from the state of Idaho has been received by them through CRD. (3-23-22)~~

~~**03. Electronic Signature.** When a signature or signatures are required by the particular instructions of any filing to be made through CRD, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to CRD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing. (3-23-22)~~

079. IMPLEMENTATION OF IARD.

~~**01. Designation and Use of IARD.** Pursuant to Section 30-14-406, Idaho Code, the Administrator designates the web-based ~~Investment Adviser Registration Depository (IARD)~~ operated by FINRA to receive and store filings and collect related fees from investment advisers on behalf of the Administrator. Unless otherwise provided, all investment adviser applications, amendments, reports, notices, related filings and fees required to be filed with the Administrator pursuant to the rules promulgated under the Act, shall be filed electronically with and transmitted to IARD. (3-23-22)(____)~~

~~02. Use of IARD. Unless otherwise provided, all investment adviser applications, amendments, reports, notices, related filings and fees required to be filed with the Administrator pursuant to the rules promulgated under the Act, shall be filed electronically with and transmitted to IARD. The following additional conditions relate to such electronic filings: (3-23-22)~~

~~a. Electronic Signature. When a signature or signatures are required by the particular instructions of any filing to be made through IARD, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing. (3-23-22)~~

~~b. When Filed. Solely for purposes of a filing made through IARD, a document is considered filed with the Administrator when all fees are received and the filing is accepted by IARD on behalf of the state. (3-23-22)~~

~~03. Electronic Filing. The electronic filing of any particular document and the collection of related processing fees shall not be required until such time as IARD provides for receipt of such filings and fees and thirty (30) days notice is provided by the Administrator. Any documents or fees required to be filed with the Administrator that are not permitted to be filed with or cannot be accepted by IARD shall be filed directly with the Administrator. (3-23-22)~~

~~04. Hardship Exemptions. Subsection 079.04 of t~~This rule provides two (2) “hardship exemptions” from the requirements to make electronic filings as required by the rules. ~~(3-23-22)()~~

~~a. Temporary Hardship Exemption. ()~~

~~i. Investment advisers registered or required to be registered under the Act who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD may request a temporary hardship exemption from the requirements to file electronically. ()~~

~~ii. To request a temporary hardship exemption, the investment adviser ~~must~~ may file Form ADV-H which can be found at 17 CFR 279.3 in paper format with the Administrator where the investment adviser's principal place of business is located, no later than one (1) business day after ~~the an electronic~~ filing ~~(that is the subject of the Form ADV-H)~~ was due; and submit the filing that is the subject of the Form ADV-H hardship request in electronic format to IARD no later than seven (7) business days after the filing was due. (3-23-22)()~~

~~iii. Effective Date - Upon Filing. The temporary hardship exemption will be deemed effective upon receipt by the Administrator of the complete Form ADV-H. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the Administrator. ()~~

~~b. Continuing Hardship Exemption. ()~~

~~i. Criteria for Exemption. A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate that the electronic filing requirements of this rule are prohibitively burdensome. ()~~

~~ii. To apply for a continuing hardship exemption, the investment adviser ~~must~~ may file Form ADV-H ~~which can be found at 17 CFR 279.3 in paper format~~ with the Administrator at least twenty (20) business days before a filing is due; and, if a filing is due to more than one (1) securities regulator, the Form ADV-H request must be filed with the Administrator where the investment adviser's principal place of business is located. The Administrator who receives the application will grant or deny the application within ten (10) business days after the filing ~~of Form ADV-H~~ the hardship request. (3-23-22)()~~

~~iii. Effective Date - Upon Approval. The exemption is effective upon approval by the Administrator. The time period of the exemption may be no longer than one (1) year after the date on which the Form ADV-H hardship request is filed. If the Administrator approves the application, the investment adviser must, no later than five (5) business days after the exemption approval date, submit filings to IARD in paper format ~~(along with the~~~~

~~appropriate processing fees~~) for the period of time for which the exemption is granted. ~~(3-23-22)~~()

080. BROKER-DEALER REGISTRATION -- APPLICATION/RENEWAL.

01. Initial Application -- FINRA Member Firms. Broker-dealers applying for initial registration pursuant to Section 30-14-406, Idaho Code, and who are contemporaneously applying for FINRA membership or who are a FINRA member, shall file with CRD the fee required by the Act and such information as required by the Administrator. ~~(3-23-22)~~()

~~a. With CRD, a completed Form BD, including Schedules A-D;~~ ~~(3-23-22)~~

~~b. With CRD, a filing fee as specified in Section 30-14-410, Idaho Code;~~ ~~(3-23-22)~~

~~c. With CRD, the Form BR.~~ ~~(3-23-22)~~

02. Initial Application -- Non-FINRA Member Firms. Broker-dealers applying for initial registration pursuant to Section 30-14-406, Idaho Code, and who are not contemporaneously applying for FINRA membership or are not a FINRA member, shall file with the Department: ()

~~a. A completed Form BD, including Schedules A-E~~ Written application as required by the Administrator; ~~(3-23-22)~~()

b. The filing fee specified in Section 30-14-410, Idaho Code; ()

c. Audited financial statements; ()

d. Documentation of compliance with the minimum capital requirements of Section 087 of these rules; ()

e. Designation and qualification of a principal officer; ()

f. A list of the addresses, telephone numbers and resident agents of all office locations within the state of Idaho, to be provided within sixty (60) days of becoming registered; ()

g. A copy of the written supervisory procedures of the broker-dealer; ()

h. Any additional documentation, supplemental forms and information as the Administrator may deem necessary. ()

03. Incomplete Applications. After a period of six (6) months from date of receipt, an incomplete application will automatically be considered abandoned and withdrawn if the requirements have not been fulfilled. ()

04. Annual Renewal. ()

a. A FINRA member shall renew its registration by submitting the renewal fee specified in Section 30-14-410, Idaho Code, to the CRD according to their policies and procedures. A non-FINRA member shall renew its registration by submitting to the Department current information required for initial registration, and the renewal fee specified in Section 30-14-410, Idaho Code. ()

b. It is required that an application for the renewal of the registration of a broker-dealer must be filed with the Department before the registration expires, which is the thirty-first day of December next following such registration, per the provisions of Section 30-14-406(d), Idaho Code. Any registration that is not renewed within that time limit will be deemed to have lapsed, thus requiring the broker-dealer to reapply for registration with the Department in accordance with the requirements of the Act. ()

05. Updates and Amendments. ()

a. A broker-dealer must file with CRD, ~~in accordance with the instructions in Form BD,~~ any amendments to the broker-dealer's ~~Form BD application.~~ All broker-dealers must assure that current and accurate information is on file with the Department at all times. If information in an application for registration becomes inaccurate or incomplete, additional information must be submitted through updates on the ~~Form BD application~~ or ~~(3-23-22)()~~ by direct notice to the Department.

b. An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment. ()

c. **Litigation Notice.** Any broker-dealer shall notify the Administrator in writing or through the CRD of any civil, administrative, or criminal complaint, petition, or pleading issued or filed against him and of any bankruptcy proceeding filed by or against him within thirty (30) days of his receipt of the initial pleading. This requirement does not include minor traffic violations or minor civil actions unrelated to the registrant's business as a broker-dealer. ()

d. **Notice of Address.** Every broker-dealer shall provide the Department, with an address sufficiently descriptive to allow service of process pursuant to the Idaho Rules of Civil Procedure. ()

e. **Change of Name.** If a registered broker-dealer desires to change its name, notice of such an intent must be submitted to the CRD or this Department for non-FINRA members, either before or within a reasonable time after the effective date of the change. The name change will not be effective in this state until the notice is received. ()

06. Completion of Filing. An application for initial or renewal registration is not considered filed for purposes of Section 30-14-406, Idaho Code, until the required fee and all required submissions have been received by the Administrator. ()

07. Deferral of Effectiveness. The Administrator may defer the effective date of any registration until noon on the forty-fifth day after the filing of any amendment completing the application. ()

081. WITHDRAWAL OF BROKER -- DEALER AND AGENT REGISTRATION.

01. Application Withdrawal. Withdrawal from registration as a broker-dealer or agent becomes effective thirty (30) days after receipt of an application to withdraw or within such shorter period of time as the Administrator may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within sixty (60) days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the Administrator by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Administrator may nevertheless institute a revocation or suspension proceeding under Section 30-14-412, Idaho Code, within one (1) year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration is effective. ()

02. Broker-Dealer. The application for withdrawal of registration as a broker-dealer shall be completed by ~~following the instructions on Form BDW and filing Form BDW~~ a withdrawal request with CRD. ~~(3-23-22)()~~

03. Agents. The application for withdrawal of registration as an agent shall be completed by ~~following the instructions on Form U-5 and filed upon Form U-5~~ filing a withdrawal request with CRD. ~~(3-23-22)()~~

082. WITHDRAWAL OF ~~AGENT OF~~ ISSUER AGENT REGISTRATION.

01. Pending Revocation or Suspension. Withdrawal from registration as an ~~agent of~~ issuer agent becomes effective thirty (30) days after receipt of an application to withdraw or within such shorter period of time as the Administrator may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within sixty (60) days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time

and upon such conditions as the Administrator by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Administrator may nevertheless institute a revocation or suspension proceeding under Section 30-14-412, Idaho Code, within one (1) year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration is effective. (3-23-22)()

02. ~~Agent of Issuer~~ **Agent**. The application for withdrawal of registration as an ~~agent of issuer~~ **agent** shall be completed by ~~following the instructions on Form U-5 and filed upon Form U-5~~ **filing a withdrawal request** with the Department. (3-23-22)()

083. BROKER-DEALER AGENT/ISSUER AGENT REGISTRATION.

01. Broker-Dealer Agents. Agents of broker-dealers applying for initial registration in the state of Idaho pursuant to Section 30-14-406, Idaho Code, shall file the following: ()

- a. With CRD, a completed Form U-4; ()
- b. With CRD, the filing fee specified in Section 30-14-410, Idaho Code; ()
- c. With CRD, proof of successful completion of the applicable examinations specified in Section 103 of these rules; ()

~~d. With the Department, any additional documentation, supplemental forms and information as the Administrator may deem necessary;~~ (3-23-22)

~~ed.~~ With the Department, Subsections 083.01.a. through 083.01.~~ed.~~ of this rule, for any agent of a non-FINRA member. (3-23-22)()

02. Agents of Issuer. ()

a. Agents of issuers applying for initial registration in the state of Idaho pursuant to Section 30-14-406, Idaho Code, shall file the following with the Department: ()

- i. A completed Form U-4; ()
- ii. The fee specified in Section 30-14-410, Idaho Code; ()
- iii. Proof of successful completion of the applicable examination(s) specified in Section 103 of these rules; ()

iv. Proof of a bond of a surety company duly authorized to transact business in this state, said bond to be in the sum of ten thousand dollars (\$10,000) and conditioned upon faithful compliance with the provisions of the Act by the agent, such that upon failure to so comply by the agent, the surety company is liable to any and all persons who may suffer loss by reason thereof. Provided, however, that the obligation of the surety bond must be maintained at all times in the amount therein provided; and provided further, that a certificate of deposit issued by any bank in the state of Idaho and assigned to the Administrator in an amount equal to the bond which would otherwise be required may be accepted by the administrator in lieu of a bond, if the certificate of deposit is maintained at all times in the amount and manner herein provided during the term for which the registration is effective and for three (3) years thereafter; ()

~~v. Any additional documentation, supplemental forms and information as the Administrator may deem necessary;~~ (3-23-22)

~~b. An individual who represents an issuer that effects transactions in a federal covered security under Section 18(b)(3) (transactions relating to "qualified purchasers" as that term may be defined by the SEC), 18(b)(4)(D) (commonly known as Regulation A, Tier 2), or 18(b)(4)(F) (commonly known as Regulation D, Rule 506) of the Securities Act of 1933 is not exempt from the registration requirements of Section 30-14-402(a), Idaho Code, if the individual is compensated, directly or indirectly, for participation in the specified securities transactions.~~ (3-23-22)

eb. Exceptions for officers. If there are not more than two (2) officers of an issuer, such officers may be registered as agents for a particular original offering of the issuer's securities without having to pass such written examination or file an agent's bond as provided by Subsection 083.02.a.iii. and 02.a.iv. of this rule, unless such person has registered under this rule within the prior five (5) years. ()

03. Incomplete Applications. After a period of six (6) months from date of receipt, an incomplete application will automatically be considered abandoned and withdrawn if the requirements have not been fulfilled. ()

04. Annual Renewal. ()

a. Broker-Dealer Agent. Agents of FINRA members shall renew their registrations by submitting the renewal fee specified in Section 30-14-410, Idaho Code, to the CRD. Agents of non-FINRA members shall renew their registrations by submitting a completed renewal application and a renewal fee as specified in Section 30-14-410, Idaho Code. ()

b. Issuer Agent. Issuer agents shall renew their registrations by submitting a completed renewal application and a renewal fee as specified in Section 30-14-410, Idaho Code. ()

05. Updates and Amendments. ()

a. A broker-dealer agent or ~~agent of~~ issuer agent must file with CRD, or with this Department, ~~in accordance with the instructions in Form U-4,~~ any amendments to the broker-dealer agent's or issuer agent's Form U-4. It is the responsibility of each broker-dealer agent or issuer agent to assure that current and accurate information is on file with the Department at all times. If information in an application for registration becomes inaccurate or incomplete, additional information must be submitted through updates on the Form U-4 or by direct notice to the Department. (3-23-22)()

b. An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment. ()

c. Litigation Notice. Any broker-dealer agent or issuer agent shall notify the Administrator in writing or through the CRD of any civil, administrative, ~~or~~ criminal complaint, petition, or pleading issued or filed against him and of any bankruptcy proceeding filed by or against him within thirty (30) days of his receipt of the initial pleading. This requirement shall not include minor traffic violations or minor civil actions unrelated to the registrant's business as a broker-dealer. (3-23-22)()

d. Notice of Address. Every broker-dealer agent and issuer agent shall provide the Department with an address sufficiently descriptive to allow service of process pursuant to the Idaho Rules of Civil Procedure. ()

e. Change of Name. If a registered broker-dealer agent or issuer agent changes his or her name, notice of such must be submitted to the CRD or this Department within a reasonable time after the effective date of the change. The name change will not be effective in this state until the notice is received. ()

06. Completion of Filing. An application for initial or renewal registration is not considered complete for purposes of Section 30-14-406(c), Idaho Code, until the required fee and all amendments, including submissions requested by the Department, have been received by the Department. ()

07. Deferral of Effectiveness. The Administrator may defer the effective date of any registration until noon on the forty-fifth day after the filing of any amendment completing the application. ()

084. CROSS-BORDER LICENSING EXEMPTION.

By authority delegated to the Administrator in Section 30-14-401(d), Idaho Code, a Canadian broker-dealer meeting all of the following conditions is determined to be exempt from the registration requirement in Section 30-14-401(a), Idaho Code: ()

01. Canadian Broker-Dealer. The broker-dealer is registered in Canada, does not have an office or other physical presence in this state, and is not an office or branch of a broker-dealer domiciled in the United States. ()

02. Registered Broker-Dealer. The broker-dealer is registered with or a member of a Canadian self-regulatory organization, stock exchange, or the Bureau des Services Financiers and maintains that registration or membership in good standing. ()

03. Customers. The broker-dealer and its agents effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by: ()

a. An individual from Canada that temporarily resides or is temporarily present in this state and with whom the broker-dealer had a bona fide broker-dealer-customer relationship before the individual entered the United States; or ()

b. An individual present in this state whose transactions relate to a self-directed, tax advantaged Canadian retirement plan of which the individual is the holder or contributor. ()

04. Disclosure. The broker-dealer prominently discloses in writing to its clients in this state that the broker-dealer and its agents are not subject to the full regulatory requirement of the Act. ()

05. Jurisdiction. Neither the broker-dealer nor its agents disclaim the applicability of Canadian law or jurisdiction to any transaction conducted pursuant to this exemption. ()

06. Anti-Fraud Provisions. The broker-dealer and its agents comply with the antifraud provisions of the Act and of federal securities laws. ()

07. Consent to Service. Prior to or contemporaneously with the first transaction in Idaho, the broker-dealer must file a consent to service of process (~~Form U-2~~) in a manner that effectively appoints the Administrator as agent for service of process. (3-23-22)()

08. Provide Requested Information. Any Canadian broker-dealer or agent relying on this exemption shall, upon written request, furnish the Department any information relative to a transaction covered by Section 084, of these rules, that the Administrator deems relevant. ()

085. RELICENSING (FORMERLY TEMPORARY AGENT TRANSFER (TAT) SYSTEM).

01. Relicensing Agents. Transfer of agents from one broker-dealer to another shall be effected pursuant to, and in accordance with, the NASAA/CRD relicense program which allows for an automatic temporary license. ()

02. Relicensing Investment Adviser Representatives. Transfer of investment adviser representatives from one (1) investment adviser to another shall be effected pursuant to, and in accordance with, the NASAA/CRD relicense program which allows for an automatic temporary license. ()

03. Temporary License Expiration. An agent or investment adviser representative may not transact business in Idaho after the expiration of a temporary license unless a permanent license has been issued. In all cases, the Administrator retains the right to deny, suspend, or revoke a temporary license for the causes listed in Section 30-14-412, Idaho Code. ()

086. AGENT TERMINATION.

Termination notice pursuant to the requirements of Section 30-14-408, Idaho Code, shall be given by filing within thirty (30) calendar days of termination, a completed ~~Form U-5~~ withdrawal request. For agents terminating registration with a FINRA member, such notice shall be filed with the CRD. For agents terminating registration with a non-FINRA member, such notice shall be filed with the Department. (3-23-22)()

087. NET CAPITAL REQUIREMENTS FOR BROKER-DEALERS.

Every registered broker-dealer shall have and maintain an adjusted net capital in compliance with 17 CFR 240.15c3-

1 under the Securities Exchange Act of 1934, as currently amended. ()

088. RECORDS REQUIRED FOR BROKER-DEALERS.

01. Required Books and Records. Unless otherwise provided by order of the SEC, each broker-dealer registered or required to be registered under the Act shall make, maintain and preserve books and records in compliance with the SEC rules 17a-3 (17 CFR 240.17a-3), 17a-4 (17 CFR 240.17a-4), 15g-9 (17 CFR 240.15g-9) and 15c2-11 (17 CFR 240.15c2-11), which are adopted and incorporated by reference. ()

02. Compliance. To the extent that the SEC promulgates changes to the above referenced rules, broker-dealers in compliance with such rules as amended are not subject to enforcement action by the Department for violation of this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended rule. ()

089. INVESTMENT ADVISER REGISTRATION -- APPLICATION/RENEWAL.

01. Initial Application. The application for initial registration as an investment adviser, pursuant to Section 30-14-406, Idaho Code, shall be made by completing Form ADV which can be found at 17 CFR 279.1 ~~in accordance with the form instructions and~~ by filing ~~the form~~ with IARD. The application for initial registration shall also include the following: (3-23-22)()

a. Proof of compliance by the investment adviser with the examination requirements of Section 103 of these rules; ()

b. A bond of a surety company duly authorized to transact business in this state, said bond to be in the sum of twenty-five thousand (\$25,000) and conditioned upon faithful compliance with the provisions of the Act by the investment adviser such that upon failure to so comply by the investment adviser, the surety company shall be liable to any and all persons who may suffer loss by reason thereof. Except that an investment adviser that has its principal place of business in a state other than this state shall be excluded from these bonding requirements provided that such investment adviser is registered as an investment adviser in the state where it maintains its principal place of business and is in compliance with such state's bonding or minimum net worth requirements; ()

c. A copy of the investment advisory contract to be executed by Idaho clients; ()

d. A balance sheet, prepared substantially in accordance with Generally Accepted Accounting Principles, dated as of the investment adviser's prior fiscal year-end; however, if the investment adviser has not been in operation for an entire year, a balance sheet dated within ninety (90) days of filing shall be submitted; ()

e. The fee required by Section 30-14-410, Idaho Code; and; ()

f. Any other information the Department may reasonably require. ()

02. Incomplete Applications. After a period of six (6) months from the date of receipt by the Department, an incomplete application will automatically be considered abandoned and withdrawn if the requirements have not been fulfilled. ()

03. Annual Renewal. The application for annual renewal registration as an investment adviser shall be filed with IARD according to their policies and procedures. The application for annual renewal registration shall include the fee required by Section 30-14-410, Idaho Code. ()

04. Applications Prior to Expiration. An application for the renewal of the registration of an investment adviser must be filed with the Department before the registration expires, which is the thirty-first day of December next following such registration, per the provisions of Section 30-14-406(d), Idaho Code, unless an order is in effect under Section 30-14-412, Idaho Code. Any registration that is not renewed within that time limit will be deemed to have lapsed, thus requiring the investment adviser to reapply for registration with the Department in accordance with the requirements of the Act. ()

05. Updates and Amendments. ()

a. An investment adviser must file with IARD, ~~in accordance with the instructions in Form ADV,~~ any amendments to the investment adviser's Form ADV. All investment advisers must assure that current and accurate information is on file with the Department at all times. ~~If information in an application for registration becomes inaccurate or incomplete, additional information must be submitted through updates on the Form ADV or by direct notice to the Department.~~ An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment. (3-23-22)()

b. Within ninety (90) days of the end of the investment adviser's fiscal year, an investment adviser must file a copy of the investment adviser's balance sheet as of the prior fiscal year-end. ()

c. Litigation Notice. Any investment adviser shall notify the Administrator in writing or through the IARD of any civil, administrative, or criminal complaint, petition, or pleading issued or filed against him and of any bankruptcy proceeding filed by or against him within thirty (30) days of his receipt of the initial pleading. This requirement does not include minor traffic violations or minor civil actions unrelated to the registrant's business as an investment adviser. ()

d. Notice of Address. Every investment adviser shall provide the Department, through IARD, with an address sufficiently descriptive to allow service of process pursuant to the Idaho Rules of Civil Procedure. ()

06. Completion of Filing. An application for initial or renewal registration is not considered filed for purposes of Section 30-14-406, Idaho Code, until the required fee and all submissions have been received by the Administrator and until the investment adviser is registered in the jurisdiction where it maintains its principal place of business. ()

07. Deferral of Effectiveness. The Administrator may defer the effective date of any registration until noon on the forty-fifth day after the filing of any amendment completing the application. ()

090. INVESTMENT ADVISER REPRESENTATIVE REGISTRATION – APPLICATION/RENEWAL.

01. Initial Application. The application for initial registration as an investment adviser representative pursuant to Section 30-14-406, Idaho Code, shall be made by completing and filing a Form U-4 application in accordance with the form instructions and by filing Form U-4 with CRD. The application for initial registration also shall include the following: (3-23-22)()

a. Proof of compliance by the investment adviser representative with the examination requirements of Section 103 of these rules; and ()

b. The fee required by Section 30-14-410, Idaho Code. ()

02. Incomplete Applications. After a period of six (6) months from the date of receipt by the Department, an incomplete application will automatically be considered abandoned and withdrawn if the requirements have not been fulfilled. ()

03. Annual Renewal. The application for annual renewal registration as an investment adviser representative shall be filed with CRD. The application for annual renewal registration shall include the fee required by Section 30-14-410, Idaho Code. ()

04. Updates and Amendments. ()

a. The investment adviser representative is under a continuing obligation to update information required by Form U-4 as changes occur. All investment adviser representatives must assure that current and accurate information is on file with the Department, through CRD, at all times. If information in an application for registration becomes inaccurate or incomplete, additional information must be submitted through updates on the Form U-4. ()

b. An investment adviser representative and the investment adviser must file promptly with CRD any amendments to the representative's Form U-4. An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment. ()

c. Litigation Notice. Any investment adviser representative shall notify the Administrator in writing, through CRD, of any civil, administrative, or criminal complaint, petition, or pleading issued or filed against him and of any bankruptcy proceeding filed by or against him within thirty (30) days of his receipt of the initial pleading. This requirement shall not include minor traffic violations or minor civil actions unrelated to the registrant's business as an investment adviser representative. ()

d. Change of Name. If a registered investment adviser representative changes his or her name, notice of such must be submitted to the CRD or this Department either before or within a reasonable time after the effective date of the change. The name change will not be effective in this state until the notice is received. ()

e. Notice of Address. Every investment adviser representative shall provide the Department, through CRD, with an address sufficiently descriptive to allow service of process pursuant to the Idaho Rules of Civil Procedure. ()

05. Completion of Filing. An application for initial or renewal registration is not considered filed for purposes of Section 30-14-406, Idaho Code, until the required fee and all submissions have been received by the Administrator. ()

06. Dual Registration Exemption. A person may transact business in this state as an investment adviser representative if he is registered as an agent pursuant to Section 30-14-402, Idaho Code, and is employed by a broker-dealer registered pursuant to Section 30-14-401, Idaho Code, and ()

a. The person's investment advisory activities are limited to recommending the investment advisory services of an investment adviser registered under Section 30-14-403, Idaho Code, or a federal covered adviser that has made a notice filing pursuant to Section 30-14-405, Idaho Code, and all such recommendations are made on behalf of the employing broker-dealer; ()

b. The person is not compensated directly for making such recommendations; and ()

c. The person provides written notice to the administrator that he is relying on this exemption from the requirement to be registered as an investment adviser representative. ()

07. Deferral of Effectiveness. The Administrator may defer the effective date of any registration until noon on the forty-fifth day after the filing of any amendment completing the application. ()

091. WITHDRAWAL OF INVESTMENT ADVISER AND INVESTMENT ADVISER REPRESENTATIVE REGISTRATION.

01. Application Withdrawal. Withdrawal from registration as an investment adviser or investment adviser representative becomes effective thirty (30) days after receipt of an application to withdraw or within such shorter period of time as the Administrator may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within sixty (60) days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the Administrator by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Administrator may nevertheless institute a revocation or suspension proceeding under Section 30-14-412, Idaho Code, within one (1) year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration is effective. ()

02. Investment Adviser. The application for withdrawal of registration as an investment adviser shall be completed by ~~following the instructions on Form ADV-W which can be found at 17 CFR 279.2 and filed upon filing a Form ADV-W withdrawal request with IARD.~~ [\(3-23-22\)\(\)](#)

03. Investment Adviser Representative. The application for withdrawal of registration as an investment adviser representative shall be completed by ~~following the instructions on Form U-5 and filed upon Form U-5 filing a Form U-5 withdrawal request~~ with CRD. (3-23-22)()

092. NOTICE FILING REQUIREMENTS FOR FEDERAL COVERED ADVISERS.

01. Notice Filing. The notice filing for a federal covered adviser pursuant to Section 30-14-405, Idaho Code, shall be filed with IARD on an executed Form ADV ~~which can be found at 17 CFR 279.1~~. A notice filing of a federal covered adviser shall be deemed filed when the fee required by Section 30-14-410, Idaho Code, and the Form ADV are filed with and accepted by IARD on behalf of the state. (3-23-22)()

~~**02. When Deemed Filed.** The Administrator will deem filed Part 2 of Form ADV if a federal covered adviser provides, within five (5) days of a request, Part 2 of Form ADV to the Administrator. Because the Administrator deems Part 2 of the Form ADV to be filed, a federal covered adviser is not required to submit Part 2 of Form ADV to the Administrator unless requested.~~ (3-23-22)

03. Renewal. The annual renewal of the notice filing for a federal covered adviser pursuant to Section 30-14-405, Idaho Code, shall be filed with IARD. The renewal of the notice filing for a federal covered adviser is deemed filed when the fee required by Section 30-14-410(e), Idaho Code, is filed with and accepted by IARD on behalf of the state. ()

~~**04. Updates and Amendments.** A federal covered adviser must file with IARD, in accordance with the instructions in the Form ADV, any amendments to the federal covered adviser's Form ADV.~~ (3-23-22)

093. RECORDS REQUIRED OF INVESTMENT ADVISERS.

Pursuant to provisions of the Act, every investment adviser registered or required to be registered under the Act shall make and keep true, accurate and current books and records as listed in 17 CFR 275.204-2 under the Investment Advisers Act of 1940, as currently amended. ()

094. CLIENT CONTRACTS – INVESTMENT ADVISERS.

01. Contract. As used in this rule, “investment advisory contract” means any contract or agreement whereby a person agrees to act as investment adviser or to manage any investment or trading account for a person other than an investment company, as defined in the Investment Company Act of 1940, as amended. ()

02. Contents of Client Contract. No investment adviser shall enter into, extend, or renew any investment advisory contract, or in any way perform any investment advisory contract entered into, extended, or renewed, after the effective date of this rule, unless such contract is in writing and contains the following: ()

a. Provides that an investment adviser shall not receive compensation based on a share of capital gains upon or capital appreciation of funds or any portion of the funds of the client, except as exempted in 17 CFR 275.205-3 under the Investment Adviser Act of 1940; ()

b. Provides that no assignment of the contract shall be made by the investment adviser without the written consent of the client; ()

c. Provides that if the investment adviser is a partnership, the investment adviser shall notify the client of any change in the membership of such partnership within a reasonable time after such change; ()

d. Provides the investment adviser's policy regarding termination of the contract, in compliance with 17 CFR 275.204-3(b). ()

e. Detailed description of the services to be provided; ()

f. Terms of the contract; ()

g. Amount of the advisory fee, the formula for computing the fee, and the amount of any prepaid fee

to be returned in the event of contract termination or non-performance; ()

h. Discloses whether the contract grants discretionary power to the investment adviser; ()

i. A contract may not contain any provision that limits or purports to limit the liability of the investment adviser for conduct or omission arising from the advisory relationship that does not conform to the Act, applicable federal statutes, or common law fiduciary standard of care; or the remedies available to the client at law or equity or the jurisdiction where any action shall be filed or heard. ()

095. INVESTMENT ADVISER BROCHURE RULE.

An investment adviser registered or required to be registered under the Act shall, in accordance with 17 CFR 275.204-3 under the Investment Advisers Act of 1940, deliver to each advisory client and prospective advisory client with a written disclosure statement that ~~may be either a copy of Part 2 of its Form ADV which~~ complies with 17 CFR 275.204-1(b) of the Investment Advisers Act of 1940, ~~or a written document containing at least the information then so required by Part 2 of Form ADV.~~ (3-23-22)()

096. REQUIREMENTS FOR CUSTODY.

If an investment adviser registered or required to be registered under the Act maintains custody of client funds, it shall be done in accordance with the requirements and standards set forth in 17 CFR 275.206(4)-2 of the Investment Advisers Act of 1940. ()

097. INVESTMENT ADVISER AFFILIATION WITH BROKER-DEALERS/ISSUERS/AGENTS.

If an investment adviser becomes affiliated with a broker-dealer or issuer, he will be under a continuing obligation to make full disclosure of the affiliation to all parties to the affiliation, and must provide written notice to the Administrator of any material changes concerning any affiliation. ~~Compliance with Part 2 of Uniform Form ADV and delivery of Part 2 of that form, or of a separate brochure or document containing substantially the same information that meets the requirements of the federal brochure rule, will be deemed to be in compliance with this rule.~~ (3-23-22)()

098. NAMES USED BY BROKER-DEALERS AND INVESTMENT ADVISERS.

01. Unregistered Names. ()

a. Broker-dealers, Broker-dealer Agents. Upon written request, the Administrator, in his discretion, may allow use by a broker-dealer of the name of an entity which is not registered with the Department as a broker-dealer if, in all communications and advertising, a notation is prominently displayed indicating that all securities transactions are made through a named registered broker-dealer. However, any and all payments received must be in the name of the registered broker-dealer. The Administrator may impose any further conditions or restrictions on the use of the nonregistered name that he deems appropriate for the protection of the public. Except as provided in this rule, the use of unregistered names by a broker-dealer is prohibited. ()

b. Investment Advisers, Investment Adviser Representatives. All advising, transactions, communications, and advertising regarding securities and the conducting of business as an investment adviser must be accomplished under the name of the investment adviser that is currently registered with the Department. Upon written request, the Administrator, in his discretion, may allow use by an investment adviser or investment adviser representative of the name which is not registered with the Department. ()

02. Change of Name. If a registered broker-dealer, investment adviser, investment adviser representative or agent desires a name change, notice of such an intent must be submitted through CRD or to the Department within thirty (30) days after the effective date of the change. The name change will not be effective in this state until the notice is received. Any notice of a name change must include a copy of the rider to be attached to the investment adviser's surety bond, if such bond is required, reflecting the name change. ()

099. CIRCUMVENTION OF ORDERS PROHIBITED.

A broker-dealer, investment adviser, agent, or investment adviser representative may not circumvent the imposition of an order denying registration or revoking registration by withdrawing the application through the CRD system after such order has been issued. Such action will not be recognized by the Administrator, and will have no effect on

the outcome of the order. ()

100. WAIVER BY ADMINISTRATOR.

The Administrator may, either upon request or upon his own motion, waive or modify the application of any particular section to a particular agent, broker-dealer or investment adviser when, in his opinion, just and reasonable cause exists for such action and the waiving or modifying of such rule would not be contrary to the provisions of the Act or to the public interest. ()

101. NOTIFICATION OF OPENING, CLOSING OR RELOCATION OF BRANCH OFFICES.

Any broker-dealer or investment adviser, registered as such with the Department, shall notify the Administrator in writing or through CRD, no later than thirty (30) days after the opening, closing or relocation of any branch office. For purposes of this rule, "branch office" is defined by FINRA. ()

102. CANCELLATION OF REGISTRATION OR APPLICATION -- GROUNDS.

If the Administrator finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser, salesman or investment adviser representative, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator or guardian, or cannot be located after reasonable search, the Administrator may by order cancel the registration or application. ()

103. EXAMINATION REQUIREMENTS.

01. Examination Required. The following examinations are required for the following applicants: ()

a. Broker-dealer agent application. General agents of securities broker-dealers are required to take and pass: ()

i. The applicable FINRA examinations; and ()

ii. Either the Series 63 or the Series 66 examination. ()

b. Investment adviser representative and investment adviser qualifying officer application. Applicants for registration as investment adviser representatives or as an investment adviser qualifying officer shall take and pass: ()

i. The Series 65; or ()

ii. The Series 66, the Series 7, and the Securities Industry Essentials examinations. ()

c. Specialized agent of a broker-dealer, issuer agent and qualifying officer for non-FINRA broker-dealer application. Specialized agents of broker-dealers, issuer agents and qualifying officers for non-FINRA broker-dealers application are required to take and pass: ()

i. The applicable FINRA examinations; and ()

ii. Either the Series 63 or the Series 66 examination. ()

d. Sales of Viaticals. Persons selling viatical investments are required to take and pass the Securities Industry Essentials and Series 7 examinations. ()

02. Specialized Examination Authority. Any registration granted pursuant to a specialized examination will be restricted, and the registrant will be authorized to effect securities transactions only in securities of the type specified by the conditions of the license. ()

03. Investment Adviser Representatives - Waiver. An applicant for investment adviser representative or investment adviser qualifying officer registration may qualify for a waiver of the examination requirement if the applicant currently holds one (1) of the following designations: ()

- a. Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.; ()
- b. Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania; ()
- c. Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts; ()
- d. Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants; ()
- e. Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.; or ()
- f. Such other professional designation as the Administrator may by rule or order recognize. ()

04. Waiver. The Administrator, in his sole discretion, may waive any examination required by this rule upon a sufficient showing of good cause and upon any conditions he may impose. ()

104. FRAUDULENT, DISHONEST AND UNETHICAL PRACTICES - BROKER-DEALER, BROKER-DEALER AGENTS, ISSUER AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES.

01. Fraudulent, Dishonest and Unethical Practices. Any broker-dealer, agent, issuer agent, investment adviser or investment adviser representative who engages in one (1) or more of the practices identified in Subsections 104.02 through 104.47 of this rule is deemed to have engaged in one (1) or both of the following: ()

a. An “act, practice, or course of business that operates or would operate as a fraud or deceit” as used in Section 30-14-501 and Section 30-14-502, Idaho Code; ()

b. A dishonest and unethical practice as used in Section 30-14-412(d)(13), Idaho Code, and such conduct may constitute grounds for denial, suspension, or revocation of registration or such other action authorized by statute. ()

c. This rule is not intended to be all-inclusive, and thus, acts or practices not enumerated herein may also be deemed fraudulent, or dishonest and unethical. ()

02. Delivery Delays. Engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers and/or in the payment upon request of free credit balances reflecting completed transactions of any of its customers. ()

03. Churning. Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account. ()

04. Unsuitable Recommendations. ()

a. Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer, agent, or issuer agent. ()

b. Recommending to a customer, to whom investment advice is provided, the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's investment

objectives, financial situation and needs, and any other information known by the investment adviser or investment adviser representative. ()

05. Unauthorized Transactions. Executing a transaction on behalf of a customer without authorization to do so. ()

06. Discretionary Authority. Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the executing of orders. ()

07. Margin Accounts. Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement before or promptly after the initial transaction in the account. ()

08. Segregation of Client Securities. Failing to segregate customers' free securities or securities held in safekeeping. ()

09. Hypothecating Customer Securities. Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent before or promptly after the initial transaction, except as permitted by rules of the Securities and Exchange Commission. ()

10. Unreasonable Price, Commission. Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit. ()

11. Failure to Supervise. Failure by a broker-dealer or investment adviser to exercise diligent supervision over the securities activities of all its broker-dealer agents, investment adviser representatives and employees as set forth in Section 105 of these rules. ()

12. Unreasonable Fees. Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business. ()

13. Sales at the Market. Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by such broker-dealer, or by any such person for whom the broker-dealer is acting or with whom the broker-dealer is associated in such distribution, or any person controlled by, controlling, or under common control with such broker-dealer. ()

14. Manipulative, Deceptive or Fraudulent Practices. Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive, or fraudulent device, practice, plan, program, design, or contrivance, which may include: ()

a. Effecting any transaction in a security which involves no change in the beneficial ownerships thereof; ()

b. Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security. However, nothing in Subsection 104.14, of this rule, prohibits a broker-dealer from entering bona fide agency cross transactions for customers; or ()

c. Effecting, alone or with one (1) or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others. ()

15. Loss Guarantees. Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer. ()

16. Bona Fide Price Reports. Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security. ()

17. Deceptive or Misleading Advertising. Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. ()

18. Disclosure of Control. Failing to disclose that the broker-dealer or investment adviser is controlled by, controlling, affiliated with, or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of such security, the existence of such control to such customer, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction. ()

19. Bona Fide Distribution. Failing to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member by, among other things, transferring securities to a customer, another broker-dealer or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees or parking or withholding securities. ()

20. Customer Communication. Failure or refusal to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint. ()

21. Loans from Customers. Borrowing money or securities from a customer, unless the customer is a broker-dealer, an affiliate, or a financial institution engaged in the business of loaning funds or securities, or immediate family. For purposes of this rule, the term "immediate family" means parents, mother-in-law, father-in-law, husband, wife, brother, sister, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and children. ()

22. Loans to Customers. Loaning money to a customer, other than an immediate family member, unless the broker-dealer or investment adviser is a financial institution engaged in the business of loaning funds or the customer is an affiliate of the broker-dealer or investment adviser. ()

23. Unrecorded Transactions. Effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction. ()

24. Fictitious Accounts. Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited. ()

25. Profit/Loss Sharing. Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents. ()

26. Splitting Commissions. Dividing or otherwise splitting the agent's commissions, profits, or other compensation from the purchase or sale of securities with any person not also registered in Idaho as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control. ()

27. Unsolicited Transactions. Marking any order tickets or confirmations as unsolicited when in fact the transaction was solicited. ()

28. FINRA and NASD Rules Compliance. Failing to comply with any applicable provision of the ~~NASD Conduct Rules and any other~~ FINRA Rules or any applicable fair practice or ethical standard promulgated by the ~~Securities and Exchange Commission~~ EC or by a self-regulatory organization approved by the ~~Securities and Exchange Commission~~ EC. (3-23-22)()

29. Contradicting Prospectus Information. Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead. ()

30. Inside Information. In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer, agent, investment adviser or investment adviser representative is in possession of material, non-public information which would impact the value of the security, or communicating to customers or other persons bona fide information not generally available to the public that may be used in the person's decision to buy, sell, or hold a security. ()

31. Contradictory Recommendations. In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstance of each investor. ()

32. Prospectus Delivery. Failure to comply with any prospectus delivery requirement promulgated under federal law. ()

33. Penny Stock Sales. Effect any transaction in, or to induce or attempt to induce the purchase or sale of, any penny stock by any customer except in accordance with the requirements as set forth in the 1934 Securities Exchange Act, Section 15(h) and the rules and regulations prescribed thereunder. ()

34. Misrepresentations Concerning Advisory Services. To misrepresent to any advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser representative or any employee of the investment adviser, or to misrepresent the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they are made, not misleading. ()

35. Unreasonable Advisory Fees. Charging a client an unreasonable advisory fee. ()

36. Conflicts of Interest. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including: ()

a. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; ~~and or~~ (3-23-22)()

b. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees. ()

37. Guaranteeing Specific Results. Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered. ()

38. Advertising. Publishing, circulating, or distributing any advertisement that does not comply with 17 CFR 275.206(4)-1 under the Investment Advisers Act of 1940. ()

39. Disclosure of Private Information. Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client. ()

40. Advisory Contract Disclosures. Entering into, extending, or renewing any investment advisory contract unless such contract is in writing and discloses, in substance the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser and that no

assignment of such contract shall be made by the investment adviser without the written consent of the other party to the contract. (3-23-22)()

41. Protection of Non-Public Information. Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information, or that are contrary to the provisions of Section 204A, and rules associated with it, of the Investment Advisers Act of 1940. ()

~~42. Advisory Contract to Comply with~~ **Waiver of State or Federal Law Prohibited.** To indicate, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of the Act or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of Section 215, and rules associated with it, of the Investment Advisers Act of 1940. (3-23-22)()

~~43. Waiver of State or Federal Law Prohibited.~~ Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in contrary to the provisions and associated rules of Section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under Section 203 of the Investment Advisers Act of 1940. (3-23-22)

44.3. Fraudulent, Deceptive or Manipulative Acts. Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in contrary to the provisions and associated rules of Section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under Section 203 of the Investment Advisers Act of 1940. ()

~~45.4. Outside Business Activities - Selling Away.~~ Any agent or investment adviser representative associated with a broker-dealer or investment adviser registered under the Act shall not engage in business activities, for which he receives compensation either directly or indirectly, outside the scope of his regular employment unless he has provided prior written notice to his employer firm. ()

46.5. Third Party Conduct. Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Act or any rules thereunder, or engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices shall be deemed an unethical business practice. The federal statutory and regulatory provisions referenced herein shall apply to investment advisers and federal covered advisers, to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290). ()

~~47.6. Misleading Filings.~~ For purposes of Section 30-14-505, Idaho Code, the term “proceeding” includes, but is not limited to, any investigation, examination or other inquiry initiated by the Department. ()

105. SUPERVISION OF AGENTS, INVESTMENT ADVISER REPRESENTATIVES AND EMPLOYEES.

01. Supervision Required. Every broker-dealer, investment adviser, and designated supervisor shall exercise diligent supervision over the securities activities of all of his agents, investment adviser representatives and employees. ()

02. Broker-Dealer Procedures. Every agent and employee of the broker-dealer shall be subject to the supervision of a supervisor designated by such broker-dealer. The supervisor may be the broker-dealer in the case of a sole proprietor, or a partner, officer, office manager, or any other qualified person. ()

03. Written Compliance Procedure. Every broker-dealer shall establish, maintain and enforce written procedures and keep a copy in each business office, that set forth the procedures adopted by the broker-dealer to comply with the following duties imposed by this rule, and state at which business office or offices the broker-dealer keeps and maintains the records required by Section 30-14-411, Idaho Code: ()

a. The review and written approval by the designated supervisor of the opening of each new customer account; ()

b. The frequent examination of all customer accounts to detect and prevent irregularities or abuses,

including a review for churning and switching of securities in customers' accounts, as well as unsuitable recommendations and sales of unregistered securities; ()

c. The prompt review and written approval by the designated supervisor of all securities transactions and all correspondence pertaining to the solicitation or execution of all securities transactions; ()

d. The review of back office operations, i.e., all systems and procedures, including the currency and accuracy of books and records, the status and causes of "Fails to Receive" and "Fails to Deliver." net capital, credit extensions and financial reports; ()

e. The review of form, content and filing of all correspondence related in any way to the purchase or sale or solicitation for the purchase or sale of securities; ()

f. The review and written approval by the designated supervisor of the delegation by any customer of discretionary authority with respect to his account to a stated agent or associate of the broker-dealer and the prompt written approval of each discretionary order entered on behalf of that account; and ()

g. The prompt review and written approval of the handling of all customer complaints. As used in these rules, "complaint" is considered to be any written statement by a customer or by any person acting for a customer which complains about the activities of the broker-dealer, agent or associate in connection with the solicitation or execution of a transaction or the disposition of funds of that customer. ()

04. Investment Adviser Procedures. Every investment adviser shall establish, maintain and enforce written procedures and keep a copy in each business office, that set forth procedures reasonably designed to prevent violation of the Idaho Uniform Securities Act and Rules and comply with the following duties as applicable to the business of the investment adviser: ()

a. The review and written approval by the designated supervisor of the opening of each new customer account; ()

b. The frequent examination of all customer accounts to detect and prevent irregularities or abuses, including a review for unsuitable recommendations and recommendations of unregistered securities; ()

c. The prompt review and written approval by the designated supervisor of all securities recommendations and all correspondence pertaining to the solicitation or execution of all securities recommendations; ()

d. The review of form, content and filing of all correspondence related in any way to the recommendation of the purchase of any securities; ()

e. The prompt review and written approval of the handling of all customer complaints. As used in these rules, a "complaint" is considered to be any written statement by a customer, or by any person acting for a customer, questioning the activities of the investment adviser or representative in connection with recommendations concerning, or disposition of, funds in the account. ()

106. -- 999. (RESERVED)

IDAPA 12 – IDAHO DEPARTMENT OF FINANCE

12.01.10 – RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

DOCKET NO. 12-0110-2301 (ZBR CHAPTER REWRITE)

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 26-31-103, 26-31-204, and 26-31-302, 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 18, 2023. The hearing site(s) will be accessible to persons with disabilities. Requests for 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 was conducted pursuant to the [Executive Order 2020-01](#), “Zero-Based Rulemaking”, for the purpose of engaging in a thorough retrospective review of the cost and benefit of an existing rule. As a result, the proposed changes reduce regulatory burden by removing outdated 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: This rulemaking will not impact the state general fund.

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 August 2023 Idaho Administrative Bulletin, [Volume 23-8, pages 12 and 13](#).

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

Idaho Code § 26-31-102 defines Regulations X and Z, the Real Estate Settlement Procedures Act, and the Truth in Lending Act for incorporation into the Idaho Residential Mortgage Practices Act and Idaho Mortgage Rules pursuant to that Act. This proposed rule promotes consistency in state and federal mortgage-related laws so that Idaho mortgage licensees are not faced with an untenable requirement of complying with conflicting state and federal laws.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Anthony Polidori at (208)-332-8060.

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 25, 2023.

DATED this 1st day of September, 2023.

Anthony Polidori
Deputy Director
Idaho Department of Finance
11341 West Chinden Blvd. Suite A300
Boise, ID 83714
Phone: (208) 332-8060
Fax: (208) 332-8099
Email: anthony.polidori@finance.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 12-0110-2301
(ZBR Chapter Rewrite)

12.01.10 – RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

000. LEGAL AUTHORITY.

This chapter is promulgated pursuant to Sections 26-31-103, 26-31-204(5), 26-31-302(1)(a), and 26-31-302(2), Idaho Code. ()

001. SCOPE.

These rules interpret the Idaho Residential Mortgage Practices Act, Title 26, Chapter 31, Idaho Code. ()

002. -- 004. (RESERVED)

005. INCORPORATION BY REFERENCE.

For the purposes of the Act and these rules the full text of the following are incorporated by reference: ()

01. The Real Estate Settlement Procedures Act. As set forth in 12 U.S.C. 2601, et seq., as amended to and including January 1, ~~2020~~ 2024. The Real Estate Settlement Procedures Act is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/USCODE-2016-title12/html/USCODE-2016-title12-chap27.htm> <https://www.govinfo.gov/content/pkg/USCODE-2021-title12/pdf/USCODE-2021-title12-chap27.pdf>. (3-31-22)()

02. Regulation X. As issued by the federal Bureau of Consumer Financial Protection and codified at 12 CFR 1024, et seq., as amended to and including January 1, ~~2020~~ 2024. Regulation X is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/CFR-2018-title12-vol8/xml/CFR-2018-title12-vol8-part1024.xml> <https://www.ecfr.gov/current/title-12/chapter-X/part-1024>. (3-31-22)()

03. The Truth in Lending Act. As set forth in 15 U.S.C. 1601, et seq., as amended to and including January 1, ~~2020~~ 2024. The Truth in Lending Act is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/USCODE-2016-title15/html/USCODE-2016-title15-chap41.htm> <https://www.govinfo.gov/content/pkg/USCODE-2021-title15/pdf/USCODE-2021-title15-chap41-subchapI.pdf>. (3-31-22)()

04. Regulation Z. As issued by the federal Bureau of Consumer Financial Protection and codified at 12 CFR 1026, et seq., as amended to and including January 1, ~~2020~~ 2024. Regulation Z is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/CFR-2018-title12-vol9/xml/CFR-2018-title12-vol9-part1026.xml> <https://www.ecfr.gov/current/title-12/chapter-X/part-1026>. (3-31-22)()

05. Availability of Documents. Unless otherwise available, the documents incorporated by reference may be viewed at the central office of the Idaho Department of Finance. ()

006. DEFINITIONS.

In addition to the terms defined in the Idaho Residential Mortgage Practices Act, the following definitions apply: ()

01. ~~Act~~ Advertising. ~~The Idaho Residential Mortgage Practices Act, Title 26, Chapter 31, Idaho Code~~ Advertising means making or permitting to be made any oral, written, graphic or pictorial statements, in any manner, in the course of the solicitation of business authorized under the Act. (3-31-22)()

02. Application. In relation to a “residential mortgage loan” or “loan modification” as defined in the Act, an “application” means a request for a residential mortgage loan or loan modification and any form or document representing such request. The term “application” does not include the processing of such request. ()

03. Closing. The process of executing legally binding documents regarding a lien on property that is subject to a residential mortgage loan and includes the day agreed upon by a borrower and a covered person to complete such process. ()

04. Covered Person. A person who has been issued a license, pursuant to the Act, or a person required to be licensed under the Act. ()

~~007. — 039. (RESERVED)~~

~~040. DECEPTIVE ADVERTISING.~~

~~01. Advertising.~~ Advertising means making or permitting to be made any oral, written, graphic or pictorial statements, in any manner, in the course of the solicitation of business authorized under the Act. Deceptive advertising is defined to include the following practices by a covered person: (3-31-22)

~~a. Advertising without clearly and conspicuously disclosing the business name and unique identifier assigned by the Nationwide Mortgage Licensing System and Registry (NMLSR) to the covered person. (3-31-22)~~

~~b. Engaging in bait and switch advertising or misrepresenting, directly or indirectly, the terms, conditions or charges incident to services authorized under the Act. Bait and switch advertising, for the purposes of these rules, means advertising services without the intent to provide them but, rather, to lure a person into making an application for services and then switch the person from obtaining the advertised services to other or different services on a basis more advantageous to the covered person. (3-31-22)~~

~~c. Using an address in advertising at which the covered person conducts no mortgage brokering, mortgage lending, or mortgage loan origination activities or for which the covered person does not hold a license. (3-31-22)~~

~~d. Advertising or soliciting in a manner that has the effect of misleading a person to believe that the advertisement or solicitation is from a person's current mortgage holder, a government agency, or that an offer is a limited opportunity, when such is not the case. (3-31-22)~~

~~04107. -- 049. (RESERVED)~~

050. WRITTEN DISCLOSURES.

~~01. Receipt of an Application.~~ Upon receipt of an application as defined in Subsection 006.02 of these rules, and before receipt of any moneys from a borrower, a covered person shall make available to each borrower information, in a manner acceptable to the Director, about the services authorized under the Act that he may provide to a borrower. (3-31-22)

021. Loan Modification Confirmation. Within three (3) business days, including Saturdays, of receipt of a notice from a creditor or its agent of a loan modification offer, a covered person shall deliver or send by first-class mail to the borrower a written confirmation of the terms of the loan modification offer. Such confirmation shall include information regarding proposed rates, payments, and loan balance. ()

051. RESTRICTIONS ON FEES.

If a covered person imposes fees authorized by Section 26-31-210 of the Act, the following restrictions apply, subject to the Director's authority to set limits on fees and charges pursuant to Section 26-31-204(6) of the Act: ()

01. Application Fee. An application fee shall include only the actual costs incurred by a covered person in connection with the taking of an application and transcribing application information. ()

02. Cancellation Fee. A cancellation fee may only be charged at the time of, or subsequent to, a request or instruction by a borrower to a covered person to cancel a request for services authorized under the Act. Such fee must bear a reasonable relationship to the actual costs incurred by the covered person for services provided

to a borrower up to the borrower's request or instruction to cancel the request for services. A cancellation fee must comply with the requirements of Regulation Z, when applicable. ()

052. -- 059. (RESERVED)

060. PROHIBITED PRACTICES.

It is a prohibited practice for any covered person in connection with offering or providing services authorized under the Act, to: ()

01. Fail to Disburse Funds Timely. Fail to disburse funds in a timely manner, in accordance with any commitment or agreement with the borrower, either directly or through a mortgage broker: ()

a. Either immediately upon closing of the loan in the case of a purchase/sale transaction; or ()

b. Immediately upon expiration of the three (3) day rescission period in the case of a refinancing, or taking of a junior mortgage on the existing residence of the borrower. ()

c. For the purposes of this Subsection, the term "immediately" represents a period of time no greater than seventy-two (72) hours. ()

02. Fail to Provide Reasonable Opportunity for Document Review. Fail to give the borrower, upon the borrower's verbal or written request, a reasonable opportunity of at least twenty-four (24) hours prior to closing to review every document to be signed or acknowledged by the borrower for the purpose of obtaining a residential mortgage loan, and every document that is required pursuant to these rules, and other applicable laws, rules or regulations. ()

03. Require Excessive Insurance. Require a borrower to obtain or maintain fire insurance or other hazard insurance in an amount that exceeds the replacement value of the improvements to the real estate. ()

04. Engage in Deceptive Advertising. Engage in any deceptive advertising ~~as set forth in Section 040 of these rules, including:~~ (3-31-22)()

a. Engaging in bait and switch advertising or misrepresenting, directly or indirectly, the terms, conditions or charges incident to services authorized under the Act. Bait and switch advertising, for the purposes of these rules, means advertising services without the intent to provide them but, rather, to lure a person into making an application for services and then switch the person from obtaining the advertised services to other or different services on a basis more advantageous to the covered person. ()

b. Advertising or soliciting in a manner that has the effect of misleading a person to believe that the advertisement or solicitation is from a person's current mortgage holder, a government agency, or that an offer is a limited opportunity, when such is not the case. ()

~~**061. -- 089. (RESERVED)**~~

~~**090. BORROWERS UNABLE TO OBTAIN LOANS.**~~

~~If, for any reason, a covered person fails to obtain a residential mortgage loan for a borrower that is satisfactory to the borrower, and the borrower has paid for an appraisal, the covered person shall provide a copy of the appraisal to the borrower and transmit and assign original appraisal reports, along with any other documents provided by the borrower, to any other person to whom the borrower directs that the documents be transmitted. The covered person shall provide such copies or transmit such documents within three (3) business days after the borrower makes the request in writing. (3-31-22)~~

~~**091. -- 999. (RESERVED)**~~

IDAPA 13 – DEPARTMENT OF FISH AND GAME

13.01.06 – RULES GOVERNING CLASSIFICATION AND PROTECTION OF WILDLIFE

DOCKET NO. 13-0106-2301 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given this agency has initiated proposed rulemaking. The action is authorized pursuant to Sections 36-104(b) and 36-201, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

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

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

This rule is being presented for authorization as part of the IDFG plan to review each rule chapter every 5 years. This rulemaking established the classification and protection of wildlife. Consistent with the Governor's [Zero-Based Regulation Executive Order](#), the agency has revised current rule language to improve clarity and reduce duplication.

The proposed rulemaking removes most scientific names with the exception of the Genus'/species' that must be identified due to season setting complications where certain members of certain families have different seasons and limits. It also leaves intact scientific names for native salmon, rainbow, cutthroat, and bull trout species for benefit of ESA regulatory mechanisms.

FEE SUMMARY: There is no fee associated with this rule.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, a Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 7, 2023 Idaho Administrative Bulletin, [Vol. 22-4, page 15](#) under Docket No. 13-0111-2301. The Department received no feedback around this rulemaking.

INCORPORATION BY REFERENCE: This rulemaking contains no incorporation by reference.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions about the proposed rules, contact Amber Worthington, Deputy Director 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 25, 2023.

DATED this 29th day of August, 2023.

Amber Worthington Deputy Director
Idaho Department of Fish and Game
600 S. Walnut Street
P.O. Box 25 Boise, ID 83707
Phone (208) 334-3771
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0106-2301
(ZBR Chapter Rewrite)

13.01.06 – RULES GOVERNING CLASSIFICATION AND PROTECTION OF WILDLIFE

000. LEGAL AUTHORITY.

Sections 36-104(b) and 36-201, Idaho Code, ~~authorize the Commission to adopt rules concerning the classification and protection of wildlife in the state of Idaho.~~ (3-31-22)()

001. ~~TITLE AND SCOPE.~~

~~The title of this chapter for citation is IDAPA 13.01.06, “Rules Governing Classification and Protection of Wildlife.”~~
These rules establish the classification and protection of wildlife. (3-31-22)()

002. – 099. (RESERVED)

100. CLASSIFICATION OF WILDLIFE – BIG GAME ANIMALS.

01. Black bear ~~—*Ursus americanus*.~~ (3-31-22)()

02. Bighorn sheep – *Ovis canadensis*, identified as “California bighorn sheep” when occurring south of Interstate 84 and as “Rocky Mountain bighorn sheep” when occurring north of Interstate 84. ()

03. Elk ~~—*Cervus canadensis*.~~ (3-31-22)()

04. Gray wolf ~~—*Canis lupus*.~~ (3-31-22)()

05. Grizzly bear ~~—*Ursus arctos*.~~ (3-31-22)()

06. Moose ~~—*Alces americanus*.~~ (3-31-22)()

07. Mountain goat ~~—*Oreamnos americanus*.~~ (3-31-22)()

08. Mountain lion ~~—*Puma concolor*.~~ (3-31-22)()

09. Mule deer ~~—*Odocoileus hemionus*.~~ (3-31-22)()

10. Pronghorn ~~—*Antilocapra americana*.~~ (3-31-22)()

11. White-tailed deer ~~—*Odocoileus virginianus*.~~ (3-31-22)()

101. CLASSIFICATION OF WILDLIFE – UPLAND GAME ANIMALS.

01. Mountain cottontail ~~—*Sylvilagus nuttallii*.~~ (3-31-22)()

02. Pygmy rabbit ~~—*Brachylagus idahoensis*.~~ (3-31-22)()

03. Snowshoe hare ~~—*Lepus americanus*.~~ (3-31-22)()

04. Red squirrel ~~—*Tamiasciurus hudsonicus*.~~ (3-31-22)()

102. CLASSIFICATION OF WILDLIFE – GAME BIRDS.

Game birds include upland game birds, migratory game birds, and American crow. ()

01. Upland Game Birds. ()
- a. Pheasants: *Phasianus sp.*, including ring-necked pheasant (*P. cochicus*). ()
 - b. Partridge: gray (Hungarian) partridge – *Perdix perdix*; chukar – *Alectoris sp.* ()
 - c. Quail: northern bobwhite – *Colinus virginianus*; California quail – *Callipepla californica*; mountain quail – *Oreortyx pictus*; and Gambel’s quail – *Callipepla gambelii*. ()
 - d. Grouse: Dusky (blue) grouse – *Dendragapus obscurus*; ruffed grouse – *Bonasa umbellus*; spruce grouse – *Falci pennis canadensis*; Greater sage grouse – *Centrocercus urophasianus*; and sharp-tailed grouse – *Tympanuchus phasianellus*. “Forest grouse” means dusky grouse, ruffed grouse, and spruce grouse. ()
 - e. Wild turkey – *Meleagris gallopavo*. ()
02. Migratory Game Birds. ()
- a. American coot – *Fulica americana*. ()
 - b. Doves: mourning dove – *Zenaida macroura* and white-winged dove – *Zenaida asiatica*. ()
 - c. Ducks: members of the *Anatidae* family other than geese and swans, including bufflehead – *Bucephala albeola*; canvasback – *Aythya valisineria*; gadwall – *Mareca strepera*; Barrow’s goldeneye – *Bucephala islandica*; common goldeneye – *Bucephala clangula*; harlequin duck – *Histrionicus histrionicus*; mallard – *Anas platyrhynchos*; common merganser – *Mergus merganser*; hooded merganser – *Lophodytes cucullatus*; red-breasted merganser – *Mergus serrator*; long-tailed duck – *Clangula hyemalis*; northern pintail – *Anas acuta*; redhead – *Aythya americana*; ring-necked duck – *Aythya collaris*; ruddy duck – *Oxyura jamaicensis*; greater scaup – *Aythya marila*; lesser scaup – *Aythya affinis*; northern shoveler – *Spatula clypeata*; blue-winged teal – *Spatula discors*; cinnamon teal – *Spatula cyanoptera*; green-winged teal – *Anas crecca*; American wigeon – *Mareca americana*; Eurasian wigeon – *Mareca penelope*; and wood duck – *Aix sponsa*. ()
 - d. Geese: members of the *Anatidae* family other than ducks and swans, including Canada goose – *Branta canadensis* (“Canada goose” to include cackling goose – *Branta hutchinsii*); Ross’s goose – *Anser rossii*; snow goose – *Anser caerulescens*; and greater white-fronted goose – *Anser albifrons*. ()
 - e. Swans: members of the *Anatidae* other than ducks and geese, including Trumpeter swan – *Cygnus buccinator*; and Tundra swan – *Cygnus columbianus*. ()
 - f. Wilson's snipe – *Gallinago delicata*. ()
 - g. Sandhill Crane – *Antigone canadensis*. ()
03. American Crow – *Corvus brachyrhynchos*. ()
103. CLASSIFICATION OF WILDLIFE – GAME FISH. ()
Game fish includes the following fish and crayfish: ()
- 01. American shad – ~~*Alosa sapidissima*~~. (3-31-22)()
 - 02. Arctic grayling – ~~*Thymallus arcticus*~~. (3-31-22)()
 - 03. Atlantic salmon – ~~*Salmo salar*~~. (3-31-22)
 - 04. Bear Lake whitefish – ~~*Prosopium abyscicola*~~. (3-31-22)()
 - 05. Black bullhead – ~~*Ameiurus melas*~~. (3-31-22)()

- ~~065.~~ Black crappie—*Pomoxis nigromaculatus*. (3-31-22)()
- ~~076.~~ Blue catfish—*Ictalurus furcatus*. (3-31-22)()
- ~~08.~~ ~~Blueback trout~~—*Salvelinus alpinus oquassa*. (3-31-22)
- ~~097.~~ Bluegill and hybrid with pumpkinseed—*Lepomis macrochirus*, including hybrid with pumpkinseed. (3-31-22)()
- ~~108.~~ Bonneville cisco—*Prosopium gemmifer*. (3-31-22)()
- ~~1109.~~ Bonneville whitefish—*Prosopium spilonotus*. (3-31-22)()
- ~~120.~~ Brook trout—*Salvelinus fontinalis*. (3-31-22)()
- ~~131.~~ Brown bullhead—*Ameiurus nebulosus*. (3-31-22)()
- ~~142.~~ Brown trout—*Salmo trutta*. (3-31-22)()
- ~~153.~~ Bull trout—*Salvelinus confluentus*. (3-31-22)()
- ~~164.~~ Burbot—*Lota lota*. (3-31-22)()
- ~~175.~~ Channel catfish—*Ictalurus punctatus*. (3-31-22)()
- ~~186.~~ Chinook salmon (land locked) – *Oncorhynchus tshawytscha*, residing in waters that prohibit migration to the ocean and back. (3-31-22)()
- ~~197.~~ Coho salmon – *Oncorhynchus kisutch*. ()
- ~~2018.~~ Crayfish – *Pacifastacus sp.* ()
- ~~2419.~~ Cutthroat trout – *Oncorhynchus clarkii*, including subspecies Bonneville cutthroat trout – *O. clarkii utah*, Lahontan cutthroat trout – *O. clarkii henshawi*, Westslope cutthroat trout – *O. clarkii lewisi*, and Yellowstone (including “finespotted”) cutthroat trout – *O. clarkii bouvieri*. ()
- ~~220.~~ Flathead catfish—*Pylodictis olivaris*. (3-31-22)()
- ~~231.~~ Golden trout—*Oncorhynchus aguabonita*. (3-31-22)()
- ~~242.~~ Green sunfish—*Lepomis cyanellus*. (3-31-22)()
- ~~253.~~ Kokanee – *Oncorhynchus nerka kennerlyi* (not anadromous). ()
- ~~264.~~ Lake trout—*Salvelinus namaycush*. (3-31-22)()
- ~~275.~~ Lake whitefish—*Coregonus clupeaformis*. (3-31-22)()
- ~~286.~~ Largemouth bass—*Micropterus salmoides*. (3-31-22)()
- ~~297.~~ Mountain whitefish—*Prosopium williamsoni*. (3-31-22)()
- ~~3028.~~ Northern pike—*Esox lucius*. (3-31-22)()
- ~~3129.~~ Pumpkinseed—*Lepomis gibbosus*. (3-31-22)()

- ~~320.~~ Pygmy whitefish—*Prosopium coulterii*. (3-31-22)()
- ~~331.~~ Rainbow trout – *Oncorhynchus mykiss*, including redband trout – *O. mykiss gairdneri*. ()
- ~~342.~~ Rainbow/cutthroat trout (cutbow) – *O. mykiss* x *O. clarkii* hybrid. ()
- ~~353.~~ Sauger—*Sander canadensis*. (3-31-22)()
- ~~364.~~ Smallmouth bass—*Micropterus dolomieu*. (3-31-22)()
- ~~375.~~ Splake—*S. namaycush* x *S. fontinalis*. (3-31-22)()
- ~~36.~~ **Sunapee trout.** ()
- ~~38.~~ **Sockeye salmon**—*Oncorhynchus nerka* (anadromous). (3-31-22)
- ~~39.~~ **Steelhead trout**—*Oncorhynchus mykiss* (anadromous). (3-31-22)
- ~~4037.~~ Tiger Trout—*Salmo trutta* x *Salvelinus fontinalis*. (3-31-22)()
- ~~4138.~~ Tiger muskie—*Esox lucius* x *E. masquinongy*. (3-31-22)()
- ~~4239.~~ Walleye—*Sander vitreus*. (3-31-22)()
- ~~430.~~ Warmouth—*Lepomis gulosus*. (3-31-22)()
- ~~441.~~ White crappie—*Pomoxis annularis*. (3-31-22)()
- ~~452.~~ White sturgeon—*Acipenser transmontanus*. (3-31-22)()
- ~~463.~~ Yellow bullhead—*Ameiurus natalis*. (3-31-22)()
- ~~474.~~ Yellow perch—*Percia flavescens*. (3-31-22)()

104. CLASSIFICATION OF WILDLIFE – ANADROMOUS GAME FISH.

Anadromous game fish include members of the Onchorynchus family that migrate to the ocean as a juvenile and return to freshwater.

- 01. Chinook salmon – *Oncorhynchus tshawytscha*** ()
- 02. Coho salmon – *Oncorhynchus kisutch*** ()
- 03. Sockeye salmon – *Oncorhynchus nerka*** ()
- 04. Steelhead trout – *Oncorhynchus mykiss*** ()

1045. CLASSIFICATION OF WILDLIFE – FURBEARING ANIMALS.

01. American badger—*Taxidea taxus*. (3-31-22)()
02. American marten—*Martes americana*. (3-31-22)()
03. American mink—*Vison vison*. (3-31-22)()
04. Beaver—*Castor canadensis*. (3-31-22)()
05. Bobcat—*Lynx rufus*. (3-31-22)()

06. Canada lynx—~~*Lynx canadensis*~~. (3-31-22)()
07. Common muskrat—~~*Ondatra zibethicus*~~. (3-31-22)()
08. Fisher—~~*Pekania pennanti*~~. (3-31-22)()
09. Northern river otter—~~*Lontra canadensis*~~. (3-31-22)()
10. Pacific marten—~~*Martes caurina*~~. (3-31-22)()
11. Red fox – *Vulpes vulpes* (all color phases). ()
1056. – 149. (RESERVED)
150. THREATENED OR ENDANGERED SPECIES.
151. – 199. (RESERVED)
200. PROTECTED NONGAME SPECIES.
01. Mammals. ()
- a. American pika—~~*Ochotona princeps*~~. (3-31-22)()
- b. Bats – all species. ()
- c. Chipmunks – *Tamias spp.* ()
- d. Columbia Plateau ground squirrel – *Urocitellus canus*. ()
- e. Golden-mantled ground squirrel – *Callospermophilus lateralis*. ()
- f. Great Basin ground squirrel – *Urocitellus mollis*. ()
- g. Kit fox—~~*Vulpes macrotis*~~. (3-31-22)()
- h. Wolverine—~~*Gulo gulo*~~. (3-31-22)()
- i. Northern Idaho ground squirrel – *Urocitellus brunneus*. ()
- j. Northern flying squirrel—~~*Glaucomys sabrinus*~~. (3-31-22)()
- k. Rock squirrel – *Otospermophilus variegatus*. ()
- l. Southern Idaho ground squirrel – *Urocitellus endemicus*. ()
- m. Woodland caribou—~~*Rangifer tarandus caribou*~~. (3-31-22)()
- n. Wyoming ground squirrel – *Urocitellus elegans nevadensis*. ()
02. Birds. All native species, except game birds. ()
03. Amphibians. All native species. ()
04. Reptiles. All native species. ()

- 05. Fish.** ()
- a. Bear Lake sculpin—~~Cottus extensus.~~ (~~3-31-22~~)()
 - b. Northern leatherside chub—~~Lepidomeda copei.~~ (~~3-31-22~~)()
 - c. Pacific Lamprey—~~Entosphenus tridentatus.~~ (~~3-31-22~~)()
 - d. Sand roller—~~Pereopsis transmontana.~~ (~~3-31-22~~)()
 - e. Shoshone sculpin—~~Cottus greenei.~~ (~~3-31-22~~)()
 - f. Wood River sculpin—~~cottus leiopomus.~~ (~~3-31-22~~)()
 - g. Bluehead sucker—~~Catostomus discobolus.~~ (~~3-31-22~~)()
- 201. PREDATORY WILDLIFE.**
Predatory wildlife are defined in Section 36-201, Idaho Code. ()
- 202. – 249. (RESERVED)**
- 250. UNPROTECTED WILDLIFE.**
Unprotected Wildlife includes all wildlife not classified in the preceding categories. ()
- 251. – 299. (RESERVED)**
- 300. PROTECTION OF WILDLIFE.**
- 01. Game Species.** Those species of wildlife classified as Big Game Animals, Upland Game Animals, Game Birds, Migratory Birds, Game Fish/Crustacea, or Furbearing Animals may be taken only in accordance with Idaho law ~~and Commission rules.~~ (~~3-31-22~~)()
 - 02. Protected Nongame and Threatened or Endangered Species.** No person may take or possess those species of wildlife classified as Protected Nongame, or Threatened or Endangered at any time or in any manner, except as provided in Idaho Code (including Sections 36-106(e), and 36-1107), and Commission rules. Protected Nongame status is not intended to prevent unintentional take of these species, protection of personal health or safety, limit property and building management, or prevent management of animals to address public health concerns or agricultural damage. ()
 - 03. Unprotected and Predatory Wildlife.** Those species of wildlife classified as Unprotected Wildlife and Predatory Wildlife may be taken in any amount, at any time, and in any manner, by holders of the appropriate valid Idaho hunting, trapping, fishing, or combination license, provided such taking is not otherwise in violation of federal, state, county, or city laws, rules, ordinances, or regulations. ()
- 301. – 999. (RESERVED)**

IDAPA 13 – DEPARTMENT OF FISH AND GAME
13.01.08 – RULES GOVERNING TAKING OF BIG GAME ANIMALS
DOCKET NO. 13-0108-2301
NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given this agency has initiated proposed rulemaking. The action is authorized pursuant to Section(s) 36-103, 36-104, 36-409, and 36-1101, 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 18, 2023.

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

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

The Department was asked to evaluate this rulemaking to address the decreasing availability of lead-only projectiles for muzzleloaders and the availability of other metal projectiles. Consequently, the proposed rule allows for the use of any metal or metal alloy and removes the restriction of non-jacketed projectile. Additionally, the proposed rule allows for accuracy tips and pressure bases.

FEE SUMMARY: There is no fee associated with this rule.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, a Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the April 7, 2023 Idaho Administrative Bulletin, [Vol. 23-4, page 17](#) under Docket No. 13-0108-2301. The Department received little feedback around the staff recommendations for proposed changes to the rulemaking and those comments received from the public had no comments around the changes and felt current rules were appropriate.

INCORPORATION BY REFERENCE: This rulemaking contains no incorporation by reference.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions about the proposed rules, contact Amber Worthington, 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 25, 2023.

DATED this 29th day of August, 2023.

Amber Worthington Deputy Director
Idaho Department of Fish and Game
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0108-2301
(Only Those Sections With Amendments Are Shown.)

406. SPECIAL WEAPON SEASONS – MUZZLELOADER.

01. Muzzleloader Only Season. ~~During a season designated by Commission proclamation as a Muzzleloader Only season, it~~ is unlawful to take a big game animal with any firearm, including muzzleloading pistols, or implement other than a muzzleloading rifle or musket that complies with each of the following:

~~(3-31-22)~~()

a. 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. (3-31-22)

b. Is capable of being loaded only from the muzzle. (3-31-22)

c. Is equipped only with open or peep sights. (3-31-22)

d. Is loaded only with loose black powder including synthetic black powder. (3-31-22)

e. Is equipped with no more than two (2) barrels. (3-31-22)

f. Is loaded only with a projectile with a diameter within one hundredth (.01) of an inch of the bore diameter. (3-31-22)

g. Is equipped only with flint, musket cap, or percussion cap. 209 primers are prohibited. (3-31-22)

h. Is equipped with an exposed ignition system. (3-31-22)

i. Is loaded only with a patched round ball or conical ~~non-jacketed metal or metal alloy~~ projectile, ~~comprised wholly of lead or lead alloy~~ with the exception of allowance of accuracy tips and pressure bases.

~~(3-31-22)~~()

02. Pelletized Powder. It is unlawful to use pelletized powder in a Muzzleloader Only season. (3-31-22)

03. Sabot. It is unlawful to use a sabot in a Muzzleloader Only season. (3-31-22)

IDAPA 13 – DEPARTMENT OF FISH AND GAME

13.01.11 – RULES GOVERNING FISH

DOCKET NO. 13-0111-2301 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given this agency has initiated proposed rulemaking. The action is authorized pursuant to Sections 36-103, 36-104, 36-406A, 36-407, 36-410, 36-701, 36-706, 36-804, 36-901, 36-902, 36-1001, 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 18, 2023.

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

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

This rule is being presented for authorization as part of the IDFG plan to review each rule chapter every 5 years. This rulemaking relates to criteria around commercial and non-commercial take, transport, and release of fish and crustacea, and fishing contests. Consistent with the Governor's [Zero-Based Regulation Executive Order](#), the agency has revised current rule language to improve clarity and reduce duplication.

IDFG has evaluated the potential to consolidate IDAPA 13.01.12, "Rules Governing Commercial Fishing," into this chapter, IDAPA 13.01.11, "Rules Governing Fish," such that IDAPA 13.01.12 may be repealed, as proposed concurrently in Docket No. [13-0112-2301](#).

This proposed rulemaking includes changes to integrate current IDFG restrictions found in both chapters, under the similar topic, into a single rule chapter under IDFG's authority to regulate fishing and commercial fishing. The proposed rule consolidates definitions into one location and adds sections specific to commercial fishing to the "Rules Governing Fish" chapter.

Of note, this rulemaking incorporates suggested changes from the public around fishing contests which makes limitations on certain water bodies less restrictive and provides exemptions for fish limits and transport of fish during fishing contests.

FEE SUMMARY: There is no fee associated with this rule.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, a Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 7, 2023 Idaho Administrative Bulletin, [Vol. 22-4, page 19](#) under Docket No. 13-0111-2301. The Department received feedback around fishing contests and reached a consensus around modification of the rules.

INCORPORATION BY REFERENCE: This rulemaking contains no incorporation by reference.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions about the proposed rules, contact Joe Kozfkay, State Fisheries Manager, 208-334-3700.

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 25, 2023.

DATED this 24th day of August, 2022.

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0111-2301
(ZBR Chapter Rewrite)

13.01.11 – RULES GOVERNING FISH

000. LEGAL AUTHORITY.

Sections 36-103, 36-104, 36-406A, 36-407, 36-410, 36-701, 36-706, 36-901, 36-902, 36-1001, Idaho Code, ~~authorize the Commission to adopt rules concerning fishing, methods of take, seasons, limits, and fishing contests.~~ (3-31-22)()

001. ~~TITLE AND SCOPE.~~

~~The title of this chapter for citation is IDAPA 13.01.11, “Rules Governing Fish.” These rules establish the methods of govern commercial and non-commercial take, seasons transport, and possession limits for all non-commercial fishing and govern release of fish and crustacea, and fishing contests.~~ (3-31-22)()

002. – 009. (RESERVED)

010. DEFINITIONS – FISH.

01. ~~Chinook Salmon~~ **Adipose Fin.** ~~Anadromous (ocean run) salmon of the species *Oncorhynchus tshawytscha* in the Snake River drainage below Hells Canyon Dam, the Salmon River drainage, and the Clearwater River drainage, (excluding lakes, reservoirs, and the North Fork of the Clearwater River above Dworshak Dam), and the Boise River drainage~~ **Small fatty fin along the back between the dorsal fin and tail.** (3-31-22)()

02. ~~Coho Salmon.~~ **Coho Salmon.** ~~Anadromous (ocean run) salmon of the species *Oncorhynchus kisutch* in the Snake River drainage below Hells Canyon Dam, the Salmon River drainage, and Clearwater River drainage (excluding lakes, reservoirs, and the North Fork of the Clearwater River above Dworshak Dam).~~ (3-31-22)

03. ~~Game Fish.~~ **Game Fish.** ~~As classified in IDAPA 13.01.06, “Rules Governing Classification and Protection of Wildlife.”~~ (3-31-22)

04. ~~Hybrid Fish~~ **Invasive Fish Species.** ~~The offspring of two different species or subspecies of fish. Fish, amphibians, and crustacea species designated as invasive species in IDAPA 02.06.09 “Rules Governing Invasive Species and Noxious Weeds.”~~ (3-31-22)()

05. ~~Jack Salmon.~~ **Jack Salmon.** ~~Anadromous (ocean run) s~~Salmon of a size length set by Commission proclamation. (3-31-22)()

06. ~~Invasive Fish Species.~~ **Invasive Fish Species.** ~~Bullfrog, fish and crustacea species designated invasive species by state~~

authority (IDAPA 02.06.09 “Rules Governing Invasive Species of the Idaho Department of Agriculture”). (3-31-22)

~~07. **Steelhead**. Anadromous (ocean run) salmon of the species *Oncorhynchus nerka* in the Snake River drainage below Hells Canyon Dam and the Salmon River drainage. (3-31-22)~~

~~08. **Steelhead**. Any rainbow trout longer than twenty (20) inches in the Snake River drainage below Hells Canyon Dam, the Salmon River drainage, and the Clearwater River drainage (excluding that portion above Dworshak Dam); and any rainbow trout longer than twenty (20) inches in length with the adipose fin clipped (as evidenced by a healed scar) in the Snake River drainage from Hells Canyon Dam upstream to Oxbow Dam, and in the Boise River drainage from its mouth upstream to Barber Dam. (3-31-22)~~

~~09. **Trout**. Trout, including brown, cutthroat, golden, grayling, lake (Mackinaw), rainbow (other than steelhead), splake, sunapee, tiger, trout hybrids; and landlocked (not ocean runs) forms of chinook, coho, atlantic and kokanee (blueback) salmon. (3-31-22)~~

~~10. **Unprotected Fish**. Bullfrog and all fish species not classified in a protected category (game fish, protected nongame, threatened or endangered species) in IDAPA 13.01.06, “Rules Governing Classification and Protection of Wildlife.” (3-31-22)~~

011. DEFINITIONS – CONDUCT OF FISHING.

~~01. **Artificial Fly**. Any fly made entirely of rubber, wood, metal, glass, feather, fiber, or plastic by the method known as fly tying. (3-31-22)~~

~~02. **Artificial Lure**. Any device made entirely of rubber, wood, metal, glass, feather, fiber, or plastic with hook or hooks attached. (3-31-22)~~

~~03. **Bag Limit**. The maximum number of fish that may be lawfully taken by any one (1) person in one (1) day, construed in accordance with Sections 36-202 and 36-410, Idaho Code. (3-31-22)~~

~~04. **Bait**. Organic substances, other than rubber, wood, feather, fiber, or plastic, attached to a hook to attract fish. Bait includes insects, insect larvae, worms, dead fish, fish parts, any other animal or vegetable matter, or scented synthetic materials. (3-31-22)~~

~~05. **Barbless Hook**. A fish hook without barbs or on which all barbs have been bent completely closed. (3-31-22)~~

~~06. **Catch-and-Release**. Effort, by permitted methods, to catch fish, provided that any fish so caught is released immediately back to the water after landing and not reduced to possession. (3-31-22)(____)~~

~~07. **Commercial Fishing**. Fishing or transporting fish or crayfish for the purpose of selling. (____)~~

~~08. **Confluence of a Stream or River**. The point where two (2) rivers or streams come together. (3-31-22)~~

~~09. **Diversion**. A man-made structure designed to change the direction of flowing water in a stream. (3-31-22)~~

~~10. **Diversion Pond**. A man-made pond holding water taken from a stream or reservoir, which pond may be connected to the stream or reservoir by an open ditch or pipe. (3-31-22)~~

~~11. **Drainage**. All water flowing into a common river or stream system, either above or below ground, due to area geography. (3-31-22)~~

~~12. **Electric Motors Only**. For fishing waters listed in proclamation as “electric motors only,” no gas (internal combustion) motors may be used, although they may be attached to the boat. (3-31-22)~~

- ~~12. Fish Trap.~~ Any man-made structure designed to capture fish. (3-31-22)
- ~~13. Fish Weir.~~ Any man-made structure placed in a water body to delay or divert migrating fish. (3-31-22)
- ~~14. Flat Water.~~ Water where there is no observable direction of flow. (3-31-22)
- ~~15. Float Tube.~~ A floating device that suspends a single occupant, from the seat down, in the water, and is not propelled by oars, paddles, or motors. (3-31-22)
- ~~1603. Fly Fishing.~~ Fishing with a fly rod, fly reel, fly line, and artificial fly. (3-31-22)()
- ~~17. General Fishing Season.~~ The season and bag limits as determined by proclamation on a Regional basis. (3-31-22)
- ~~1804. Harvest.~~ Reduce a fish to possession. ()
- ~~19. Hook.~~ A bent wire device, for the catching of fish, to which one (1), two (2), or three (3) points may be attached to a single shank. Up to five (5) hooks per line may be used, except where specifically identified. (3-31-22)
- ~~2005. Ice Fishing.~~ Fishing through an opening broken or cut through the ice. ()
- ~~2106. Length.~~ The length between the tip of the nose or jaw and the tip of the tail fin. ()
- ~~22. Limit is 0 (Zero).~~ Fishing is allowed, provided the fish is released after landing and not reduced to possession. (3-31-22)
- ~~23. Motor.~~ Includes electric and internal combustion motors. (3-31-22)
- ~~24. Mouth of River or Stream.~~ The place where a river or stream enters a larger body of water. (3-31-22)
- ~~25. No Motors.~~ For fishing waters listed in proclamation as “no motors,” no person may fish from a boat with a motor attached. (3-31-22)
- ~~26. Possession Limit.~~ As defined in Section 36-202, Idaho Code. (3-31-22)
- ~~27. Reservoir.~~ The flat water level existing at any time within a reservoir basin. Unless noted otherwise, a stream flowing through the drawdown portion of a reservoir is not considered part of the reservoir. (3-31-22)
- ~~28. Season Limit.~~ The maximum number of fish that may be lawfully harvested in any declared season. (3-31-22)
- ~~29. Section.~~ An area of a river, stream, or reservoir between specific boundary locations. (3-31-22)
- ~~30. Single Point Hook.~~ A bent wire device, for catching fish, with one (1) shank and one (1) point. (3-31-22)
- ~~31. Sliding Sinker.~~ A method of attaching a sinker to a device that slides freely on the main line. (3-31-22)
- ~~3207. Snagging.~~ Taking or attempting to take a fish by use of a hook or lure in any manner or method other than enticing or attracting a fish to strike with, and become hooked in, its mouth or jaw. (3-31-22)()
- ~~33. Special Rule Waters.~~ Any water with a gear, season, or bag limit rule that is listed in proclamation

~~and different from the general fishing season. (3-31-22)~~

~~34. **Tributary.** A stream flowing into a larger stream or lake. (3-31-22)~~

~~08. **Trolling.** Taking a fish from a moving watercraft by dragging or pushing any fly, lure, bait, or hook using a motor, oars, or other forms of propulsion. ()~~

~~3509. **Unattended Line.** A line not under the immediate surveillance by the angler. (3-31-22)()~~

~~36. **Upstream.** Moving from a lower elevation towards a higher elevation point in the same stream. (3-31-22)~~

~~37. **Watercraft.** Those devices designed as a means of transportation on water. (3-31-22)~~

012. DEFINITIONS – GEAR AND WATERCRAFT.

~~01. **Artificial Fly.** Any fly made entirely of rubber, wood, metal, glass, feather, fiber, or plastic by the method known as fly tying. ()~~

~~02. **Artificial Lure.** Any device made entirely of rubber, wood, metal, glass, feather, fiber, or plastic with hook or hooks attached. ()~~

~~03. **Bait.** Organic substances, other than rubber, wood, feather, fiber, or plastic, attached to a hook to attract fish. Bait includes insects, insect larvae, worms, dead fish, fish parts, any other animal or vegetable matter, or scented synthetic materials. ()~~

~~04. **Barbless Hook.** Hook without barbs or on which all barbs have been bent completely closed. ()~~

~~05. **Electric Motor.** Watercraft propulsion system powered by electricity. ()~~

~~06. **Float Tube.** Single occupant floating device not to exceed six (6) feet in any dimension that is not propelled by oars, paddles, or motors. ()~~

~~07. **Hook.** Bent wire device, for the catching of fish, to which one (1), two (2), or three (3) points may be attached to a single shank. ()~~

~~08. **Motor.** Watercraft propulsion system powered by electricity or combustion of fuel. ()~~

~~09. **Single-Point Hook.** Bent wire device, for catching fish, with one (1) shank and one (1) point. ()~~

~~10. **Sliding Sinker.** Method of attaching a sinker to a device that slides freely on the main line. ()~~

~~11. **Watercraft.** Device designed as a means of transportation on water. ()~~

013. DEFINITIONS – SEASONS AND LIMITS.

~~01. **General Fishing Season.** Season and bag limits as determined by proclamation on a regional basis. ()~~

~~02. **Season Limit.** Maximum number of fish that may be lawfully harvested in any declared season. ()~~

~~03. **Special Rule Waters.** Any water with a gear, motor, or watercraft restriction, season, or bag limit adopted by proclamation and different from the general fishing season. ()~~

014. DEFINITIONS – LOCATIONS.

- 01. Confluence.** Location where two (2) rivers or streams come together. ()
- 02. Diversion.** Man-made structure designed to divert water. ()
- 03. Diversion Pond.** Man-made basin holding diverted water, including basins connected by an open ditch or pipe. ()
- 04. Drainage.** All water flowing into a common river or stream system, either above or below ground, due to area geography. ()
- 05. Fish Trap.** Any man-made structure designed to capture fish. ()
- 06. Fish Weir.** Any man-made structure placed in a water body to delay or divert migrating fish. ()
- 07. Mouth.** Place where a river or stream enters a larger body of water. ()
- 08. Reservoir.** Portion of a dammed waterbody in which there is no observable direction of flow. Unless noted otherwise, a stream flowing through the drawdown portion of a reservoir is not considered part of the reservoir. ()
- 09. Section.** An area of a river, stream, or reservoir between specific boundary locations. ()
- 10. Tributary.** A stream flowing into a larger stream or lake. ()
- 11. Upstream.** Moving from a lower elevation towards a higher elevation point in the same stream. ()

0125. DEFINITIONS – FISHING CONTESTS.

- 01. Fishing Contest.** Any organized fishing event that: ()
- a. Has a live-fish weigh-in; or ()
- b. Awards cash or prizes of one thousand dollars (\$1,000) or more based on number, size, or species of fish captured; or ()
- c. Is expected to draw or have more than twenty (20) participants. ()
- 02. Catch-and-Release Contest.** Any fishing contest with specific procedures to keep target fish species alive and healthy and to release all fish caught back into the contest water on the same day. ()
- 03. Harvest Contest.** Any fishing contest that allows participants to harvest fish. ()

013. – 100. (RESERVED)

101. RELEASE OF FISH WHILE FISHING.

Any fish caught ~~in Idaho waters~~ that is unlawful to possess must be immediately released back to the water. (3-31-22)()

102. STURGEON.

No person may remove a sturgeon that is unlawful to possess from the water, ~~and it is unlawful to possess sturgeon.~~ (3-31-22)()

01. Barbed Hook Restrictions. No person may fish for sturgeon with barbed hooks. ()

02. Sinker for Sturgeon. When fishing for sturgeon, a person must use a sliding sinker and lighter test line to attach the weight to the main line (the line attached to the reel). ()

103. (RESERVED)

104. IDENTIFICATION OF SPECIES AND SIZE IN POSSESSION AND DURING TRANSPORTATION OR SHIPMENT.

01. Restrictions. No person may have in the field or in transit any trout, tiger muskie, or bass from which the head or tail has been removed unless: ()

a. The angler is ashore and done fishing for the day; ()

b. The fish is processed or packaged with the skin naturally attached to the flesh; and ()

c. The fish is processed or packaged in a manner that the number of fish harvested can be readily determined and the processed fish is not transported by ~~boat~~ watercraft. (3-31-22)()

02. Transport or Gift. No person may transport for another or accept as a gift any game fish, unless a statement signed by taker accompanies the fish, showing the number and kinds, the date taken, the taker's name, address, and fishing license number. ~~However, n~~No person may claim ownership of more fish than allowed by the possession limit. (3-31-22)()

105. PURCHASE, BARTER, OR SALE OF FISH.

No person may purchase, barter, or sell the edible flesh of fish, crayfish, or bullfrog harvested from the wild, except as provided in Section 36-501, Idaho Code, and Title 36, Chapter 8, Idaho Code, and ~~these~~ rules promulgated pursuant thereto. (3-31-22)()

106. LIVE FISH – POSSESSION, TRANSPORT, IMPORT, AND RELEASE.

01. Permit. No person may possess, transport, ~~cause to be transported,~~ import, or release any live fish, crayfish, or bullfrog, or viable eggs thereof, without having first obtained a permit from the ~~Director~~ Department or the Department of Agriculture. (3-31-22)()

02. Marking Fish in Possession. No person may mark live fish by any means, including ~~with a tag,~~ by removing fins or injuring ~~with intent to leave a scar,~~ without first obtaining a Scientific Collecting Permit from the Department. (3-31-22)()

03. Import Inspection and Examination Requirements. ~~All live fish imported into or transported within Idaho must be certified free from disease~~ The Department may require a disease-free certification for live fish import or transport, as evidenced by a Certificate of Veterinary Inspection by a licensed veterinarian, (b) CFR Title 50 certification, (c) American Fisheries Society certified fish health inspector's certification, or (d) other certification by ~~an individual designated by the Director of~~ the Department of Agriculture. (3-31-22)()

04. Unpermitted Fish Species Released. Any fish ~~species unpermitted~~ unauthorized for import, possession, transport or release that is released by a person or escapes from ~~an owner or operator shall~~ that person's control must be captured or destroyed by ~~the owner that person,~~ or and may be captured or destroyed by the Department at the ~~owner's~~ person's expense. (3-31-22)()

107. LIVE FISH AND EGGS – EXCEPTIONS.

No permit is required to: ()

01. Fish. Keep fish that can legally be reduced to possession (except for anadromous ~~salmon and steelhead~~ game fish), alive and in possession in a live well, ~~net, or on a stringer~~ while at on the body of water from

which they were taken.

(3-31-22)()

~~02. Same Location. Release fish at the same time and place where captured.~~ (3-31-22)

~~03. Aquarium Fish. Possess ornamental or tropical aquarium fish of varieties commonly accepted for interstate shipment (not to include invasive species).~~ (3-31-22)

~~04. Private Ponds or Commercial Fish Facility. Possess fish from a private pond or commercial fish facility when accompanied by sales receipt and written permission from the ~~director~~ Department, as provided in ~~Chapter 7~~, Title 36, ~~Chapter 7~~, Idaho Code or from the Department of Agriculture as provided in ~~Chapter 46~~, Title 22, ~~Chapter 46~~, Idaho Code.~~ (3-31-22)()

~~05. Transport Between Commercial Fish Facilities. Transport fish between commercial fish facilities licensed under Chapter 7, Title 36 and Chapter 46, Title 22, Idaho Code.~~ (3-31-22)

~~06. Fish Eggs. Possess, sell, purchase or transport nonviable fish eggs used for bait or personal consumption.~~ ()

108. – 199. (RESERVED)

200. FISHING METHODS AND GEAR.

~~01. General Restrictions. Unless modified by rule (such as ~~the~~ exceptions in the following subsections), order, or proclamation, it is unlawful to:~~ (3-31-22)()

~~a. Fish in any waters of Idaho with more than one (1) handline or pole with a line attached, unless in possession of a valid two-pole permit.~~ (3-31-22)()

~~b. Leave an line unattended line.~~ (3-31-22)()

~~c. Have more than five (5) hooks attached per line.~~ ()

~~d. Use more than five (5) lines while ice fishing.~~ ()

~~de. Fish by archery, spearfishing, snagging, hands, trapping, seining, or netting.~~ ()

~~ef. Use live fish, leeches, frogs, salamanders, waterdogs, or shrimp as bait.~~ ()

~~fg. Land any fish with a gaff hook.~~ ()

~~02h. Molesting Fish. It is unlawful to ~~m~~Molest any fish by shooting at it with a firearm or pellet gun, striking at it with a club, hands, rocks, or other objects, building obstructions for catching fish, or chasing fish up or downstream in any manner.~~ (3-31-22)()

~~i. Fish from a watercraft with a motor attached in waters listed in proclamation as “no motors.”~~ ()

~~j. Use gas (internal combustion) motors on fishing waters listed in proclamation as “electric motors only,” although it may be attached to the boat.~~ ()

~~03. Hook and Line Exceptions. The holder of a valid two (2) pole permit may use two (2) poles during a general fishing season. A person may use no more than (5) lines while ice fishing.~~ (3-31-22)

~~04. Snagging Archery and Spear Fishing Exceptions. ~~Fishing with~~ The use of snagging, bow and arrow, crossbow, spear or mechanical device, excluding firearms, is permitted for the taking of unprotected fish, provided there is an open season for game fish.~~ (3-31-22)()

~~053.~~ **Gaff Hook Exceptions.** ~~It is permitted to use a~~ The use of a gaff hook ~~through a hole cut or broken in the ice is permitted while ice fishing~~ in waters which have no length restrictions or harvest closures for that species, or when landing unprotected fish species taken with archery equipment, ~~provided the angler does not intend to release fish so caught.~~ (3-31-22)()

~~06.~~ **Snagging Exceptions.** Snagging of unprotected fish species is permitted. (3-31-22)

~~074.~~ **Trapping and Seining Exceptions.** It is lawful to take unprotected fish, crayfish, and yellow perch with a minnow net, seine, or up to five (5) traps, ~~provided~~ unless there is an open season for game fish, and provided the following conditions are met: (3-31-22)()

a. The seine or net does not exceed ten (10) feet in length or width, and the seine has three-eighths (3/8) inch square or smaller mesh; and the minnow or crayfish trap does not exceed two (2) feet in length, width or height. If the trap is of irregular dimension, but its volume does not exceed the volume of an eight (8) cubic foot trap, it is lawful to use. ()

b. Nets and seines are not left unattended. ()

c. Traps are checked at least every forty-eight (48) hours. ()

d. All game fish and protected nongame fish incidentally ~~taken~~ captured while trapping or seining are immediately released alive. (3-31-22)()

e. All traps have a tag attached bearing the owner's name and address, ~~or~~ license number, or sportsman identification number. (3-31-22)()

~~085.~~ **Use of Bait Exceptions.** Live crayfish and bullfrog may be used for bait if caught on the body of water being fished. ()

~~096.~~ **Use of Hands Exceptions.** ~~It is permitted to take~~ Bullfrog and crayfish may be taken with the hands. (3-31-22)()

~~10.~~ **Barbed Hook Restrictions.** ~~It is unlawful to fish for sturgeon with barbed hooks. It is unlawful to fish for or take steelhead or salmon with barbed hooks in the Clearwater River drainage, Salmon River drainage, and Snake River drainage below Hells Canyon Dam.~~ (3-31-22)

~~11.~~ **Sinker for Sturgeon.** ~~When fishing for sturgeon, a person must use a sliding sinker and a lighter test line to attach the weight to the main line (the line attached to the reel).~~ (3-31-22)

~~1207.~~ **Fishing Shelters.** Any enclosure or shelter left unattended overnight on the ice of any waters of the state shall have the owner's name, telephone numbers, and current address, or sportsman identification number legibly marked on two (2) opposing sides of the enclosure or shelter. (3-31-22)()

201. – 344. (RESERVED)

345. FISHING IN BOUNDARY WATERS.

01. Bear Lake. The holder of a valid Idaho or Utah fishing license may fish all of Bear Lake, subject to the rules or regulations of the state in which they are fishing, including any closure. ()

~~02.~~ **Snake River Between Idaho and Oregon or Washington.** ~~The holder of a valid Idaho fishing license may fish the Snake River where it forms the boundary between Idaho and the states of Oregon or Washington, subject to the fish and game laws of Idaho. An Idaho license does not authorize the holder to fish from the shoreline, sloughs, or tributaries on the Oregon or Washington side. An Oregon or Washington license holder has the same rights and restrictions with reference to the Idaho side.~~ (3-31-22)

~~032.~~ **Limit for One License Only.** Any angler who fishes on the Snake River or any other water

forming an Idaho boundary is entitled to have in possession only the limit allowed by one (1) license regardless of the number of licenses ~~he~~ they may possess. (3-31-22)()

346. FISH SALVAGE.

No person may salvage fish from public waters without specific authorization of the ~~Commission, Director, or Regional Supervisor~~ Department. Authorization for salvage may allow holders of valid fishing licenses to harvest fish without regard to usual possession limits and may allow snagging, spearing, archery, dipnet, seines, or with the hands. (3-31-22)()

347. – 399. (RESERVED)

400. ~~STEELHEAD AND ANADROMOUS SALMON~~ GAME FISH LICENSES, TAGS, AND PERMITS.

01. Licenses. Any person fishing for ~~steelhead or~~ anadromous ~~salmon~~ game fish, except those expressly exempt, must have in possession a valid fishing license. (3-31-22)()

02. Permits. No person may fish for, or reduce to possession, ~~steelhead or~~ anadromous ~~salmon~~ game fish without a valid ~~steelhead or salmon~~ permit in possession for the targeted species. Permits are only valid for the specified river sections and species, as well as mark types (adipose clipped or unclipped) as set by Commission proclamation. (3-31-22)()

a. Salmon Permit. Allows for fishing, retention, and possession of salmon as authorized by Commission proclamation. ()

b. Steelhead Permit. Allows for fishing, retention, and possession of steelhead as authorized by Commission proclamation. ()

401. – 402. (RESERVED)

403. PERMIT VALIDATION.

For each ~~steelhead or adult~~ anadromous ~~salmon~~ game fish hooked, landed, and reduced to possession, the angler hooking the fish must immediately validate ~~her~~ their permit ~~by notching the permit and entering in ink with~~ the appropriate month, day, and river location code (listed by Commission proclamation). (3-31-22)()

404. IDENTIFICATION OF SPECIES IN POSSESSION AND DURING TRANSPORTATION OR SHIPMENT.

01. Provisions for Processing and Transporting ~~Steelhead and Anadromous Salmon~~ Game Fish. ~~No person may have in the field or in transit a hatchery produced steelhead or anadromous salmon processed by removing the head and tail unless the following conditions are met~~ All processing and transportation provisions and restrictions from IDAPA 13.01.11.104 are applicable to anadromous game fish. In addition: (3-31-22)()

a. The ~~fish is~~ processed and packaged ~~with the skin naturally attached to the flesh~~ fish must including include a portion with a healed, clipped, adipose fin scar or adipose fin; ~~and~~. (3-31-22)()

b. ~~The fish is packaged in a manner that the number of fish harvested can be readily determined.~~ (3-31-22)

02. ~~Restrictions on Processing and Transporting Steelhead and Anadromous Salmon~~. ~~No person may process steelhead or anadromous salmon until he is ashore and done fishing for the day. No person may transport processed steelhead or anadromous salmon via boat. No jack salmon may be processed while in the field or in transit. Each processed steelhead or anadromous salmon counts towards an angler's possession limit while in the field or in transit.~~ (3-31-22)

b. No jack salmon may be processed while in the field or in transit. ()

c. Each processed anadromous game fish counts towards an angler's possession limit while in the

~~field or in transit.~~ ()

405. ~~STEELHEAD AND ANADROMOUS SALMON GAME FISH METHODS OF TAKE.~~
~~In addition to take restrictions for all game fish, the following apply to anadromous game fish:~~ ()

01. ~~Hooks.~~ It is unlawful to use any hook larger than five eighths (5/8) inch, measured from the point of the hook to the shank. ~~Steelhead and a~~ anadromous salmon game fish may be taken only with barbless hooks in the Salmon, Clearwater, and Snake River drainages downstream of Hells Canyon Dam. ~~Bending the barb down to the shank of a single, double, or treble hook will meet this requirement. Steelhead and anadromous salmon may be taken with barbed hooks in the Boise River drainages, and the Snake River between Hells Canyon and Oxbow Dams.~~ (3-31-22)()

02. ~~Snagging.~~ No person may kill or retain in possession any steelhead or anadromous salmon hooked other than in the mouth or jaw. (3-31-22)

03. ~~Legal Catch~~ Retention. Any ~~steelhead or~~ anadromous salmon game fish caught must be released or, provided it is legal to possess, killed immediately after it is landed. (3-31-22)()

04. ~~Cease Fishing.~~ Once an angler has attained ~~his~~ their bag, possession or season limit on those waters with ~~steelhead or~~ anadromous game fish ~~salmon~~ limits, ~~he~~ they must cease fishing for ~~steelhead or~~ anadromous salmon game fish, including catch-and-release fishing. (3-31-22)()

05. ~~Keeping Marked Fish~~ Adipose Fin. Only steelhead or anadromous salmon marked by clipping the adipose fin, as evidenced by a HEALED scar may be kept in the Salmon, Clearwater, and Snake River drainages. ~~Anadromous salmon with an intact adipose fin may be retained as authorized by Commission proclamation. Only anadromous game fish with a clipped adipose fin, as evidenced by a healed scar, may be kept during an open season. Retention of unclipped anadromous game fishes may be authorized by Commission proclamation.~~ (3-31-22)()

06. ~~Fish Counted in Limit.~~ Each fish that is hooked, landed, and reduced to possession counts towards the limit of the person hooking the fish. ()

07. ~~Special Limits.~~ No person may fish in waters having special limits while possessing fish of that species in excess of the special limit. (3-31-22)

406. – 407. (RESERVED)

408. STEELHEAD PURCHASE REPORT.

01. ~~Filing Purchase Report.~~ Any person holding a wholesale or retail steelhead trout buyer's license must report all sales and purchases of steelhead on ~~an Idaho Steelhead Purchase Report to the Administration Bureau of the Idaho Department of Fish and Game, Boise, Idaho,~~ form provided by the Department on or before December 31 of each year. (3-31-22)()

02. ~~Inaccurate Reporting.~~ Failure to provide complete and accurate information on the report or failure to file the report on ~~or before December 31 is~~ time are grounds for revocation of the wholesale or retail license. (3-31-22)()

409. – ~~699~~599. (RESERVED)

~~7~~00. FISHING CONTESTS – PERMIT REQUIREMENT AND APPLICATION.

01. ~~Permit Requirement.~~ No person or other entity may conduct ~~or participate in~~ a fishing contest without having first obtained a fishing contest permit from the Department. Events organized wholly for youth under the age of fourteen (14) do not require a fishing contest permit. (3-31-22)()

02. ~~Permit Application.~~ Application for fishing contest permits must be made ~~on~~ using a form ~~prescribed~~ provided by the Department. ~~An application must be submitted at least thirty (30) days prior to a catch-~~

~~and release contest and ninety (90) days prior to a harvest contest.~~ (3-31-22)()

7601. FISHING CONTESTS PERMIT ISSUANCE.

01. General. The issuance of a fishing permit is at the Department's discretion. Among the factors the Department will consider are: ()

a. ~~Impacts~~ Effects of the contest on fish populations. (3-31-22)()

b. Compatibility of the contest with fish population management and fishery goals. ()

c. Potential conflict with other recreational users or other permitted contests. (3-31-22)()

d. ~~Potential conflict with other permitted contests~~ Previous compliance with submitting fishing contest reports. (3-31-22)()

02. Limit on Contest. The Department will not issue a permit for a harvest contest for wild native trout or sturgeon in rivers or streams. ~~The Director may issue a permit for a catch and release contest for these species if he determines there will be no harm to that fishery resource in the particular water where the contest is to take place:~~ (3-31-22)()

03. Conditions. The Department has discretion to specify conditions in the permit to minimize adverse ~~impacts~~ effects on fish populations, management programs and goals, other recreational users, or other permitted contests, including: (3-31-22)()

a. The time of start and check-in; ()

b. Limitations on the contest area ~~where participants may fish;~~ (3-31-22)()

c. ~~For catch and release contests,~~ Handling protocols and the method and location of release of fish; (3-31-22)()

d. ~~For harvest contests, m~~ More restrictive bag or size limits than would otherwise apply. (3-31-22)()

e. Allowing overland transport of live fish to facilitate fish redistribution within the contest area. ()

f. Requiring mandatory kill of fish species deemed incompatible with water body management objectives. ()

7602. FISHING CONTESTS – REQUIREMENTS.

01. Rules. Any fishing contest participant must comply with seasons, limits, and rules pertaining to the taking of fish and any additional conditions of the fishing contest permit. For special rule waters, the Department may authorize seasons, limits, and rules exemptions. (3-31-22)()

02. Culling. No fishing contest participant may release back to the water (cull) any fish that is not capable of swimming free. ~~A participant in a catch and release contest may have one (1) daily bag limit of the target species in possession while continuing to fish for the contest target species; if the participant catches another target fish, the participant must immediately release the last fish caught or immediately exchange it for another target fish in possession.~~ (3-31-22)()

7603. FISHING CONTEST REPORTS.

Each fishing contest sponsor shall, within thirty (30) days after the last day of a fishing contest, submit a ~~written~~ report to the Fisheries Bureau at the Department's main office ~~on using~~ the form ~~prescribed~~ provided by the Department. (3-31-22)()

~~7604.~~ – ~~9699.~~ (RESERVED)

700. COMMERCIAL FISHING LICENSES, TAGS, AND APPLICATIONS.

01. Commercial Fishing Licenses Requirements. No person shall set, operate, or fish with commercial gear unless they possess a valid commercial fishing license or are assisting in the presence of a licensee. ()

a. Commercial Fishing Species. The holder of a valid commercial fishing license may engage in commercial fishing for Bullfrog, Crayfish, or unprotected species from the Minnow or Sucker families. ()

b. Commercial Fishing Locations. Commercial harvest is allowed only in the Snake River and its main stem impoundments from Hells Canyon Dam upstream to the confluence of the North and South Forks, Palisades Reservoir, Lake Lowell, Black Canyon Reservoir, Blackfoot Reservoir, and the Bear River and its main stem impoundments from Utah state line upstream to and including Alexander Reservoir. ()

02. Commercial Fishing License Application. Application for a commercial fishing license may occur using a form provided by the Department. Should the license be approved, or conditionally approved, commercial fishing may occur after licenses and tags are secured. ()

03. Commercial Gear Tags. No person may set, operate, lift, or fish commercial gear unless such gear has attached thereto a valid commercial gear tag from the Department, except that no tag needs to be attached to conventional rod and reel fishing tackle used for commercial fishing. ()

701. COMMERCIAL FISHING AUTHORIZATION ISSUANCE.

01. General. The Department may consider commercial fishing operations not listed in IDAPA 13.01.11.700.01 by special authorization. The issuance of a special authorization is at the Department's discretion. Such authorizations will be valid for a period not to exceed one (1) year. Among the factors the department will consider are: ()

a. Impacts of commercial fishing on fish or wildlife populations. ()

b. Post-release mortality of non-target species. ()

c. Compatibility of commercial fishing with fish population management and fishery goals. ()

d. Potential conflict with other recreational users or commercial fishing activities. ()

e. Transmission of invasive species. ()

f. Compliance with reporting requirements. ()

02. Commercial Fishing Conditions. The Department has discretion to specify conditions to minimize adverse effects on fish or wildlife populations, management programs and goals, other recreational users, or other licensees, including: ()

a. Limitations of fishing seasons and times. ()

b. Limitations on fishing areas. ()

c. Limitations on gear type, specifications, and quantity. ()

d. Handling protocols, as well as methods and locations for release of non-target fish. ()

e. Maximum allowable catch. ()

03. Revocation of Commercial Licenses and Special Authorizations. The Department is authorized to suspend, for a period not to exceed one (1) year, or revoke entirely, any commercial license or authorization for violation of Title 36, Idaho Code by the licensee or persons acting under the licensee's direction and control. ()

702. – 749. (RESERVED)

750. RELEASE OF NON-TARGET FISH AND CRUSTACEA.

Any person capturing with commercial gear any species of fish or crustacea not a commercial species or listed on a special permit shall immediately release it unharmed back to the water. ()

01. Female Crayfish. Any person capturing any female crayfish carrying eggs or young shall release it unharmed back to the water at the time the crayfish are sorted. ()

751. POSSESSION AND TRANSPORTATION OF LIVE FISH OR CRUSTACEA.

01. Live Fish. No person may transport live fish without Department authorization. ()

02. Live Crustacea. Commercial fishers may possess and transport live commercial species of crustacea between the water areas where harvested and the point of sale or holding. Live crustacea may be held only in the waters where harvested, in ponds for which a private pond permit listing crustacea has been issued or in licensed commercial facilities. ()

752. – 779. (RESERVED)

780. SIZE LIMITS.

01. Fish. Commercial fish species of any size may be taken commercially. ()

02. Crayfish. ()

a. Only crayfish three and five-eighths (3 5/8) inches or greater in length from the tip of the nose to the tip of the tail, measured in a straight line ventral side up, may be taken commercially. ()

b. Crayfish shall be sorted, and any undersize crayfish returned to the water at the place of capture immediately following the emptying of any single trap or a trap line. However, an allowable sorting error percentage of undersized crayfish, not to exceed five percent (5%), is allowed in any load or lot. The percentage of undersized crayfish will be the mean of combined counts of samples measured and counted from various portions of the load or lot. Samples will be taken in containers of not less than one (1) gallon size approximately full of crayfish, with at least three (3) such samples taken from any load or lot. ()

781. – 799. (RESERVED)

800. COMMERCIAL GEAR AND METHODS OF TAKE FOR FISH OR CRUSTACEA.

No person may commercially harvest fish or crustacea except as follows: ()

01. Seine Nets. Seine net mesh size may not exceed one and one half (1 1/2) inch bar measurement and under constant attendance by the licensee or someone working under the supervision of the licensee; or if being used to hold fish, clearly marked with buoys that are at least twelve (12) inches in diameter. ()

02. Traps. With a trap not exceeding three (3) feet in any dimension, and provided all traps are lifted and emptied of catch at least once every ninety-six (96) hours, except during periods of weather that pose a threat to human life, health, or safety. ()

03. By Hand. For crayfish only. ()

801. UNTAGGED GEAR.

Untagged gear, or unattended seine nets, or traps left unattended more than ninety-six (96) hours are considered unlawful or abandoned and may be confiscated by Department personnel. ()

802. – 859. (RESERVED)

860. COMMERCIAL SEASONS.

01. Commercial Fish. Year-round. ()

02. Commercial Crustacea. April 1 through October 31 of each year. ()

861. – 879. (RESERVED)

880. COMMERCIAL FISHING RESTRICTIONS.

01. Operation Limitations. No commercial gear may be set, operated, or lifted within one hundred (100) yards of any public boat ramp or dock. ()

02. Storage Limitation. No commercial gear, watercraft, or other equipment or materials used in conjunction with a commercial fishing operation may be stored or left unattended at any public fishing access area in any manner that restricts angling or angler access. ()

881. – 899. (RESERVED)

900. COMMERCIAL FISHING INSPECTIONS AND REPORTING REQUIREMENTS.

01. Inspections. Department personnel may inspect: ()

a. Commercial gear at any time the gear is being used. ()

b. Catches and catch records at any time. ()

02. Reporting Requirements. All licensees shall submit a monthly report on a form prescribed by the Department, with all requested information including daily landings and effort, such that it is received by the Department not later than the fifteenth day of the month following the fishing activities. ()

901. – 999. (RESERVED)

IDAPA 13 – DEPARTMENT OF FISH AND GAME
13.01.12 – RULES GOVERNING COMMERCIAL FISHING
DOCKET NO. 13-0112-2301 (ZBR CHAPTER REPEAL)
NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given this agency has initiated proposed rulemaking. The action is authorized pursuant to Sections 36-104 and 36-804, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

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

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

This rule is being presented for authorization as part of the IDFG plan to review each rule chapter every five years. The rule chapter under consideration establishes the criteria for commercial fishing in Idaho. Consistent with the Governor’s [Zero-Based Regulation Executive Order](#), the agency has reorganized rule sections in this chapter and revised current rule language to improve clarity and reduce duplication.

IDFG has evaluated the potential to consolidate IDAPA 13.01.12, “Rules Governing Commercial Fishing,” into IDAPA 13.01.11, “Rules Governing Fish,” such that IDAPA 13.01.12 may be repealed, as proposed concurrently in Docket No. [13-0111-2301](#).

This proposed rulemaking includes changes to integrate current IDFG restrictions found in both chapters, under the similar topic, into a single rule chapter under IDFG’s authority to regulate fishing and commercial fishing. The proposed rule consolidates definitions into one location and adds sections specific to commercial fishing to the “Rules Governing Fish” chapter.

FEE SUMMARY: There is no fee associated with this rule.

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

There is no fiscal impact associated with this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, a Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 7, 2023 Idaho Administrative Bulletin, [Vol. 23-4, page 21](#) under Docket No. 13-0112-2301. The Department received no feedback on this rulemaking.

INCORPORATION BY REFERENCE: This rulemaking contains no incorporation by reference.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions about the proposed rules, contact Joe Kozfkay, State Fisheries Manager, 208-334-3700

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 25, 2023.

DATED this 29th day of August, 2023.

Amber Worthington 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
Email: rules@idfg.idaho.gov

IDAPA 13.01.12 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 13 – DEPARTMENT OF FISH AND GAME

13.01.15 – RULES GOVERNING THE USE OF DOGS

DOCKET NO. 13-0115-2301 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given this agency has initiated proposed rulemaking. The action is authorized pursuant to Section(s) 36-103, 36-104, 36-409, and 36-1101, 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 18, 2023.

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

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

This rule is being presented for authorization as part of the IDFG plan to review each rule chapter every 5 years. This rulemaking concerns the use of dogs in taking wildlife and use of game birds in field training dogs in Idaho. Consistent with the Governor's [Zero-Based Regulation Executive Order](#), the agency has revised current rule language to improve clarity and reduce duplication.

Notable revisions in this rulemaking include the addition of a reference to bobcat consistent with the Furbearer proclamation and clarification of the requirement for outfitters and the need for a Hound Hunter Permit.

FEE SUMMARY: There is no fee associated with this rule.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, a Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 7, 2023 Idaho Administrative Bulletin, [Vol. 23-4, page 23](#) under Docket No. 13-0115-2301. The Department received feedback around nonresident hound hunter permits and was asked that the limit remain the same. Consistent with the existing rule and the request, the Department does not propose changing the permit cap.

INCORPORATION BY REFERENCE: This rulemaking contains no incorporation by reference.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions about the proposed rules, contact Sal Palazzolo, 208-334-3700.

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 25, 2023.

DATED this 29th day of August, 2023.

Amber Worthington 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
Email: rules@idfg.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0115-2301
(ZBR Chapter Rewrite)

13.01.15 – RULES GOVERNING THE USE OF DOGS

000. LEGAL AUTHORITY.

Sections 36-104, 36-409, and 36-1101, Idaho Code, ~~authorize the Commission to adopt rules concerning the use of dogs in taking wildlife, use of game birds in field training, and related permitting.~~ (3-31-22)()

001. TITLE AND SCOPE.

~~The title of this chapter for citation is IDAPA 13.01.15, “Rules Governing the Use of Dogs.”~~ These rules govern the use of dogs in taking wildlife and use of game birds in field training dogs in Idaho. (3-31-22)()

002. -- 009. (RESERVED)

010. DEFINITIONS.

~~IDAPA 13.01.06, “Rules Governing Classification and Protection of Wildlife,” defines upland game animals, upland game birds, and migratory game birds.~~ (3-31-22)

01. Licensed Outfitter. ~~An~~ Outfitter with a valid license issued under Title 36, Chapter 21, Idaho Code. (3-31-22)()

02. Licensed Guide. ~~A~~ Guide with a valid license issued under Title 36, Chapter 21, Idaho Code. (3-31-22)()

03. Unarmed Observers. ~~An~~ Unarmed person who is not the owner or controller of pursuit dogs and who accompanies a hunt without intent to take or harvest an animal. (3-31-22)()

04. Unqualified Idaho Resident. ~~A~~ Person who has moved into Idaho, and by notarized affidavit proves intent to become a bona fide Idaho resident but who is not yet qualified to purchase a resident license. (3-31-22)()

011. -- 099. (RESERVED)

100. USE OF DOGS.

No person may use dogs for taking wildlife, except for the following wildlife under the following conditions: ()

01. Upland Game Animals, Upland Game Birds, and Migratory Game Birds. A dog may be used for training on or hunting upland game animals, game birds, and ~~migratory~~ game birds. (3-31-22)()

~~02. Black Bear, Mountain Lion, Bobcat, and Fox—Taking. Dogs may be used for taking black bear, mountain lion, bobcat, and fox in a take season open for the species, unless the Commission prohibits dog use in the area by proclamation. (3-31-22)~~

~~03. Black Bear, Mountain Lion, Bobcat, and Fox—Hunting and Training/Pursuit Only. A Dogs dog may be used for to hunt, training on and pursuit pursue only (no harvest) of black bear, mountain lion, bobcat, and fox, in a dog training season open for the species, unless such use is prohibited by the Commission prohibits dog use in the area by proclamation. A big game tag valid for the calendar year that has been filled is still valid for training/pursuit only of the species. In seasons identified for these species in proclamation as “Dog Training” or “Pursuit Only”, dogs may be used for pursuit and treeing only, and these species may not be captured, killed, or possessed. Outside of the bobcat take season, bobcats may be pursued and treed, but may not be captured, killed, or~~

possessed. (3-31-22)()

043. Blood Trailing of Big Game. ~~The u~~Use of one (1) blood-trailing dog controlled by leash during hunting hours and within seventy-two (72) hours of hitting a big game animal is allowed to track animals and aid in recovery. (3-31-22)()

054. Unprotected and Predatory Wildlife. A dog may be used for training on or taking unprotected and predatory wildlife. ()

101. -- 199. (RESERVED)

200. HOUND HUNTER PERMIT.

01. Hound Hunter Permits. ()

a. The following persons must have a valid hunting license and Hound Hunter Permit in possession when any dog is being used to hunt, including training or pursuit only, black bear, mountain lion, bobcat, and fox: ()

i. Anyone who owns the dog. ()

ii. Anyone having control of the dog if owned by another person. ()

iii. Anyone that harvests an animal over dogs, except clients of licensed outfitters in the licensed outfitting area, provided the licensed outfitter or guide accompanying the client has a Hound Hunter Permit. (3-31-22)()

b. A permit is not transferable EXCEPT, ~~a~~ licensed outfitters may convey the authority of ~~his~~ their Hound Hunter Permit to a nonresident licensed guide operating for ~~him~~ them, provided the nonresident guide has a copy of the outfitter's Hound Hunter Permit in possession. (3-31-22)()

c. A permit is valid from January 1 through December 31 of each year. ()

02. Exceptions. A person owning or using a dog only for blood trailing does not need a hound hunter permit. An unarmed observer does not need a hunting license or hound hunter permit. ()

03. Limit on Hound Hunter Permits for Nonresidents. No more than seventy (70) nonresident hound hunter permits will be issued to nonresident hunters. Sales of nonresident Hound Hunter Permits to the following persons are exempt from this limit: ()

a. ~~A n~~Nonresident licensed outfitter(s) or guide(s), provided the permit is not used for personal hunting. (3-31-22)()

b. ~~An u~~Unqualified Idaho resident(s). (3-31-22)()

c. ~~Persons~~Nonresidents who ~~hound~~ hunt solely in ~~the Middle Fork Zone (Units 20A, 26, and 27), a game management zone or unit for which the Commission has adopted a separate limit for hound hunter permits, in which cases those limits will apply to the number of nonresidents.~~ (3-31-22)()

~~**d.** Persons who hound hunt solely in the Lolo Zone (Units 10 and 12).~~ (3-31-22)

~~**e.** Persons who hound hunt solely within the Selway Zone (Units 16A, 17, 19, and 20), for which no more than forty (40) nonresident permits will be issued for Units 16A, 19, 20, and all of Unit 17, excluding Hunt Area 17-1, for which no more than six (6) nonresident permits will be issued. Hunt Area 17-1 is that portion of Unit 17 south of the following boundary: Beginning at the junction of the Unit 17 boundary and Forest Service Trail 24, then west along Forest Service Trail 24 to the Selway River, then north along the Selway River to Forest Service Trail 40, then southwest along Forest Service Trail 40 to Forest Service Trail 3, then along Forest Service Trail 3 to the Unit 17~~

~~boundary.~~ (3-31-22)

04. Nonresident Applications. ()

a. To be eligible for a controlled draw for limited nonresident permits, a nonresident must submit a ~~legible~~, complete application ~~for a hound hunter permit~~ on the form prescribed by the Department such that it is received at the Department's main office by no later than December 1 of the year preceding the year in which the permit is to be valid. (3-31-22)()

b. No person may submit more than one (1) application for a Hound Hunter Permit. ()

c. Two nonresidents may apply for two (2) permits on the same application form. ()

d. If nonresident ~~tags~~ permits are available after the application period, they will be available for purchase at any Department office on a first-come, first-served basis ~~on or after~~ starting around December 10. (3-31-22)()

201. -- 299. (RESERVED)

300. ~~BIRD DOG TRAINING AND FIELD TRIALS BY INDIVIDUALS USING ARTIFICIALLY~~ USE OF CAPTIVELY PROPAGATED GAME BIRDS.

IDAPA 13.01.10.500, "Rules Governing Importation, Possession, Release, Sale, or Salvage of Wildlife," apply to anyone who possesses, releases, or uses artificially propagated game birds for field training dogs. No person may conduct bird-dog field training or trial with the use of captively propagated game birds unless that person has a valid Bird Dog Training Permit or Bird Dog Field Trial Permit corresponding to the activity, and complies with permit terms. ()

~~**01. Bird Dog Training.** No person may conduct bird-dog field training with the use of artificially propagated game birds unless all of the following conditions are met:~~ (3-31-22)

~~**a.** The owner of any dog being field trained has a valid Bird Dog Training Permit (obtainable at Department Offices), and has the permit available for inspection at the training site.~~ (3-31-22)

~~**b.** Artificially propagated game birds used for training purposes on Wildlife Management Areas are certified as disease free under the standards set forth by the National Poultry Improvement Program (NPIP).~~ (3-31-22)

~~**c.** The permittee is in compliance with permit terms.~~ (3-31-22)

~~**02. Bird Dog Field Trials.** No person may conduct or own a dog participating in a bird-dog field trial using artificially propagated game birds unless all of the following conditions are met:~~ (3-31-22)

~~**a.** There is a valid Bird Dog Field Trial Permit (obtainable at Department Offices) available for inspection at the field trial site.~~ (3-31-22)

~~**b.** Artificially propagated game birds used for training purposes are certified as disease free under the standards set forth by the National Poultry Improvement Program (NPIP).~~ (3-31-22)

~~**c.** Proof of lawful game-bird origin is available for inspection at the field trial site.~~ (3-31-22)

~~**d.** The permittee is in compliance with permit terms.~~ (3-31-22)

301. -- 999. (RESERVED)

**IDAPA 15 – OFFICE OF THE GOVERNOR
DIVISION OF HUMAN RESOURCES AND PERSONNEL COMMISSION**

**15.04.01 – RULES OF THE DIVISION OF HUMAN RESOURCES
AND IDAHO PERSONNEL COMMISSION**

DOCKET NO. 15-0401-2301 (ZBR CHAPTER REWRITE)

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 67-5308 and 67-5309, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

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

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

Under [Executive Order 2020-01, Zero-Based Regulation](#), the Division of Human Resources is striving to prevent the accumulation of costly, ineffective, and/or outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. The proposed rule changes reflect a comprehensive review of this chapter by collaborating with the public to streamline or simplify the rule language in this chapter and to use plain language for better understanding. This proposed rulemaking updates the rules to comply with governing statute and Executive Order 2020-01.

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 August 2, 2023 Idaho Administrative Bulletin, [Vol. 23-8, 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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Michelle Peugh, Bureau Chief, 208-854-3073.

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 25, 2023.

DATED this 31st day of August, 2023.

Janelle White
Interim Administrator
304 North 8th Street
P.O. Box 83720
Boise, Idaho 83720-0066
Janelle.White@dhr.idaho.gov
Phone: (208) 334-2263

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 15-0401-2301
(ZBR Chapter Rewrite)

15.04.01 – RULES OF THE DIVISION OF HUMAN RESOURCES
AND IDAHO PERSONNEL COMMISSION

000. LEGAL AUTHORITY.

~~The rules of the Division of Human Resources and Idaho Personnel Commission are adopted pursuant to Section 67-5309, Idaho Code. The Division has authority to determine the policies of the Idaho Personnel System and make such rules as are necessary for the administration of the Personnel System. The administrator of the Division is appointed by the Governor, subject to confirmation by the Senate, and serves at the pleasure of the Governor pursuant to Section 67-5308(2), Idaho Code.~~ (3-31-22)()

001. SCOPE

These rules establish the policies and procedures of the Idaho Personnel System. ()

002. -- 005. (RESERVED)

006. WAIVER OF RULES.

The administrator reserves the right to waive any rule in specific instances when, in his/her opinion, such waivers are legal, warranted and justified in the interests of a more effective and responsive system of personnel administration. ()

007. -- 008. (RESERVED)

~~**009. DUTIES OF THE ADMINISTRATOR.**~~

~~In addition to other duties as assigned by law, the administrator provides administrative support to the Idaho Personnel Commission, has custody of the books and records of the Division and the Commission, and maintains a record of the proceedings before the Commission and its hearing officers.~~ (3-31-22)

~~**010.**~~ **009. DEFINITION.**

Each of the terms defined in these rules have the meaning given herein unless a different meaning is clearly required by the context. Additional definitions are contained in Section 67-5302, Idaho Code. ()

01. Administrative Leave. Temporary paid leave from a job assignment where pay and benefits remain intact. ()

02. Appeal. Any written request for relief from dismissal, demotion, suspension, or other adverse action filed with the Commission by an employee, appointing authority, or applicant. The meaning of appeal includes application, petition, or protest. ()

03. Appellant. An employee, appointing authority, or applicant filing an appeal or a petition for review with the Commission. ()

04. Appointment, Limited. The appointment of a person to a classified position where the work is projected to be of limited duration, for which the person has qualified by examination. ()

05. Appointment, Permanent. The appointment of a person to a classified position who has been certified by the appointing authority to have successfully completed the required probationary period and whose employment is permanent, subject to removal or discipline only under the provisions of Title 67, Chapter 53, Idaho Code, and the rules of the Division and Idaho Personnel Commission. ()

- 06. Appointment, Probationary.** The appointment of a person to a classified position for which the person has qualified by examination but is serving a work trial period as a condition for certification to permanent appointment. ()
- 07. Base Pay.** The rate paid for performing a job, excluding bonuses, shift differentials, overtime or other compensation premiums. ()
- 08. Classified Service.** That body of positions in state agencies subject to Title 67, Chapter 53, Idaho Code, as defined therein and excludes temporary, and nonclassified appointments. ()
- 09. Compensation Plan.** The overall system of salary administration for classified service including Sections 67-5309B and 67-5309C, Idaho Code; the classification and compensation schedules, Division and Idaho Personnel Commission rules and policies, and agency policies governing employee pay. ()
- 10. Compensation Schedule.** The pay grades established by the Division and associated rates of pay. (Ref. Section 67-5309B, Idaho Code) (3-31-22)()
- 11. Consultant.** An independent contractor who provides professional or technical advice, counsel, or service. (Ref. Rule 050) (3-31-22)()
- 12. Dismissal.** The separation of an employee from classified service with cause assigned by the appointing authority pursuant to Rule 190. ()
- 13. Division.** The Idaho Division of Human Resources. ()
- 14. Due Process.** As related to Idaho's Personnel System for permanent classified employees, the activities required to address an individual's constitutional right to notice and an opportunity to be heard. (Ref. Section 67-5315, Idaho Code) ()
- 15. Employment History.** The information available to the public without the employee's consent in accordance with Section 74-106, Idaho Code, for every agency for which a current or former public official works, including the official reasons for separation from employment but not including accrued leave balances or usage. ()
- 16. Good Cause.** The conduct of a reasonable person in the same or similar circumstances. ()
- 17. Hay Method.** A methodology for establishing the relative value of jobs and used as a dimension of the pay system. ()
- 18. Hiring List.** A hiring list is a subset of a register consisting of the top twenty-five (25) individuals on the register, plus all individuals tied for the twenty-fifth position, certified as eligible for a specific recruitment. Candidates for reinstatement or transfer may be considered and are provided in addition to the top twenty-five (25). ()
- 19. Incumbent.** Any person holding a classified or non-classified position in state service. ()
- ~~**20. Independent Contractor.** Any person, firm, or corporation meeting the Internal Revenue Service's test for an independent contractor or a self-employed person. (Ref. Rule 050) (3-31-22)~~
- ~~**210. Involuntary Transfer.** A significant change in work location, shift and/or organizational unit made as a result of a management decision as opposed to an employee's request or agreement to transfer. ()~~
- ~~**221. Layoff.** An involuntary reduction in hours of work or separation of an incumbent in the classified service either by reduction in force due to shortage of work or funds, or abolishment of positions. ()~~
- ~~**232. Light or Limited Duty.** A general term describing a temporary limited assignment in relation to~~

recovery from injury, illness or other limiting condition as approved by the appointing authority. ()

243. Merit Increase. The advancement of an employee's compensation within a pay grade based upon performance in accordance with Section 67-5309B(3) and (4), Idaho Code. ()

254. Merit Increase Matrix. A pay distribution tool used to advance employee pay based on performance and market data. ()

265. Minimum Qualification Specialty. A minimum qualification required for one (1) or more positions in a classification that is in addition to the other minimum qualifications required for all positions in the classification. ()

~~**27. Occasional or Sporadic Work.** Work that is voluntarily performed by an employee in a different capacity from the employee's regular work and is infrequent, irregular or occurring in scattered instances. (3-31-22)~~

286. On-Call Time. Time when an employee is required to be available if called upon by their agency during hours that are outside of their normally defined work schedule. ()

297. Pay Line Exception. A temporary assignment of pay grade, pursuant to Section 67-5309D, Idaho Code, in excess of the pay grade allocated pursuant to Section 67-5309B, Idaho Code, as approved by the administrator. ()

~~**3028. Permanent Employee.** An employee in the classified service who has successfully completed entrance probation. Permanent employees remain subject to separation as set forth in these rules and Section 67-5309(n), Idaho Code. ()~~

~~**3429. Promotion.** The advancement through the competitive process of an employee with permanent status from a position which he occupies in one (1) classification to a position in another classification having a higher paygrade. ()~~

320. Reduction in Pay. A reduction of an employee's salary from one (1) pay rate to a lower rate within the pay grade to which the employee's classification is allocated. ()

331. Register. A list of names of persons or the name of one (1) person who has been determined to be eligible for employment in a classification on the basis of examination and merit factors as established by the administrator. ()

342. Resignation. The voluntary quitting or abandonment of state employment, excluding retirement. ()

353. Respondent. The party whose interests are adverse to those of the appellant. ()

~~**364. Salary Equity Increase.** The advancement of an employee's compensation within a pay grade based upon factors such as market demand, compression within the agency or classification, or inequities, and the employee's performance, in accordance with Section 67-5309B(3), Idaho Code. (3-31-22)()~~

375. Suspension. An enforced period of absence, with or without pay, for disciplinary purposes, for felony charges, or pending investigation of charges made against an employee pursuant to Rule 190. ()

386. Termination. The separation of an entrance or voluntary probationary employee from classified service for unsatisfactory service during the probationary period without cause assigned by the appointing authority pursuant to Rule 152. ()

397. Transfer. A change of work location of an employee in which the employee changes from one (1) position to another in the same classification or to another classification in the same pay grade. ()

~~**4038. Underfill.** Administrator-approved appointment to a position established at a higher classification~~

while being compensated at a lower pay grade during completion of a training plan. ()

~~4139.~~ **USERRA.** Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. Sections 4301 through 4333. Prohibits employment discrimination against persons because of their service in the Armed Forces Reserve, the National Guard, or other uniformed services. (3-31-22)

~~420.~~ **Workweek.** A period of seven (7) consecutive days beginning 12:01 a.m. Sunday. ~~(Ref. Rule 073)~~
~~(3-31-22)~~()

~~0140.~~ -- 019. (RESERVED)

020. BASIC MERIT AND SALARY REQUIREMENTS OF THE PERSONNEL SYSTEM.

All appointments, promotions and separations in the classified service shall be based on competence, valid job requirements, and individual performance. (3-31-22)

01. Examinations. Examinations shall be designed to evaluate factors pertinent to an individual's ability to perform competently the duties of the classification. ()

a. Content of Examinations. Examinations may include any questions, tests or criteria designed to evaluate the suitability of applicants for job openings within a classification. ()

b. Job Analysis and Confidentiality. No information concerning the specific content of the examination will be divulged to unauthorized personnel by the Division or other personnel who have access to the examinations. ()

02. Eligible Candidates. The appointing authority shall make a selection from a hiring list containing eligible candidates. ()

a. Failing Score. Failure in any part of the examination may disqualify an applicant in the entire examination and from having his name placed on the hiring list. ()

03. Authorized Pay Rates. No employee in the state classified service will be paid at a rate less than the minimum nor greater than the maximum rate of the pay grade assigned to the classification. ()

a. Payline Exceptions. Temporary assignments to a new pay grade may be made by the administrator. Such assignments apply to an entire classification for the purpose of recruitment or retention and will be reviewed annually to determine the need for continuance. ()

b. Salary Equity Increases. An appointing authority may, with approval by the administrator, advance an employee's salary within a pay grade based upon factors such as market demand, to address compression within an agency or classification, or inequities. ()

c. Salary Upon Transfer. A transfer between agencies in the same classification or one of equal pay grade does not require a change in the employee's salary, but a lower or higher rate may be negotiated between the employee and the appointing authority. If the transfer is to a classification of lower pay grade (demotion), the employee's salary is negotiable between the employee and appointing authority within the lower pay grade. ()

d. Salary Upon Reinstatement. Unless related to reemployment after a layoff, the salary of a reinstated employee is negotiable between the employee and appointing authority in the current pay grade for the classification in which the employee has reinstatement privileges. ()

e. Salary After Reappointment from Layoff. Employees appointed by the agency that laid them off will be paid in the current pay grade for the classification to which reappointed or at the same payrate the employee received immediately preceding layoff, whichever is greater, but not to exceed the maximum of the current pay grade. ()

f. Salary Upon Return from Military Duty. An employee who returns to state service from active

military duty in accordance with the provisions of Section 65-508, Idaho code, and USERRA will be paid at a comparable rate in the current pay grade for the classification to which they were assigned prior to leaving for military service. ()

g. Reduction of Salary. The salary of an employee receiving more than the lowest rate of the pay grade for his classification may be reduced to a lower rate within the pay grade by the appointing authority for disciplinary reasons enumerated in Rule 190. ()

021. DISCRIMINATION PROHIBITED.

No person shall be discriminated against in regards to appointments, promotions, demotions, separations, transfers, compensation, or other terms, conditions, or privileges of employment because of race, national origin, color, sex, age, religion, disability, or veteran status (unless under other than honorable conditions). (3-31-22)

021. BASIC REQUIREMENTS FOR VETERANS AND MILITARY PERSONNEL.

01. Application by Military Personnel. An application will be accepted after the closing date of the announcement from a person who was serving in the armed forces or undergoing service-connected hospitalization of no more than one (1) year following discharge, during any period in which the announcement was open. The application must be submitted within one hundred twenty (120) days of the applicant's separation from the armed forces or hospitalization and prior to the expiration of the register established as a result of an examination. ()

02. Return from Military Duty. An employee returning from military leave without pay who is relieved or discharged from military duty under conditions other than dishonorable will be, upon application, reinstated in his former position, or one of comparable classification, without loss of credited state service, status, or pay as prescribed by Sections 46-216, 65-508, and 65-511, Idaho Code, USERRA, or the Military Selective Service Act, Title 38, Chapter 43, U.S. Code. Application for reemployment must be made in accordance with the provisions of USERRA. ()

03. Application by Disabled Veterans. A disabled veteran may file an application at any time up until a selection for any classification for which the Division maintains a register as a source for future job openings or for which a register is about to be established, provided the veteran has not already been examined twice for the same classification, does not have current eligibility on that register, or is not serving in a competitive position in the same pay grade as the classification for which application is made. ()

04. Veterans' Preference Points. ()

a. Veterans' and disabled veterans' preference points must not be used to achieve a passing score. ()

b. Veterans' and disabled veterans' preference points, when applicable under state law, will be added to the final score achieved in the examinations. Five (5) points will be added to the earned rating of any veteran, as defined in Section 65-203, Idaho Code, and the widow or widower of any veteran, as defined in Section 65-203, Idaho Code, as long as the widow or widower remains unmarried. ()

c. Disabled veterans', Purple Heart recipients, spouses of any eligible disabled veterans who cannot qualify for any public employment because of a service-connected disability, and unmarried widows or widowers of disabled veterans entitled to ten (10) point preference will be placed on the open-competitive register in order of their final score on the examination augmented by preference points. ()

d. Disabled veterans who have a current service-connected disability of thirty percent (30%) or more will be offered an interview when their final score places them on the hiring list. If more than ten (10) disabled veterans with a disability rating of thirty percent (30%) or more place on a hiring list, at least ten (10) will be offered an interview. ()

022. PROHIBITED QUESTIONS.

All questions on applications and examinations shall be based on valid job requirements. Questions that impermissibly discriminate on the basis of race, national origin, color, sex, age, religion, disability, political

~~affiliation, or veteran status are prohibited. Questions regarding veteran status for compliance with veterans' preference are permitted. (3-31-22)~~

~~**023. BONA FIDE OCCUPATIONAL QUALIFICATION.**~~

~~Qualification requirements based on age or gender may be established as necessary for specific positions by the Administrator of the Division. (3-31-22)~~

~~**024. CONFLICT OF INTEREST AND PERSONAL CONDUCT.**~~

~~The maintenance of a high standard of honesty, ethics, impartiality, and conduct by state employees is essential to ensure proper performance of state business and strengthen the faith and confidence of the people of Idaho in the integrity of state government and state employees. All appointing authorities shall establish such policies and standards necessary to prevent conflicts of interest. (3-31-22)~~

~~**025.2. NEPOTISM.**~~

~~No employee shall work under the immediate supervision of a supervisor who is a spouse, child, parent, brother, sister or the same relation by marriage. ()~~

~~**026.3. DUAL EMPLOYMENT.**~~

~~There will be no conflicting hours of work when a classified employee is employed by more than one (1) state agency. The employee must obtain approval from all appointing authorities concerned prior to beginning dual employment. ()~~

~~**027.4. -- 045.9. (RESERVED)**~~

~~**050. CONSULTANTS AND PERSONS EMPLOYED UNDER INDEPENDENT CONTRACT.**~~

~~Nothing in these rules prohibits the use of independent contractors or consultants for legal, medical, technical, or other professional services, provided that they are not engaged in the performance of administrative duties for any state agency. No position in the state classified service will be filled by a consultant or independent contractor. (3-31-22)~~

~~**01. Limited Use Only.** Individuals employed through contracts with temporary services or professional staffing agencies will be utilized only for short term situations. (3-31-22)~~

~~**02. Conflict of Interest/Nepotism.** Agency policies regarding conflict of interest/nepotism should address the award of work to consultants and contractors. (See Rules 024 and 025 and Ref. Section 18-1359, Idaho Code. (3-31-22)~~

~~**03. Not to Be Treated as Employees.** Independent contractors, their staff or consultants must not be treated as employees. Appointing authorities must comply with current Internal Revenue Service guidance on independent contractor and employee definitions. (3-31-22)~~

~~**051. — 059. (RESERVED)**~~

~~**060. ADOPTION OF CLASSIFICATION SCHEDULE.**~~

~~The Division will develop, adopt, and make effective a classification schedule consisting of classification specifications allocated to various pay grades in the compensation schedule for all positions based on an analysis of the duties and responsibilities of representative positions. (3-31-22)~~

~~**061.0. ANALYSIS OF CLASSIFICATIONS.**~~

~~The Division will assist appointing authorities in the analysis of positions in determining proper classification and, at the determination of the administrator, will conduct independent classification reviews of the various agencies. ()~~

~~**062. AUTHORITY.**~~

~~The administrator has the responsibility and authority to classify positions in the classification schedule. (3-31-22)~~

~~**063. REVIEW OF CLASSIFICATION SCHEDULE.**~~

~~The administrator will ensure the appropriateness and accuracy of classification specifications. (3-31-22)~~

0641. AMENDMENT OF CLASSIFICATION SCHEDULE.

01. Changes To Classifications. Whenever it is necessary to establish or delete a classified position or to revise a position's responsibilities, the appointing authority will submit proposed changes to the administrator. ()

02. Approval. Each appointing authority, prior to establishing any new position within the agency, will obtain the approval of the administrator for the classification of such positions and their assignment to a pay grade in the compensation schedule. Approval by the administrator of the Division of Financial Management for sufficiency of funds is also required. ()

03. Assignment to Pay Grade Required. No person will be appointed to, employed in, or paid for services in any classified position until the position has been established, classified, and assigned to a pay grade in accordance with these rules. ()

0652. APPROVAL OF NEW, REVISED AND DELETED CLASSIFICATIONS.

01. New and Refactored Classifications. New classifications of work and revised classifications require approval by both the administrator and the Division of Financial Management administrator when there is a fiscal impact. ()

02. Revised and Deleted Classifications. Revised classifications with no fiscal impact and classifications deleted from the classification schedule require approval only of the administrator. ()

0663. ABOLISHMENT OF POSITIONS.

An appointing authority may abolish a position for reasons of administrative efficiency. Employees to be separated as a result shall have layoff and reemployment preference in accordance with Rules 140 through 147. ()

0674. RECLASSIFICATION OF POSITIONS.

01. Procedure. Positions may be reclassified in the same pay grade, upward, or downward as determined by an analysis by the Division of the duties and responsibilities assigned by appointing authorities to specific positions. An incumbent occupying a reclassified position shall be properly classified by an appointing authority ~~within thirty (30) calendar days of being notified by the administrator that the duties and responsibilities assigned to the position are not properly classified.~~ (3-31-22)()

02. Effective Date. Reclassifications of positions are not effective until they are approved by the administrator, but may be retroactive to the beginning of the pay period during which approval is granted. Reclassification of an employee may not precede the effective date of the reclassification of the position. ()

068. VIOLATIONS.

~~Accurate position classification is the foundation for providing equal pay for equal work, identification of actual work performed, fair employment and equal opportunity for promotions, and equitable compensation. Upon the administrator's determination that classification rules have been violated, the appointing authority will be informed and provided thirty (30) days to take actions necessary to correct the situation or submit a corrective action plan to the administrator. If these actions do not occur, the administrator will inform the employee, the appointing authority, and the state controller that the employee is being compensated in violation of these rules. (Ref. Sections 67-5308 and 67-5312, Idaho Code)~~ (3-31-22)

0695. (RESERVED)

07066. COMPENSATION OF EMPLOYEES SURVEYS.

01. Assignment to Pay Grade. As a basis for pay equity, the Division will use a combination of point factoring and market data to determine the relative value of each classification. (Ref. Rule 074.01 and Section 67-

~~5309B, Idaho Code) (3-31-22)~~

~~**02. Factoring.** The Division will use the Hay method to determine the relative value of each classification, and as a basis for internal pay equity. (Ref. Section 67-5309B, Idaho Code) (3-31-22)~~

~~**031. Salary Surveys.** The Division will conduct or approve salary surveys, to determine salary ranges that represent labor market average rates for Hay point factored positions in classified service. ()~~

~~**042. Relevant Labor Markets.** Labor markets used for wage comparison will be based on recruiting markets for specific job classifications. Consultation with various appointing authorities will also contribute to labor market determination. ()~~

~~**a.** When the competition for employees is the local area market, the comparison will be made from a survey representing public and private employers in the state of Idaho. (3-31-22)~~

~~**b.** For classifications with a regional recruiting area, the comparator market will be from public and private employers from the neighboring states and Idaho. For those with no private counterparts, the comparator market will be state governments, including, but not limited to, Arizona, Colorado, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. (3-31-22)~~

~~**e.** Recruitment and retention issues will be used to determine the need for additional special market surveys. (3-31-22)~~

~~**05. Compensation Schedule.** Significant changes to components of the compensation plan will be presented in a public meeting after notice. (3-31-22)~~

~~**071. MERIT INCREASE MATRIX.** Salary increases must be based on a merit increase matrix approved by the Division. Shift and geographic premium pay, bonuses, reinstatements, transfers, promotions, salary equity increases, and recruitment and retention awards are not subject to a matrix. (3-31-22)~~

~~**072. OPERATION OF COMPENSATION PLAN:**~~

~~**01. Authorized Pay Rate.** No employee in the state classified service will be paid at a rate less than the minimum nor greater than the maximum rate of the pay grade assigned to the classification. (3-31-22)~~

~~**02. Starting Salary.** The starting salary for a new appointee may be anywhere within the pay grade assigned to the employee's classification and is at the appointing authority's discretion considering available budget, market, and relation to existing staff salaries. (3-31-22)~~

~~**03. Payline Exceptions.** Temporary assignments to a new pay grade may be made by the administrator. Such assignments apply to an entire classification for the purpose of recruitment or retention and will be reviewed annually to determine the need for continuance. (3-31-22)~~

~~**04. Salary Equity Increases.** An appointing authority may, with approval by the administrator, advance an employee's salary within a pay grade based upon factors such as market demand, to address compression within an agency or classification, or inequities. In accordance with Section 67-5309B(3), Idaho Code, the employee's performance must be considered. (3-31-22)~~

~~**05. Salary After Reappointment from Layoff.** Employees appointed by the agency that laid them off (Ref. Rules 101.01 and 146) will be paid in the current pay grade for the classification to which reappointed or at the same payrate the employee received immediately preceding layoff, whichever is greater, but not to exceed the maximum of the current pay grade. (3-31-22)~~

~~**06. Salary Upon Transfer.** (3-31-22)~~

~~**a.** A transfer between agencies (Ref. Rule 125) in the same classification or one of equal pay grade~~

~~does not require a change in the employee's salary, but a lower or higher rate may be negotiated between the employee and the appointing authority. (3-31-22)~~

~~b. If the transfer is to a classification of lower pay grade (demotion), the employee's salary is negotiable between the employee and appointing authority within the lower pay grade. (3-31-22)~~

~~07. **Salary Upon Reinstatement.** Unless related to reemployment after a layoff, the salary of a reinstated employee (Ref. Rule 124) is negotiable between the employee and appointing authority in the current pay grade for the classification in which the employee has reinstatement privileges. (4-6-23)~~

~~08. **Salary Upon Downward Reassignment.** When a classification is reassigned downward the employee's salary will be protected to the maximum within the new pay grade. (3-31-22)~~

~~09. **Salary Upon Return from Military Duty.** An employee who returns to state service from active military duty in accordance with the provisions of Section 65-508, Idaho Code, and USERRA will be paid at the comparable rate in the current pay grade for the classification to which he was assigned prior to leaving for military service. (3-31-22)~~

073.67. CALCULATION OF PAY.

01. Standard Calculation of Pay. For other than police, correctional officers, or fire employees, pay is calculated in the following order: ()

- a. Holiday pay; ()
- b. All hours worked on a holiday as overtime; ()
- c. All hours worked over forty (40) in the workweek as overtime, excluding occasional or sporadic work; ()
- d. Vacation, sick and other paid or unpaid leaves; and ()
- e. All remaining hours worked at the employee's regular rate of pay. ()

02. Shift Differential. Additional compensation paid to employees (including temporary or part-time employees) who work specific, designated hours. Shift differential is paid in addition to any other compensation. ~~(Ref. Sections 67-5302(20) and 67-5328, Idaho Code; Shift differential may be awarded in amounts up to and including twenty-five percent (25%) of hourly rates, based on local market practice for similar jobs. (Ref. Section 67-5309(u), Idaho Code. (3-31-22)()~~

~~**03. Calculation of Pay for Police, Correctional Officers, and Fire Employees.** Police, correctional officers, and fire employees on a twenty-eight (28) day work schedule will be compensated as described in Rules 073.01 and 073.02, except that overtime will be calculated based on one hundred sixty (160) hours in a twenty-eight (28) day period instead of forty (40) hours in a workweek. (3-31-22)~~

~~**04. Holiday Pay Calculation.** (3-31-22)~~

~~a. Paid time off for holidays is a benefit and must be allocated in a substantially similar manner to all employees in the same classification. (3-31-22)~~

~~b. A full-time employee will receive holiday pay in accordance with the number of hours the employee works on a regular workday. If the employee's schedule is so irregular that a regular workday cannot be determined, the employee will receive eight (8) hours of holiday pay. An employee must receive some paid leave, wages or salary for the pay period in which the holiday occurs to receive the holiday benefit. (3-31-22)~~

~~c. A part-time employee who has a regular work schedule shall be paid for a holiday in the same ratio as eight (8) hours is to a forty (40) hour work week, which for calculation purposes converts to two tenths (.20) x~~

~~hours normally worked. (3-31-22)~~

~~d. To avoid inequities with regard to the Family Medical Leave Act (FMLA) during holiday weeks, if an employee is recording all hours for the week as Family Medical “Leave Without Pay,” no hours will be coded on the holiday. Therefore, the holiday will not be counted toward the twelve (12) weeks of family medical leave. (3-31-22)~~

~~e. If a part time employee’s hourly schedule is so irregular that a normal workweek cannot be determined, the holiday benefit is in the same proportion that the hours the employee works during a week in which a holiday occurs relate to forty (40). (3-31-22)~~

~~f. Schedules resulting in holiday time off in excess of eight (8) hours may be approved by the appointing authority if included in the agency compensation plan. Appointing authorities may also suspend flex schedules during holiday weeks or otherwise adjust work schedules to ensure internal consistency. (3-31-22)~~

~~05. **Reduction of Salary.** The salary of an employee receiving more than the lowest rate of the pay grade for his classification may be reduced to a lower rate within the pay grade by the appointing authority for disciplinary reasons enumerated in Rule 190. (3-31-22)~~

~~06. **Salary Administration.** Each agency must develop a compensation plan designed to consider recruitment and retention and ensure pay equity within the organization. (Ref. Section 67-5309B, Idaho Code) (3-31-22)~~

~~07. **Salaries for Temporary Appointments.** Except as provided for in these rules, salaries for employees hired under temporary appointments will be governed by Section 59-1603, Idaho Code. (4-6-23)~~

074. ASSIGNMENT OF HAY EVALUATION POINTS.

~~01. **Assignment to Pay Grade.** Pursuant to Sections 67-5309B and C, Idaho Code, the pay grade to which a classification is assigned shall be determined by the number of Hay evaluation points assigned to each classification. (3-31-22)~~

~~02. **Guide Charts.** The Hay evaluation points assigned to a classification shall be the composite numerical value of points factored from the Hay guide charts. (3-31-22)~~

~~03. **Factoring Benchmarks.** The established factoring benchmarks shall be used in conjunction with the Hay Guide Charts to determine the number of points assigned to a classification. (3-31-22)~~

~~04. **Factoring Process.** Hay evaluation points shall be assigned to a classification by review and assignment of the administrator and with notification to the administrator of the Division of Financial Management regarding potential fiscal impacts. These points are final unless appealed in accordance with Section 67-5316, Idaho Code. (4-6-23)~~

075. BONUSES.

~~01. **Performance Bonuses.** Up to a total of two thousand dollars (\$2,000) may be awarded each fiscal year, in recognition of exemplary performance. In extraordinary circumstances exceptions to the two thousand dollar (\$2,000) limit may be granted if approved in advance by the State Board of Examiners. Documentation of the exemplary performance and related bonus award must be provided to the employee and placed in the employee’s agency personnel file. (Ref. Sections 59-1603(7) and 67-5309D(1), Idaho Code) (3-31-22)~~

~~02. **Employee Suggestion Award.** Appointing authorities may award up to a total of twenty five percent (25%) of the savings realized from an employee’s idea to save taxpayer dollars, not to exceed two thousand dollars (\$2,000). (Ref. Section 67-5309D, Idaho Code) (3-31-22)~~

~~a. Suggestions need to increase productivity, conserve state resources, reduce state costs, or improve the morale of state employees. (3-31-22)~~

~~b.~~ Suggestions that may deserve an award larger than two thousand dollars (\$2,000) and suggestions aimed at saving money outside the employee's state agency should be submitted through the employee's agency first, then submitted to the Division. Awards greater than two thousand dollars (\$2,000) must be approved in advance by the State Board of Examiners. (3-31-22)

~~c.~~ Employee suggestion awards may be funded from the expense category (personnel, operating, or capital) from which the savings were realized. (3-31-22)

~~076~~**68.** -- 079. (RESERVED)

~~080.~~ **RECRUITMENT.**

~~The administrator will cooperate with the appointing authority of each agency in the operation of a coordinated recruiting program. (3-31-22)~~

~~081.~~ **PURPOSE OF EXAMINATIONS.**

~~The administrator shall conduct examinations for the purpose of maintaining eligibility registers. (3-31-22)~~

~~082~~**0.** **METHODS OF RECRUITMENT.**

~~For the purpose of establishing eligibility registers, there are three (3) methods of recruitment: open competitive, agency promotional, or statewide promotional. The scope of advertising and outreach for each approach will vary with agency preference, needs, and labor market strategies. (3-31-22)()~~

~~083.~~ **MOVING EXPENSE REIMBURSEMENT.**

~~01. **Reimbursement Limitations.** The appointing authority may reimburse moving expenses for current or newly hired state employees in an amount less than or equal to ten percent (10%) of the employee's base salary or fifteen thousand dollars (\$15,000), whichever is less. Moving expense reimbursements must comply with the State Board of Examiners' State Moving Policy and Procedures that are in effect at the time the move takes place. (3-31-22)~~

~~02. **Exceptions to Reimbursement Limitations.** Exceptions to the expense reimbursement limits set forth in Rule 083.01 may be granted if approved in advance by the appointing authority. (3-31-22)~~

~~084.~~ **ANNOUNCEMENT OF RECRUITMENT.**

~~01. **Distribution of Announcements.** The announcement of each open competitive recruitment will be made through an internet application system and posted to other locations determined necessary by the administrator to develop a register of eligibles. If the open competitive recruitment has been requested by the appointing authority in lieu of a promotional recruitment, it will be his responsibility to post or otherwise distribute the announcement so it can be seen by all employees of that agency prior to its expiration date. (Ref. Rule 169) (4-6-23)~~

~~02. **Posting of Promotional Announcements.** The announcement for each promotional recruitment will be supplied to the appointing authority of each affected agency. It will be his responsibility to post, electronically communicate, or otherwise distribute such announcement so it can be seen by all employees in the agency prior to the expiration date. (3-31-22)~~

~~085.~~ **CONTENT OF ANNOUNCEMENTS.**

~~Each announcement shall contain the title of the classification, characteristic duties and responsibilities, salary, minimum qualifications, nature of examination, qualifying score, closing date, equal opportunity and veterans' preference notice, and other pertinent information. (3-31-22)~~

~~086.~~ **APPLICATIONS.**

~~01. **Form.** All applications must be filed in the form approved by the administrator. (3-31-22)~~

~~02. **Filing of Applications.** Applications are currently accepted by internet application system.~~

(3-31-22)

~~03. **Application by Military Personnel.** An application will be accepted after the closing date of the announcement from a person who was serving in the armed forces, or undergoing service-connected hospitalization of no more than one (1) year following discharge, during any period in which the announcement was open. The application must be submitted within one hundred twenty (120) days of the applicant's separation from the armed forces or hospitalization and prior to the expiration of the register established as a result of an examination. (Ref. Sections 65-503 and 67-5309(f), Idaho Code)~~ (3-31-22)

~~04. **Application by Disabled Veterans.** A disabled veteran may file an application at any time up until a selection for any classification for which the Division maintains a register as a source for future job openings or for which a register is about to be established, provided the veteran has not already been examined twice for the same classification, does not have current eligibility on that register, or is not serving in a competitive position in the same pay grade as the classification for which application is made. (Ref. Sections 65-503 and 67-5309(f), Idaho Code)~~ (3-31-22)

~~05. **Promotion of Entrance Probationary Employee.** Any classified employee on entrance probation may file an application for a promotional opportunity but is ineligible to be certified to a department or statewide promotional hiring list until permanent status has been attained. (Ref. Rule 169.03.)~~ (3-31-22)

~~06. **Disclosure of Information for Hiring Purposes.** By submitting an application, an individual is deemed to authorize disclosure of confidential information to state agencies for purposes of screening, testing, interviewing and hiring. (Ref. Section 74-106, Idaho Code).~~ (3-31-22)

087. DENIAL OF APPLICATIONS.

~~01. **Basis.** The administrator may choose not to process an application if:~~ (3-31-22)

~~a. The applicant will not meet the minimum qualifications specified in the announcement at the time set for appointment.~~ (3-31-22)

~~b. The application was not received on or before the closing date for acceptance of applications.~~ (3-31-22)

~~e. A background investigation or examination of an applicant discloses that the applicant committed an act which is cause for dismissal as provided in Rule 190.~~ (3-31-22)

~~02. **Further Actions.** When any such finding under Rule 087.01 is made, the administrator may deny the application and may cancel the eligibility of the applicant if he or she has already attained a place on the eligibility register. If the applicant has already received appointment, the administrator may take appropriate action to have the employee removed from the position.~~ (3-31-22)

~~088.—089. (RESERVED)~~

090. EXAMINATIONS.

~~Examinations shall be designed to evaluate factors pertinent to an individual's ability to perform competently the duties of the classification. The factors tested shall be job related and may include, but are not limited to, education and experience, knowledge, skills, abilities, aptitude, and physical ability.~~ (3-31-22)

091. PROHIBITED FACTORS.

~~No part of any examination may include any question designed to reveal prohibited information including the political or religious affiliation or belief, national origin or race of any candidate.~~ (3-31-22)

092. PREPARATION OF EXAMINATIONS.

~~01. **Content of Examinations.** Examinations may include any questions, tests or criteria designed to evaluate the suitability of applicants for job openings within a classification. So far as is practical, promotional~~

~~examinations will be similar to corresponding open-competitive examinations and the same standards will be applied in determining scores. (3-31-22)~~

~~**02. Job Analysis and Confidentiality.** Contents of each examination will be determined by the Division on the basis of appropriate professional techniques and procedures of job analysis and test development. No information concerning the specific content of the examination will be divulged to unauthorized personnel by the Division or other personnel who have access to the examinations. (3-31-22)~~

~~**03. Subject Matter Experts.** The Division may, at its discretion, collaborate with appointing authorities, incumbents, subject-matter experts, or other qualified persons in the preparation of examinations. (3-31-22)~~

~~**093. CONDUCT AND RATING OF EXAMINATIONS INCLUDING VETERANS' PREFERENCE POINTS.**~~

~~**01. Designation of Examiners.** The examinations will be conducted and rated by persons designated by the administrator. (3-31-22)~~

~~**02. Scoring of Examinations.** Each examination will be rated for final scores on the basis of one hundred (100) point maximum. The Division will use appropriate statistical and professional techniques and procedures in determining passing points and final scores. (3-31-22)~~

~~**03. Veterans' Preference.** (3-31-22)~~

~~**a.** Veterans' and disabled veterans' preference points, when applicable under state law, will be added to the final score achieved in the examinations, notwithstanding the fact that the augmented final score may exceed one hundred (100) points. Five (5) percentage points will be added to the earned rating of any veteran, as defined in Section 65-203, Idaho Code, and the widow or widower of any veteran, as defined in Section 65-203, Idaho Code, as long as the widow or widower remains unmarried. Pursuant to Section 65-504, Idaho Code, ten (10) percentage points will be added to the earned rating of any disabled veteran, as defined in Section 65-502, Idaho Code, or to the unmarried widow or widower of the same, or the spouse of any eligible disabled veteran who cannot qualify for any public employment because of a service connected disability. Employment registers will be established in order of final score except that the names of all five (5) and ten (10) percentage point preference eligibles resulting from the merit system will be placed on the register in accordance with their augmented rating. (Ref. Sections 65-506 and 67-5309(f), Idaho Code) (3-31-22)~~

~~**b.** Veterans' and disabled veterans' preference points must not be used to achieve a passing score. (3-31-22)~~

~~**04. Failing Score.** Failure in any part of the examination may disqualify the applicant in the entire examination and from having his name placed on the register. Final scores will be computed in accordance with weights assigned the individual factors in the total examination. (3-31-22)~~

~~**05. Examination Upon Reclassification.** An employee occupying a position which is reclassified (Ref. Rule 067.01) may be required at the discretion of the administrator to pass an examination for the classification to which reclassified. (3-31-22)~~

~~**094. ELIMINATION TESTS.**~~

~~Wherever it is stated in the announcement that an applicant must qualify in a series of different tests or satisfy other requirements to become eligible for appointment, and the applicant fails to meet such requirements, he or she shall not be permitted to take any further tests in the examination, and such tests if previously given need not be rated. (3-31-22)~~

~~**095. NOTICE AND RECORD OF RESULTS OF EXAMINATION.**~~

~~All competitors shall be notified of their final scores electronically or by mail. The records of scores are held as official records for the life of the resulting eligibility registers. (3-31-22)~~

~~096. REVIEW AND APPEAL.~~

~~01. Review of Examination Content and Scoring Material.~~ Any competitor, or his/her representative authorized in writing, shall be permitted to inspect his/her own papers and records, except examination content and scoring material, upon application in person at the office of the Division in Boise during business hours. Alternative arrangements are available for competitors located outside of Boise. Review is limited to the time allowed for appeal of examination scores. (3-31-22)

~~02. Appeal of Examination Score.~~ Any competitor, by written request to the administrator, may appeal his or her examination score within thirty-five (35) calendar days after the notice was sent to such competitor. The administrator will review the test, may change the score, and may take any other action necessary to insure the integrity and quality of the testing process. When such review discloses error affecting the scores of other competitors, the review and adjustment includes their scores. The administrator will provide a written explanation to competitors whose scores are affected by the action taken. (3-31-22)

~~097. ALTERNATIVE EXAMINATION PROCESS FOR PERSONS WITH DISABILITIES.~~

~~01. Conditions for Eligibility.~~ Notwithstanding other provisions in these rules, an agency may appoint an individual directly into entrance or promotional probationary status in a classification if the Division of Vocational Rehabilitation, the Idaho Commission for the Blind, or the Industrial Commission certifies the following: (3-31-22)

~~a.~~ That the individual has a physical or mental impairment that substantially limits one (1) or more major life activities, as further defined under state or federal law; (3-31-22)

~~b.~~ That the individual meets the minimum qualifications of the classification and is qualified to perform the essential functions of a particular classified position with or without reasonable accommodation; and (3-31-22)

~~c.~~ That the individual lacks competitiveness in the examination process due to the disability. (Ref. Section 67-5309(e), Idaho Code.) (3-31-22)

~~02. Concurrence Required.~~ The certification shall be made with the concurrence of the Division. (3-31-22)

~~03. Probationary Period.~~ The probationary period shall be the sole examination for individuals certified under this alternative examination process. (Ref. Rule 150). (3-31-22)

~~098.—100. (RESERVED)~~

~~101. ELIGIBILITY REGISTERS.~~

Eligibility registers are established by the Division to provide for fair and impartial selection for entrance into the state classified service and for promotion on the basis of competitive merit examinations. (3-31-22)

~~01. Reemployment Preference Registers.~~ Registers with reemployment preference for a given classification will contain the names of classified employees of permanent status who have been laid off except limited service appointments. (Ref. Rules 140 and 144). (3-31-22)

~~02. Open Competitive Registers.~~ Open competitive registers for a given classification will contain the names of applicants who successfully passed an open competitive examination for the classification. (3-31-22)

~~102. PLACEMENT ON REGISTER.~~

~~01. Score Order.~~ Eligible candidates will be placed on the register for a given classification ranked in descending numerical order based on their final score on the examination for such classification. (3-31-22)

~~02. Veterans' Preference.~~ Eligible veterans or surviving spouses entitled to five (5) point preference will be placed on the open competitive register in accordance with their final score on the examination augmented by

~~preference points. (Ref. Rule 093.03 and Section 65-504, Idaho Code) (3-31-22)~~

~~**03. Disabled Veterans' Preference.** Preference will be awarded to disabled veterans as follows: (3-31-22)~~

~~**a.** Disabled veterans, Purple Heart recipients, spouses of any eligible disabled veterans who cannot qualify for any public employment because of a service-connected disability, and unmarried widows or widowers of disabled veterans entitled to ten (10) point preference will be placed on the open competitive register in order of their final score on the examination augmented by preference points. (Ref. Rule 093.03 and Sections 65-503 and 65-504, Idaho Code) (3-31-22)~~

~~**b.** Disabled veterans who have a current service-connected disability of thirty percent (30%) or more will be offered an interview when their final score on the hiring list places them within the top twenty-five (25) qualified candidates. If more than ten (10) disabled veterans with a disability rating of thirty percent (30%) or more place in the top twenty-five (25) qualified scores of a hiring list, at least ten (10) will be offered an interview. (Ref. Rule 093.03 and Section 65-504, Idaho Code) (3-31-22)~~

~~**103. DURATION OF ELIGIBILITY REGISTERS.**~~

~~**01. Reemployment Preference Registers.** Eligible candidates will remain thereon for twelve (12) months from effective date of layoff. (Ref. Rules 101.01 and 144) (3-31-22)~~

~~**02. Other Registers.** The duration of all other registers will be determined by the administrator based on the frequency of job openings and agency need. (3-31-22)~~

~~**104. REMOVAL OF NAMES.**~~

~~**01. Reasons Specified.** Names may be removed from any eligibility register by the administrator because of: (3-31-22)~~

~~**a.** Appointment of the eligible candidate from the register to the classification or appointment to a classification in a higher pay grade. (3-31-22)~~

~~**b.** A statement by the eligible candidate that he is not willing to accept appointment under conditions previously specified. (3-31-22)~~

~~**c.** Physical, mental or other disability where it has been demonstrated that the disability will prevent the eligible candidate from satisfactorily performing the essential functions of the position with reasonable accommodation for the disability. (3-31-22)~~

~~**d.** Failure of an eligible candidate to respond within seven (7) calendar days to documented good faith inquiry concerning availability for employment. (3-31-22)~~

~~**e.** The eligible candidate's conduct renders him unsuitable for the position or classification for which he applied. (3-31-22)~~

~~**f.** Written rejection of the eligible candidate for good cause by an appointing authority as approved by the administrator. (3-31-22)~~

~~**g.** Conviction of an eligible candidate of any felony. (3-31-22)~~

~~**h.** False statements of material facts given in the eligible candidate's application for employment or any subsequent examinations or interviews. (3-31-22)~~

~~**i.** Dismissal of an eligible candidate from state service. (3-31-22)~~

~~**j.** Paying, promising to pay, or giving any money, thing, service or consideration to any person,~~

~~directly or indirectly, for any service or influence given, used, or promised towards securing appointment. (3-31-22)~~

~~k. Directly or indirectly obtaining information regarding examinations to which, as an applicant, he is not entitled. (3-31-22)~~

~~l. Refusing an interview or refusing to accept a position under the conditions set forth in the recruitment announcement. (3-31-22)~~

~~m. Having been certified for a probationary appointment for three (3) separate positions in the same classification in the same agency and not been accepted for employment for good cause. (3-31-22)~~

~~n. Declining three (3) separate offers of employment or reemployment without good cause. (3-31-22)~~

~~**02. Limitations and Duration of Removal.** The administrator will determine if the candidate will be removed from all registers, registers for a particular classification, or registers for specified agencies. All removals will be for one (1) year unless otherwise authorized by the administrator. (3-31-22)~~

~~**105. TEMPORARY UNAVAILABILITY NOT REASON FOR REMOVAL.**~~

~~Temporary unavailability of an eligible applicant, not to exceed fifteen (15) calendar days, in order that the employee may give his or her employer advance notice of separation is not proper cause for his or her removal from the register. (3-31-22)~~

~~**106. RESTORATION OF NAMES TO ELIGIBILITY REGISTERS.**~~

~~Upon receiving appropriate evidence, the administrator shall restore the name of an eligible candidate to any eligibility register from which it has been removed for causes enumerated in Rule 104. (3-31-22)~~

~~**107. REVISION OF CLASSIFICATION SPECIFICATIONS.**~~

~~Whenever a classification specification is revised, the names of persons on the existing eligibility register who meet the minimum qualifications for the revised classification shall be placed in score order on the eligibility register for the revised classification. (3-31-22)~~

~~**108. (RESERVED)**~~

~~**109. CERTIFICATION AND SELECTION.**~~

~~Whenever a vacancy in a classified position is to be filled by a competitive recruitment process, the appointing authority shall make selection from a hiring list created from eligibility registers certified by the Division. Non-promotional internal or external transfers or reinstatements do not require registers certified by the Division. (3-31-22)~~

~~**110. NUMBER OF NAMES ON REGISTER.**~~

~~The Division will certify a hiring list from the eligibility register, in the order of their scores, a sufficient number of names so that the appointing authority is able to select for appointment from among twenty five (25) eligible candidates for each position to be filled. If appointments are to be made to more than one (1) position, one (1) additional name shall be added for each vacancy so that the appointing authority has twenty five (25) names to consider for each vacancy. The names of all eligible candidates with scores identical to the twenty-fifth ranking eligible candidate on the register shall be provided to appointing authorities for selection purposes. (3-31-22)~~

~~**111-118. (RESERVED)**~~

~~**119. APPOINTMENTS, REINSTATEMENTS, TRANSFERS, AND RESIGNATIONS.**~~

~~**01. Reemployment Preference Register.** New appointments to a classification within an agency are not permissible if there is an agency reemployment preference register (Ref. Rule 101.01) for that classification with names of eligibles who are willing to accept employment. (3-31-22)~~

~~**02. Probationary Period Required.** All appointments to positions in the state classified service whenever adequate eligibility registers exist for the classification are probationary appointments except as otherwise~~

~~provided in Rules 040 and 150.~~

~~(3-31-22)~~

12019. LIMITED SERVICE APPOINTMENTS.

01. Designation. Classified positions expected to be of limited duration due to funding or nature of the position or project must be identified and designated in advance of announcement. ()

02. Permanent Status and Expedited Layoff. Employees appointed under limited-service appointments have permanent classified status after successful completion of probation. These employees have the same rights and responsibilities as other permanent employees but may be subject to expedited layoff ~~pursuant to Rule 140.01.e.~~ ~~(3-31-22)~~()

03. Limited Service Agreement. Appointing authorities making limited-service appointments must prepare, no later than the date of appointment, a written agreement for signature of both the employee and appointing authority describing the non-career nature of the appointment, potential for layoff, and the duration the employee may expect to work. Renewals and updated agreements are required every two (2) years. A copy of the agreement must be kept in the employee's personnel file. ()

1240. SEASONAL APPOINTMENT.

~~**01. Purpose.** An appointing authority may make a seasonal appointment from a register for work that occurs intermittently during the year. (Ref. Section 67-5302(31), Idaho Code).~~ ~~(3-31-22)~~

021. Employee Rights. Employees appointed under a seasonal appointment will have all obligations, rights, and privileges of any classified employee except those accorded by Rules 140 through 147, relating to reduction in force. ()

~~**03. Separation.** Employees appointed under a seasonal appointment may be separated from the seasonal appointment and returned as frequently as intermittent workload dictates.~~ ~~(3-31-22)~~

~~**04. Duration of Appointment.** If an employee has not been called to work for six thousand two hundred forty (6,240) hours (three (3) years), the seasonal appointment expires; rehire of the employee must be from a register.~~ ~~(3-31-22)~~

1221. TEMPORARY APPOINTMENTS (NON-CLASSIFIED).

01. Hours Limitation. Temporary appointments are limited to one thousand three hundred eighty-five (1,385) hours of work in any twelve (12) month period for any one agency. Both calculations begin on the date of the original temporary appointment ~~(Ref. Section 67-5302(33), Idaho Code).~~ ~~(3-31-22)~~()

02. Transition to Classified Service. Temporary employees who have served at least one thousand forty (1,040) hours of continuous service, may go from temporary status to classified entrance probation status in that same position without further ~~examination application~~ if the announcement for the temporary position from which the certified register was created indicates that the temporary position has the potential of becoming a permanent classified position. The classified position must be in the same classification and at the same location as announced. ~~(3-31-22)~~()

1232. (RESERVED)

1243. REINSTATEMENTS.

01. Eligibility. A current or former employee will be eligible for reinstatement to a classification in which he held permanent status, or if deleted its successor, or to another classification of equal or lower pay grade under the following conditions ~~(salary treatment is covered by Rule 072.06).~~ ~~(4-6-23)~~()

a. Reinstatement is limited to a period equal to the length of the employee's probationary and permanent employment combined. (3-31-22)

~~b.~~ The current or former employee must have separated from the classification for which reinstatement is desired without prejudice. A former employee must also have separated from state classified service without prejudice. (3-31-22)

~~eb.~~ The current or former employee must meet the current minimum qualifications of the classification to which reinstatement is desired. ()

~~02. Reinstatement Prohibited.~~ Reinstatement of a current or former employee is not permissible as long as there is an agency register (Ref. Rule 101.01) for that classification with names of eligibles who have reemployment preference status. (3-31-22)

~~032. Examination.~~ A current or former employee may be required to pass an examination for the classification to which reinstatement is desired. ()

~~043. Probationary Period.~~ An appointing authority may negotiate for a probationary period as a condition of reinstatement except where prohibited. (Ref. Rules 124.05 and 145.01). (3-31-22)()

~~05. Return from Military Duty.~~ An employee returning from military leave without pay (Ref. Rule 250.04) who is relieved or discharged from military duty under conditions other than dishonorable will be, upon application, reinstated in his former position, or one of comparable classification, without loss of credited state service, status, or pay as prescribed by Sections 46-216, 65-508, and 65-511, Idaho Code, USERRA, or the Military Selective Service Act, Title 38, Chapter 43, U.S. Code. Application for reemployment must be made in accordance with the provisions of USERRA. Salary treatment is covered by Rule 072.09. (3-31-22)

~~1254.~~ TRANSFERS.

~~01. Authority to Transfer.~~ An appointing authority may transfer an employee at any time from one position to another in the same classification. ()

~~02. Transfer Within Pay Grade.~~ An appointing authority may transfer an employee from a classification in which he holds permanent status to another classification allocated to the same pay grade for which the employee meets the minimum qualifications. ()

~~03. Probationary Period.~~ An appointing authority may negotiate with an employee for a probationary period as a condition for a voluntary transfer. ~~Voluntary probation is not allowed for intra agency transfers.~~ (Ref. Rule 150) (3-31-22)()

~~04. Limitation.~~ Transfers will not be used to abridge an employee's rights in reduction in force prescribed by Rules 140 through 147. (3-31-22)

~~05. Transfer Between Agencies.~~ An employee is eligible for transfer between agencies in the same classification in which he holds permanent status or to another classification in the same or lower pay grade for which the employee meets the minimum qualifications. ~~Accrued vacation and sick leave will be transferred in accordance with Rules 230.04 and 240.02.~~ Salary treatment is covered by Rule 072.06. (3-31-22)()

~~06. Restriction.~~ Transfer of an employee between agencies is not permissible as long as there is a agency register with reemployment preference status (Ref. Rule 101.01) for the classification in the agency to which transfer is desired with names of eligibles who are willing to accept reemployment. (3-31-22)

~~07. Examination.~~ An employee transferring between classifications may be required to pass an examination for the classification to which transfer is desired. (4-6-23)

~~08. Involuntary Transfer.~~ Notice and an opportunity to be heard must be given to any employee subject to an involuntary transfer. (3-31-22)

~~1265.~~ RESIGNATION.

01. Notice. A classified employee may resign at any time. A resignation is effective at the time designated by the employee, without need for written or advance notice, or acceptance of the resignation by the appointing authority. ()

02. Rescission and Reinstatement. Once an employee has submitted a resignation, reinstatement is in the discretion of the appointing authority as ~~provided in Rule 124~~. The appointing authority may but is not required to allow an employee to rescind a resignation prior to its effective date. (3-31-22)()

03. Resignation in Lieu of Dismissal. An employee may resign in lieu of being dismissed for cause. ()

~~127~~6. -- 128. (RESERVED)

129. ACTING APPOINTMENT TO A POSITION.

01. Conditions for Acting Appointment. At the discretion of an appointing authority, a classified employee with permanent status may be appointed to a position in a classification of higher pay grade within his own agency in an acting capacity whenever: ()

a. The incumbent of the position in the higher classification is on authorized leave of absence; or ()

~~**b.** A vacancy exists and there is no agency register with reemployment preference status (Ref. Rule 101.01) with names of eligibles who are willing to accept reemployment, nor adequate agency register for the classification.~~ (3-31-22)

02. Minimum Qualifications. To be eligible for an acting appointment, an employee must meet the minimum qualifications of the class. ()

~~**03. Effective Date.** The effective date of each acting appointment may be retroactive to the beginning of the pay period during which approval is granted.~~ (3-31-22)

130. LIMITATION ON LENGTH OF APPOINTMENT.

Acting appointments are limited to the period of time necessary to fill the vacancy pursuant to procedures prescribed in these rules but in no case can continue beyond one thousand forty (1,040) hours of credited state service unless specifically extended by the administrator. ()

131. SALARY.

For any credited state service which an employee serves in a classification in an acting capacity, he or she shall receive the salary for the classification as though he or she had actually been promoted. ()

132. EXPIRATION OF APPOINTMENT.

01. Return of Incumbent. When the incumbent of the classification returns from leave of absence, or the vacant position is filled, the acting appointment expires. The acting appointee is returned to the class, the pay grade and rate held immediately preceding the acting appointment. ()

02. Failure of Incumbent to Return. Should the employee on leave of absence separate from state service, the employee serving in the acting appointment may continue to serve in that capacity until the vacancy has been filled but in no case exceed the time limits prescribed in Rule 130. ()

133. -- 139. (RESERVED)

140. REDUCTION IN FORCE.

01. Conditions for Layoff. An appointing authority may lay off an employee whenever necessary due

to: shortage of funds or work; reorganization; the end of a limited service appointment; employee's failure to complete interagency promotional probation when demotion options are not available; or abolishment of one (1) or more positions (~~ref. Rule 066~~). (3-31-22)()

~~02. Layoff Decisions. Layoff decisions must not be based on race, color, national origin, gender, age, religion, disability, or political affiliation. Layoffs must be accomplished in a systematic manner with equity for the rights of classified employees and not do away with an employee's right to problem-solving, or appeal if the layoff is in fact a dismissal. (3-31-22)~~

~~03. Assessment for Adverse Impact. In planning and conducting a reduction in force, the appointing authority must consider the effect layoff units and positions to be abolished may have on the composition of the agency work force. If layoff units or exclusions are established, adverse impact of protected classes must be assessed. The appointing authority must administer the reduction in force consistent with state and federal laws, and rules and guidelines governing adverse impact. (3-31-22)~~

042. Layoff by Position. Reduction in force must be by classification of position. ()

a. Reduction in force may be limited to or specifically exclude employees appointed under selective certification (~~Ref. Rule 112~~) for bona fide occupational qualifications, or appointed to a classification with minimum qualification specialties. Inclusions or exclusions must include or exclude all incumbents of the classification appointed under similar selective certification, or the same option or minimum qualification specialty and must be approved in advance by the administrator. (3-31-22)()

b. An appointing authority may petition the administrator to exclude an individual from a reduction in force whose retention may be required to meet agency mission critical needs. Requests must provide a documented rationale with exclusions approved in advance by the administrator. ()

c. ~~Limited service appointments are defined by the project, program, or function for which the appointments were made.~~ When a limited service project is completed or funding concluded, the limited service appointee is separated from state service as a layoff. However, limited service appointees have no reemployment preference and will not displace other regular permanent or limited services staff via voluntary demotion in lieu of layoff. (3-31-22)()

053. Layoff Unit. Reduction in force must be agency-wide or by organizational unit designated for layoff purposes. Layoff units are geographic, programmatic, or other identified subdivisions of an agency designated for layoff purposes by the appointing authority. They must be approved by the administrator before the effective date of the layoff. Organizational layoff unit designations must be renewed with a change in appointing authority or administrator. ()

064. Reduction of Hours Worked. An involuntary reduction in the number of hours worked for a selected position constitutes a layoff unless there is an equal reduction of hours worked for all positions in the same classification in the agency or approved layoff unit for a limited period of time, such as a furlough. ()

075. Downward Reclass. A material change in duties of one (1) or more positions resulting in an employee's reclassification to a classification allocated to one (1) pay grade lower does not constitute a layoff (~~Ref. Rule 067~~). More than one (1) pay grade change downward is considered a layoff, unless the change of duties is disciplinary (~~Ref. Section 190~~). (3-31-22)()

141. CALCULATION OF RETENTION POINTS.

There will be an evaluation of all employees in the classification in the agency or organizational unit affected by the reduction in force based on a retention point system. Retention points are derived from experience as described in performance evaluations, classified credited state service, and veterans' preference as described in Rule 141.03. The appointing authority will determine a process for the impartial assessment of evaluations to assign points as follows:

Exemplary Performance	-	.100 points
Solid Sustained Performance	-	.075 points

Achieves Performance Standards	-	.050 points
Does Not Achieve Performance Standards	-	.0 points

()

01. No Performance Evaluation on File for a Twelve-Month Period. All credited state service for which there is no performance evaluation will receive seventy-five thousandths (.075) points per hour. ~~A supervisor's failure to document performance in a timely manner cannot be used to disadvantage an employee during retention point calculation.~~ (3-31-22)()

~~a. Completing annual evaluation. The evaluation may be written to cover the prior two thousand eighty (2,080) hours or extended to also cover the time frame up to the date of the evaluation.~~ (4-6-23)

~~b. Changes in prior periods not allowed. Once an evaluation has been signed by the supervisor, employee, manager, and other applicable reviewers, the document may not be changed, unless the change is a result of a problem solving dispute resolution.~~ (3-31-22)

02. Calculation of Retention Points Since Last Evaluation. The most recent performance evaluation should be used to pro-rate retention points when calculating credited state service since that evaluation, unless that evaluation occurred more than two thousand eighty (2,080) hours from the date of calculation. In such cases, points are calculated in conformance with Rule 141.01. ()

03. Veterans' Preference. Veterans as defined in Title 65, Chapter 2, Idaho Code, will receive preference by the addition of retention points equivalent to three (3) years of service at a level that achieves performance standards. (Ref. Section 65-501, Idaho Code) (3-31-22)()

04. Calculation Date Cutoff. No points will be calculated for the sixty (60) days prior to the effective date of the layoff. ()

05. Audit of Retention Points. Each employee is entitled to an audit of retention points by an independent auditor designated by the administrator in cases of dispute between the appointing authority and the employee. The request for audit must be filed with the appointing authority within five (5) calendar days of the employee's receipt of layoff notification. The decision of the independent auditor is binding on both parties unless an appeal is filed within thirty-five (35) calendar days from the date of the auditor's notification to the affected parties. ()

142. CREDITED STATE SERVICE.

Eligible credited state service for purposes of Rule 140 is defined as follows: ()

01. Service Prior to State Personnel System. All credited state service prior to the establishment of classified service, Title 67, Chapter 53, Idaho Code. (Ref. Sections 67-5332 and 59-1604, Idaho Code, for definitions of credited state service) (3-31-22)()

~~02. Classified Service. All classified credited state service since the establishment of classified service.~~ (3-31-22)

~~03. Nonclassified Service. All credited state service in a position exempt from classified service if that position is subsequently transferred to classified service pursuant to Rule 040.~~ (3-31-22)

143. REDUCTION IN FORCE DETERMINATION AND NOTIFICATION.

01. Identification of Classifications. The appointing authority will identify the classification of positions to be reduced or eliminated. ()

02. Calculation of Retention Points. Retention points will be calculated for all employees assigned to the classification of position including those serving in underfill positions. Retention points need not be calculated

where layoff involves a single-incumbent class. ()

03. Order of Reduction in Force. The order of reduction in force will be by type of appointment held by the employee in the affected classification as follows: first to be laid off are the entrance probationary appointees, and then the permanent appointees including those serving a voluntary probation. Employees will be placed on the layoff list beginning with the employee with the highest number of retention points. Employee layoffs will be made from the layoff list in inverse order. When two (2) or more employees have the same combined total of retention points, retention will be determined in the following sequence: ~~(Ref. Rule 150.02.e.)~~ (3-31-22)()

a. The employee with the highest total retention points for the past thirty-six (36) months. ()

b. Random selection. ()

04. Notification to Affected Employees. Each employee affected will be notified in writing of layoff and the rationale for the decision at least fifteen (15) calendar days prior to the effective date. Notification will include a copy of the agency layoff procedure and a copy of the computation of retention points when required ~~(Ref. Rule 143.02).~~ (3-31-22)()

05. Notification to Administrator. The appointing authority must give written notice of layoff to the administrator at least fifteen (15) calendar days prior to its effective date and must provide a list of persons affected by the layoff with their retention point calculations and must indicate which employees will be laid off. ()

144. PLACEMENT ON REGISTER WITH REEMPLOYMENT PREFERENCE.

A permanent employee laid off from their job or who chooses a voluntary demotion in lieu of a layoff, under these rules shall be placed on their classification's register with reemployment preference ~~in unranked order.~~ Such placement will be for one (1) year from the effective date of demotion or layoff, or until the employee or former employee declines a total of three (3) separate job offers without good cause, whichever comes first. ~~(Rule 104.01.n.)~~ An employee or former employee may request their name be removed at any time. (3-31-22)()

145. USE OF REGISTERS WITH REEMPLOYMENT PREFERENCE.

01. Priority for Reemployment by Agency that Conducted the Layoff. ()

a. The employee who has been laid off will be offered reemployment to a position in the classification from which laid off, before any person outside that agency may be promoted to, transferred to, reinstated or appointed to that classification by an appointing authority of that agency. ~~Appointing authorities may reassign or transfer individuals who are in the same classification within their agency but may not demote, promote, reclassify, or make acting appointments to that classification. If that agency determines a need to fill that classification, the employee who was laid off has first priority for that position. (Ref. Rules 125.04 and 125.08) Extenuating circumstances due to short term budget, workload, location, or other complexities may be used by the appointing authority to request a temporary waiver of this rule by the administrator.~~ (3-31-22)()

b. When attempting to fill vacancies for a classification where a lay off occurred, the agency will provide an opportunity to interview and will make their hiring selection from the individuals their agency laid off from the classification, including those separated from state service under Rule 241.02 and those that took a voluntary demotion in lieu of layoff. ()

c. Individuals being returned to the classification from which they were laid off will be reinstated with the same salary, permanent status and their sick leave balance restored. ~~If the pay minimum has increased, see Rule 072.03.~~ (3-31-22)()

02. Consideration for Hire by Other Agencies. For promotional opportunities, ~~internal agency candidates are normally considered before outside recruitment occurs, including other agencies' laid off candidates. However,~~ individuals who have been laid off must be offered the opportunity to interview ~~before other agencies consider candidates from statewide promotional or open competitive recruitments.~~ (3-31-22)()

03. Employment by Other Agency. Individuals may be reappointed or reinstated if eligible. The

salary of an employee re-hired after a layoff is negotiable between the employee and new appointing authority in the current pay grade for the classification in which the employee is appointed. ()

04. Return to Register. If an individual finds another agency's position unsatisfactory or does not satisfactorily complete a voluntary probation period, he may be placed back on a register for the remainder of their twelve (12) month time frame. Individuals appointed to a position, other than the classification from which laid off, will remain on preference register status for the remainder of the twelve-month (12) period if otherwise eligible. ()

146. (RESERVED)

147. VOLUNTARY DEMOTION IN LIEU OF LAYOFF.

Within their layoff unit, an employee with permanent status may choose to accept a voluntary demotion rather than be laid off. Demotion options are limited to a classification, ~~or if deleted, its successor,~~ in which the employee held permanent status in the agency. Such demotion will not be permitted if it causes the layoff of an employee with greater retention points. ~~(3-31-22)~~()

01. Eligibility. ()

a. Qualified. Employee must meet the classification's current minimum qualifications and any minimum qualification specialties. ()

b. Exclusion. Limited service appointees are not eligible to take any voluntary demotion that would result in the displacement of other employees. However, voluntary demotions to a vacant position are allowed with the approval of the appointing authority. ()

02. Acceptance. To accept a voluntary demotion rather than a layoff, the employee must notify the appointing authority in writing of their decision no later than three (3) working days after written notification of the layoff and opportunity to demote to a specific position. ()

148. -- 149. (RESERVED)

150. PROBATIONARY PERIODS.

01. Probationary Period Required. ~~Except as provided in Rule 040, e~~Every appointment and promotion to a classified position is probationary. ~~(3-31-22)~~()

02. Types of Probationary Periods. The probationary period serves as a working test period to provide the agency an opportunity to evaluate a probationary employee's work performance and suitability for the position. There are three (3) types of probationary periods: ()

a. Entrance probation is the probationary service required of an employee at the time of his original appointment or any subsequent appointment to state classified service excluding reinstatement and transfer, the duration of which is one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who must serve two thousand eighty (2,080) hours. ()

b. Promotional probation is the probationary service required when an employee is promoted, the duration of which is one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who must serve two thousand eighty (2,080) hours. ()

c. Voluntary probation is an agreement between employees and the appointing authority for ~~interagency~~ employment actions such as reinstatement, transfer, or voluntary demotion. ~~A voluntary probation is not to be used for employment actions within the agency.~~ The probationary period is negotiable but may not exceed one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who may serve up to two thousand eighty (2,080) hours. ~~(3-31-22)~~()

03. Extension of Probationary Period. Upon written request demonstrating good cause, the

administrator may extend the probationary period of an employee for an additional specified period not to exceed one thousand forty (1,040) hours of credited state service. Extension must occur before an employee has worked one thousand forty (1,040) hours or two thousand eighty (2,080) hours for peace officers. ~~(Ref. Section 67-5309(j), Idaho Code)~~ (3-31-22)()

04. Interruption of Probationary Period. The probationary period in any classification must be completed within a single agency uninterrupted by termination ~~(Ref. Rule 152.02)~~ or dismissal ~~(Ref. Rule 190)~~. An employee who separated during the probationary period must begin a new probationary period upon reappointment or promotion. (3-31-22)()

05. Temporary Service Credit. At the request of the hiring agency, the administrator will allow temporary service time in a given classification to be used toward fulfilling the entrance probationary requirement in that classification as established in Section 67-5309(j), Idaho Code. The temporary duties must be substantially the same as the regular permanent appointment. ~~(Ref. Section 67-5309(y), Idaho Code, and Rules 122 and 150.01)~~ (4-6-23)()

06. Acting Service Credit. At the request of the hiring agency, the administrator will allow acting appointment service time in a given classification to be used toward fulfilling the promotional probationary requirement in that classification as established in Section 67-5309(j), Idaho Code. The acting appointment duties must be substantially the same as the regular permanent appointment. ~~(Ref. Section 67-5309(y), Idaho Code, and Rules 129 and 150.01)~~ (3-31-22)()

151. SATISFACTORY SERVICE.

When a probationary employee has satisfactorily served the probationary period hours, the employee will become permanent status. ~~The appointing authority shall no later than thirty (30) calendar days after the expiration of the probationary period provide the employee and the Division a performance evaluation.~~ Certification to permanent status is effective one thousand forty (1,040) hours of credited state service after appointment, except that it is effective two thousand eighty (2,080) hours of credited state service after appointment for peace officer classifications unless either period has been extended pursuant to Rule 150.03. ~~(Ref. Section 67-5309(j), Idaho Code, and Rule 210.04)~~ (3-31-22)()

152. SEPARATION DURING PROBATION.

01. Notification. If a probationary employee does not serve satisfactorily, the appointing authority must provide the employee and the Division a performance evaluation indicating unsatisfactory performance ~~in order to process the failure to complete probation separation within thirty (30) days after the expiration of the probationary period.~~ ~~(Ref. Section 67-5309(j), Idaho Code, and Rule 210.04).~~ (3-31-22)()

02. During Entrance and Voluntary Probation. ()

a. An employee who does not serve satisfactorily during the entrance or voluntary probation must first be given the opportunity in writing to resign without prejudice; an employee who fails to resign may be terminated without cause assigned and without the right to file for problem-solving or an appeal. ~~(Ref. Section 67-5309(j), Idaho Code, and Rule 210.04)~~ (3-31-22)()

b. Notice to the employee of termination for unsatisfactory service must be made at least fifteen (15) calendar days prior to the effective date of termination, unless there are extenuating circumstances. ()

153. UNSATISFACTORY PERFORMANCE DURING A PROMOTION PROBATION PERIOD.

01. Disciplinary Action. Regardless of the probation status, when a Rule 190 violation supports demotion, suspension, or dismissal, such action may occur. ()

02. During Promotional Probation. If an employee on promotional probation does not meet performance expectations: ()

a. The employee may voluntarily demote to a vacant position in any classification he or she has held

permanent status in state career service. However, the employee must meet the current minimum requirements for that classification. If more than one (1) option exists for demotion, the employee should be placed in the higher paid position, but the specific assignment is up to the appointing authority. ()

b. If no position is available for the voluntary demotion option, the employee may be laid off ~~(Ref. Rules 145 and 147)~~ and may request their name be placed on a register for the classification where they last held permanent status. ~~(4-6-23)()~~

c. When reinstatement occurs in the classification they promoted from, the employee's name is removed from reemployment required preference status. ()

154. FAILURE TO PROVIDE PERFORMANCE EVALUATION.

If the appointing authority fails to provide a performance evaluation ~~as required in Rule 151~~, the employee shall be considered to have satisfactorily completed the probationary period and be certified to permanent status as provided ~~by Rule 151~~, unless the probationary period has been extended by the administrator. ~~(Ref. Rule 150.03)~~
~~(3-31-22)()~~

155. -- 158. (RESERVED)

159. STATUS AND TENURE.

01. Probationary Promotions. Employees serving a promotional probationary period have continued permanent status in the classification from which promoted until they are certified as having satisfactorily completed the promotional probationary period in the classification to which promoted. ~~(Ref. Rules 151, 152, and 153)~~
~~(3-31-22)()~~

~~**02. Tenure of Employment.** All employment in the state classified service is without definite term except where the term may be specified by law, or under conditions of a limited service appointment. (Ref. Rule 120)~~
~~(3-31-22)~~

160. -- 168. (RESERVED)

169. PROMOTIONS.

~~**01. Use of Promotional Registers.** (3-31-22)~~

~~**a. Preference for Promotion.** Whenever practical, a vacancy in a classified position must be filled by the promotion of an employee in the agency in which the vacancy occurs. (Ref. Section 67-5309(g), Idaho Code)~~
~~(3-31-22)~~

~~**b. Exception.** An appointing authority may request that a position be filled from a statewide promotional register (Ref. Rule 101.03) or an open competitive register (Ref. Rule 101.04) whenever he determines that such an appointment will best serve the interests of the agency. (3-31-22)~~

~~**e. Agency Registers with Reemployment Preference Status.** Promotions to a classification are not permissible as long as there is an agency register with reemployment preference status (Ref. Rule 101.01) for the classification with names of eligible candidates who are willing to accept reemployment. (3-31-22)~~

021. Interagency Promotions. All interagency promotions must be made using statewide promotional registers (Ref. Rule 101.03) ()

032. Eligibility for Promotion. Promotional appointees must have permanent status (Ref. Rule 159) and meet the minimum qualifications of the promotional classification. ()

043. Promotion, In-Grade. To reflect unique agency organization design, an agency may choose to request an internal competitive process to recognize the advancement of an employee with permanent status from a position occupied in one classification to a position in another classification having greater points or a unique

specialty area, but within the same pay grade. With the approval of the administrator, an in-grade promotion will be treated in all regards as a promotion. ()

170. -- 178. (RESERVED)

179. DEMOTIONS.

Demotions are reductions of an employee from a position which the employee occupies in one classification to a position in another classification in a lower pay grade. Demotions authorized under these rules apply to both probationary and permanent status employees who meet the minimum qualifications of the classification to which demoted. ()

180. (RESERVED)

~~**181. NONDISCIPLINARY DEMOTION OPTIONAL.**~~

~~An appointing authority may allow a voluntary demotion when requested or accepted by an employee and approved by the appointing authority. (3-31-22)~~

~~**182. DISCIPLINARY DEMOTION.**~~

~~An appointing authority may make a disciplinary demotion for causes enumerated in Rule 190 that are not sufficiently severe to warrant dismissal. (3-31-22)~~

~~**183**~~**1. -- 189. (RESERVED)**

190. DISCIPLINARY ACTIONS.

01. Cause for Disciplinary Actions or Separation From State Service. Dismissal, suspension, demotion, or the reduction in pay, of a classified employee, may occur for any of the following causes during the employee's employment: ()

a. Failure to perform the duties and carry out the obligations imposed by the state constitution, state statutes, or rules of the agency or the Division and Idaho Personnel Commission. ()

b. Inefficiency, incompetency, or negligence in performing duties, or job performance that fails to meet established performance standards. ()

c. Physical or mental incapability for performing assigned duties, if a reasonable accommodation cannot be made for the disabling condition. ()

d. Refusal to accept a reasonable and proper assignment from an authorized supervisor. ()

e. Insubordination or conduct unbecoming a state employee or conduct detrimental to good order and discipline in the agency. ()

f. Intoxication or being under the influence of alcohol, or the misuse of medications or controlled substances, while on duty. ()

g. Careless, negligent, or improper use or unlawful conversion of state property, equipment, or funds. ()

h. Use of any influence which violates the principles of the merit system in an attempt to secure a promotion or privileges for individual advantage. ()

i. Conviction of official misconduct in office, or conviction of any felony, or conviction of any other crime involving moral turpitude. ()

j. Acceptance of gifts in exchange for influence or favors given in the employee's official capacity. ()

- k. Habitual pattern of failure to report for duty at the assigned time and place. ()
- l. Habitual improper use of sick leave. ()
- m. Unauthorized disclosure of confidential information from official records. ()
- n. ~~Unapproved~~ ~~A~~ absence without leave. (3-31-22)()
- o. Misstatement or deception in application for employment. ()
- p. Failure to obtain or maintain a current license or certificate lawfully required as a condition in performance of duties. ()
- q. Prohibited participation in political activities. ~~(Ref. Section 67-5311, Idaho Code)~~ (3-31-22)()

02. Suspension for Investigation. An appointing authority may place an employee on administrative leave for investigation of disciplinary causes enumerated in Rule 190.01. Each suspension for investigation will be superseded by reinstatement to duty, dismissal, disciplinary demotion, or suspension within thirty (30) calendar days of the suspension for investigation or within an extension of an additional thirty (30) calendar days approved by the administrator. Further extensions may be granted with the approval of the Administrator. ()

03. Disciplinary Suspension. An appointing authority may suspend without pay an employee for discipline for causes enumerated above. Disciplinary suspension of an employee with permanent status is subject to appeal by the employee to the Commission. ()

04. Suspension on Felony Charges. An appointing authority may suspend without pay an employee upon the issuance of a complaint, an information or indictment for felony charges. Such suspensions may remain in effect during the time such charges are pending. Full reinstatement of all benefits and salary that the employee would have otherwise been entitled must be provided by the appointing authority to the employee upon a subsequent finding that charges or information were without grounds or the employee was not found guilty. For the purpose of this rule, a judgment withheld under Rule 33(d) of the Idaho Rules of Criminal Procedure is a conviction. ()

05. Notice to Administrator. Whenever an appointing authority considers it necessary to take disciplinary action against an employee, he must notify the employee and the administrator concurrently in writing; and set forth the specific rules violated and the reasons for the action. Suspensions with pay for investigation ~~(Ref. Rule 190.02)~~ may be made without prior notice to the employee; in this case, the appointing authority must notify the administrator as soon as practical. (3-31-22)()

191. -- 199. (RESERVED)

200. PROBLEM-SOLVING AND DUE PROCESS PROCEDURES.

01. Overview of Procedures. ()

a. The due process procedure deals with the disciplinary matters set forth in Section 67-5315(2), Idaho Code, dismissals, suspensions without pay, and demotions, and with all involuntary transfers. The due process procedure generally requires the employee receive notice and an opportunity to respond before a disciplinary decision or involuntary transfer is made by the agency. Decisions regarding disciplinary dismissals, suspensions without pay, and demotions may be appealed in accordance with Rule 201. ()

b. The problem-solving procedure deals with all matters not specifically reserved for the due process procedure. Problem solving decisions may not be appealed to the Commission except as authorized by Section 67-5316, Idaho Code. ()

02. Establishment of Agency Problem-Solving and Due Process Procedures. Each participating agency must maintain written employee problem-solving and due process procedures, which have been approved by

the administrator for conformity to law and Rule 200. ()

03. Eligibility and Time for Filing Under Problem-Solving Procedure. Any classified employee with permanent, or entrance probationary status may file under the problem-solving procedure as defined by Section 67-5315(1), Idaho Code. An employee must file under the problem-solving procedure in writing not later than ten (10) working days after being notified or becoming aware of a nondisciplinary matter which may be handled through the problem-solving procedure; however, if the filing alleges an ongoing pattern of harassment or illegal discrimination, the agency is strongly encouraged to waive any time limits. The time limit for filing will be extended due to the employee's illness or other approved leave, up to ten (10) days after return to the job. The agency may accept a filing that is or appears to be filed late. Agency policies may provide for waiver of time elements or any intermediate step of the problem-solving procedure upon mutual agreement of the employee and appointing authority. ()

04. Elements of the Problem-Solving Procedure. The procedure must contain a statement from the agency head encouraging employees to use the procedure for any nondisciplinary, job-related matters, and encouraging the employee, supervisors, and upper-level managers and administrators to resolve the matter at the lowest management level possible within the organization. The statement must also provide a means whereby agency representatives can obtain timely authority, if needed, to resolve the matter. The procedure must require the employee to make a reasonable attempt to discuss the issue with the immediate supervisor before filing. After a written filing is received, the procedure must provide for such additional levels of management within the employee's chain of command as are appropriate in the agency. The procedure must also provide for the use of an impartial mediator upon agreement by the employee and agency. Timelines must not exceed five (5) working days between each step unless both the employee and the agency agree, in writing, to a specific number of days to extend the timelines herein, not to exceed thirty (30) days between each step. The procedure must also inform the employee that he is entitled to be represented by a person of the employee's own choosing at each step of the procedure, except the initial informal discussion with the immediate supervisor. Two (2) or more employees may join in a single filing under the problem-solving procedure. Retaliation for filing under the problem-solving procedure, for participating as a witness, or representative is expressly prohibited. This procedure does not apply to unsatisfactory performance during entrance probation (~~Ref. Sections 67-5309(j), 67-5315(1)(4), Idaho Code, and Rule 152.~~ (3-31-22)())

05. Filings Alleging Sexual Harassment or Other Illegal Discrimination. Each agency's problem-solving procedure must provide an optional alternative procedure for an employee to file allegations of sexual harassment or discrimination based on race, color, sex, national origin, religion, age, or disability. The procedure must expressly prohibit sexual harassment and discrimination. Employees must be informed of their right to file complaints with the Idaho Human Rights Commission. The alternative procedure must designate a specific person or persons to receive and investigate such filings, and require that the investigation and resolution of them be conducted with maximum regard for confidentiality. ()

06. Elements of Due Process Procedure. An agency must provide notice and an opportunity to respond before making a decision to impose any disciplinary sanction or involuntary transfer, as set forth in Section 67-5315(2), Idaho Code. With respect to notice, an agency must provide notice of the contemplated action, the basis or reason for the contemplated action, and an explanation of the evidence supporting the contemplated action. The notice must be provided to the employee and administrator concurrently. With respect to the opportunity to respond, the employee must be given the opportunity to respond to the notice and present reasons why the contemplated action should not be taken. The opportunity to respond must not occur later than five (5) working days after the employee has received notice, unless an extension is approved by the appointing authority in writing. After the employee has responded, or after the period to respond has expired or has been waived in writing by the employee, whichever occurs first, the appointing authority, or designee, must make and implement the agency's decision not later than five (5) working days thereafter, excluding days the appointing authority, or designee, is out of the office, or for other extenuating circumstances. The extension will be communicated to the employee in writing. The procedure must inform the employee of his right to be represented by a person of the employee's own choosing during the opportunity to respond. The procedure must also provide for the use of an impartial mediator upon agreement by the employee and agency. The procedure does not apply to unsatisfactory performance during entrance and promotional probation (~~Ref. Sections 67-5309(j), 67-5315(2), Idaho Code, and Rules 150 through 153.~~ (4-6-23)())

07. Notification. A copy of the approved problem-solving and due process procedures must be furnished and explained to each employee with permanent, or entrance probationary status in the agency concerned. ()

201. APPEAL PROCEDURE.

01. Idaho Rules of Administrative Procedure of the Attorney General. In addition to the following rules on appeals and petitions for review, the “Idaho Rules of Administrative Procedure of the Attorney General” on contested cases, IDAPA 04.11.01.000 et seq., apply with the following exceptions, which are inconsistent with the Commission’s statute or practice: IDAPA 04.11.01.055, 202, 240, 250, 270.01, 280, 300, 302, 651, 720, 730, 740, 790, 791, 821.02, and 860. Petitions for rulemaking and declaratory rulings are addressed in Rules 270 and 271. ()

02. Filing of Appeal and Appearances. Every appeal filed with the Commission must be written and state the decision that is being appealed and the action requested of the Commission. The Commission must serve a copy of the appeal on the respondent and upon the legal counsel for the Commission. Notices of appearance and notices of substitution of counsel need not be filed by deputy attorneys general or members of law firms already representing a party in an appeal or petition for review. ()

03. Time for Appeal. An appeal from a decision of an appointing authority is deemed to be timely filed if received at the office of the Commission within thirty-five (35) calendar days after completion of the agency due process procedure. Personal delivery or deposit in the United States mail, postage prepaid, of a written notification to the affected employee of the appointing authority’s decision constitutes completion of the agency due process procedure. An appeal of a decision or action of the administrator or staff must be filed at the office of the Commission within thirty-five (35) calendar days of personal delivery of notice of the decision or action, deposit of the notice in the United States mail, postage prepaid, or deposit of the notice in Statehouse mail. ()

04. Non-Jurisdictional Appeals. Appeals which are non-jurisdictional may be dismissed without motion by the hearing officer, the chair of the Commission, or his designee. If a hearing officer orders such a dismissal, the dismissal may be appealed to the Commission as a petition for review pursuant to Rule 202.01. If the chair of the Commission orders such a dismissal, it constitutes the final order of the Commission and may be appealed pursuant to Sections 67-5317(3) and 67-5318, Idaho Code. ()

05. Setting of Hearing. Within fifteen (15) days after receiving the appeal from the Commission, the hearing officer must consult with the parties to set a mutually agreeable date for hearing. The hearing officer may thereafter postpone or continue the hearing for good cause. ()

06. Filing of Documents. Once an appeal is referred to the hearing officer, all documents relating thereto must be filed directly with the hearing officer during the pendency of the appeal with copies provided simultaneously to opposing counsel and unrepresented parties. ()

07. Burden of Proof. In disciplinary actions, the appointing authority has the burden of proving cause for the discipline by a preponderance of the evidence. In all other actions, the appellant has the burden of proof by a preponderance of the evidence. ()

08. Open Hearing. Every hearing is public, unless the hearing officer closes the hearing for good cause. Individual parties may represent themselves (pro se) or be represented by an attorney. ()

09. Protective Orders. The hearing officer may issue protective orders limiting access to information obtained in the course of a hearing. ()

10. Decision of Hearing Officer. The hearing officer must issue a decision in the form of a preliminary order explaining the right to file a petition for review under Section 67-5317, Idaho Code. The preliminary order, consisting of such findings of fact, conclusions of law and orders as are necessary, together with the record of the proceedings must be filed at the office of the Commission with a copy sent or delivered to the parties. A motion for reconsideration under Section 67-5243, Idaho Code, is not permitted. ()

11. Procedure for Award of Attorney Fees and Costs. As part of his preliminary order, the hearing officer must make findings as to the entitlement to attorney fees and costs, if any, pursuant to Section 12-117, Idaho Code. If the hearing officer finds a prevailing party is entitled to statutory attorney fees and costs, the prevailing party must file a memorandum of costs, including a supporting affidavit stating the basis and method of computation of the amount claimed. The memorandum must be filed with the hearing officer not later than ten (10) working days after receipt of the hearing officer's decision or no attorney fees and costs may be awarded. Objections to the award of attorney fees and costs must be filed not later than ten (10) working days after receipt of the memorandum of costs and supporting affidavit. The hearing officer must conduct a hearing on the award of attorney fees and costs within ten (10) days of receiving any objections to the award. If no objections are timely filed with the hearing officer, or if the parties stipulate to have the matter decided on the briefs, no hearing is required. The hearing officer determines the amount of the award and must make written findings as to the basis and reasons for the award within ten (10) days after the hearing on the award of attorney fees and costs. If no hearing is required, the hearing officer must issue his decision on the award of attorney fees and costs no later than thirty (30) days after receipt of the prevailing party's memorandum of costs and supporting affidavit. ()

12. Factors Considered in Award of Attorney Fees and Costs. The following factors are considered in the determination of an award of attorney fees and costs: the time and labor required; ()

- b.** The experience and ability of the attorney; ()
- c.** The prevailing charges for like work; ()
- d.** The amount involved and the results obtained; ()
- e.** Awards in similar cases; and ()
- f.** Any other factor that appears pertinent to the award. ()

202. PETITION FOR REVIEW PROCEDURE.

01. Filing of Petition for Review. A petition for review shall be filed at the office of the Commission within thirty-five (35) days of the hearing officer's decision issued pursuant to Rule 201.10. The petition shall be in writing and specifically cite the alleged errors of fact or law made by the hearing officer. ()

02. Stay of Hearing Officer's Decision. Upon the filing of the petition for review, the jurisdiction of the hearing officer in the matter is ended except for resolving post-hearing motions and awarding attorney fees and costs. The hearing officer's decision and any orders entered pursuant to Rules 201.10 and 201.11 will be automatically stayed. ()

03. Nature of Hearing. The hearing of the Commission on a petition for review will be limited to oral arguments regarding issues of law and fact as may be found in the record established before the hearing officer and any post-hearing orders. Written arguments or briefs and motions regarding the petition for review will be allowed under such terms as the Commission may direct in its notice of hearing, which will be issued at least twenty-eight (28) days prior to the date set for hearing. ()

04. Transcript. If the petition for review involves questions of fact, the appellant shall provide a full transcript of the proceedings before the hearing officer for the Commission to review. The respondent may pay for an additional copy of the transcript for respondent's own use. ()

05. Requests for Postponement and Other Motions. ()

a. Except in emergencies, a request for postponement shall be filed in writing by a party or representative not later than seven (7) days before the scheduled hearing. The Chair of the Commission, or his or her designee, may determine whether good cause is shown for the postponement and grant or deny the request on behalf of the Commission. ()

b. Motions to dismiss for lack of jurisdiction shall be decided by the Commission. All other motions

shall be considered by the Chair of the Commission or at the Chair's discretion may be referred to one (1) Commissioner, whose decision on the motion may be communicated to the parties by letter or other informal means, by the Chair or by counsel to the Commission. ()

06. Decision on Petition for Review. The decision of the Commission shall include a statement of appeal rights under Section 67-5318, Idaho Code. Motion for reconsideration of Commission decisions pursuant to Section 67-5246, Idaho Code are not permitted. The Commission shall file the original copy of its decision with the record of the proceedings and mail copies to the parties promptly. ()

07. Record of the Proceedings. A verbatim record of the proceedings at hearings before the Commission shall be maintained either by electrical devices or by stenographic means, as the Commission may direct, but if any party to the action requests a stenographic record of the proceedings, the record shall be done stenographically. The requesting party shall pay the costs of reporting the proceedings. ()

08. Attorney Fees and Costs in a Petition for Review. In its decision on petition for review, the Commission shall make findings as to the entitlement to attorney fees and costs, if any, pursuant to Section 12-117, Idaho Code. If the Commission finds the prevailing party, if any, is entitled to attorney fees and costs, the prevailing party shall file a request for attorney fees and costs, with accompanying memorandum and affidavit in support of the request described in Rule 201.11, with the Commission not later than ten (10) working days after receipt of the Commission's decision. Objections to the award of attorney fees and costs shall be filed not later than ten (10) working days after receipt of the request for attorney fees and costs. The Commission shall determine the amount of the award, if any, taking into account the factors defined in Rule 201.12. ()

09. Protective Orders. The Commission may issue protective orders limiting access to information in the record. ()

~~**203. REFERRALS FROM FEDERAL AGENCIES ON DISCRIMINATION COMPLAINTS.** When the Division receives a complaint from a federal agency alleging violation of employment laws, the administrator must take prompt action to investigate. If the complaint is agency specific, the appointing authority will take necessary actions to ensure the investigation is thorough, staff are fully cooperative, and submit findings and any corrective action plan to the administrator and other proper authorities. (3-31-22)~~

~~**204.3 -- 209. (RESERVED)**~~

210. PERFORMANCE EVALUATIONS.

~~**01. Performance Evaluations.** Each agency shall use the statewide online performance evaluation system; however, another system may be used, provided it meets the basic objectives of the state's online performance evaluation system as approved in advance by the administrator. Agency records and supporting documentation are subject to review by the Division and the employee's overall performance rating must be transmitted to the administrator. (3-31-22)()~~

~~**02. Approval of Form.** The Division will make available a standard format for purpose of the statewide online performance evaluation system. An appointing authority may utilize another form provided it meets the basic performance criteria and ratings and is approved in advance by the administrator. (3-31-22)~~

~~**03. Purpose.** The purpose of performance evaluation is to provide an objective evaluation by the immediate supervisor of an employee's performance in comparison with established expectations for the position; and to identify an employee's strengths and weaknesses and where improvement is necessary. All performance evaluations must be discussed with affected employee who will be allowed opportunity to submit written comments regarding the evaluation contents. (3-31-22)~~

~~**04.2. Use of Evaluations.** Performance evaluations should be used in connection with promotions, transfers, demotions, retentions, separations, and reassignments (Ref. Section 67-5309(h), Idaho Code); and used as the affirmative certification for merit increases, bonuses, and salary equity increases (Ref. Section 67-5309B, Idaho Code); and for certifying a probationary employee to permanent status (Ref. Rule 151). Other uses of performance evaluations are optional with the appointing authority. (3-31-22)()~~

~~053.~~ **Evaluation Schedule.** All classified employees must be evaluated for their performance during probationary periods for appointments and promotions and for every two thousand eighty (2,080) hours of credited state service thereafter (generally, an annual basis). ~~(Ref. Sections 67-5309(h) and (j), 67-5309B(6), Idaho Code.)~~ Part-time employees must be evaluated on an annual basis. (3-31-22)()

~~06.~~ **Retention of Evaluation.** A copy of the performance evaluation must be retained in agency records with a copy furnished to the employee. (3-31-22)

~~07.~~ **Supervisors' Requirements.** Supervisors are required to manage performance on a consistent basis including completion of performance evaluations on all employees under their direct supervision. (Ref. Section 67-5309B(6), Idaho Code) (3-31-22)

211. -- 219. (RESERVED)

~~220.~~ **RECORDS.**

~~01.~~ **Employee Service Records.** (3-31-22)

~~a.~~ For each employee in classified service, the Division maintains an electronic service record which must include all personnel transactions pertinent to the employee's employment history. (Ref. Section 67-5309(o), Idaho Code) (3-31-22)

~~b.~~ Any employee may at all reasonable times during business hours review his service record maintained in the Division or maintained in any agency. Except for material used to screen and test for employment, all information maintained in an employee's service record must be made available to the employee or designated representative upon request. File contents may be corrected if found in error according to the procedure contained in Title 74, Chapter 1, Idaho Code. (3-31-22)

~~02.~~ **Administrative Records.** The administrator must permanently maintain a record of the proceedings of the Commission and a record of all hearings of appeals. (3-31-22)

~~03.~~ **Employee Personnel Action Documents.** The appointing authority must furnish each employee with notice of every personnel action affecting the employee's status, pay, tenure, or other terms and conditions of employment, including a copy of their performance evaluations. (3-31-22)

~~04.~~ **Transfers, Reemployment and Promotions Between Agencies.** (3-31-22)

~~a.~~ When an employee seeks a transfer, reemployment, or promotion between agencies, the appointing authority of the hiring agency, or designee, is entitled to examine the employee's service record and performance information before the hiring decision is made. (Ref. Section 67-5309(o), Idaho Code) (3-31-22)

~~b.~~ All performance evaluation documents must be provided by the former agency and forwarded to the new agency when an interagency promotion, demotion, or transfer occurs. (3-31-22)

~~221. — 229.~~ (RESERVED)

~~230.~~ **VACATION LEAVE.**

~~01.~~ **Eligibility.** All classified employees, regardless of status or whether full-time or part-time, earn vacation leave and are eligible to take and be paid for unused vacation leave in accordance with Sections 67-5334, Idaho Code. (3-31-22)

~~02.~~ **Rate of Accrual.** All credited state service (ref. Sections 67-5332 and 59-1604, Idaho Code, for definitions) are counted in determining leave accrual rate. (3-31-22)

~~03.~~ **Mutual Agreement.** Vacation leave requested by the employee may be used only when approved

by the agency. The employee and the agency must mutually agree upon such time or times when vacation leave least interferes with the efficient operation of the agency taking into consideration the vacation preference of the employee. (3-31-22)

~~04. **Interagency Transfer.** An employee who is transferred from one state agency to another agency will be credited with accrued vacation leave by the receiving agency at the time of transfer. (3-31-22)~~

~~231~~**20. -- 239. (RESERVED)**

~~240. **SICK LEAVE:**~~

~~01. **Eligibility.** Sick leave is earned in accordance with Section 67-5333, Idaho Code. (3-31-22)~~

~~02. **Interagency Transfer.** An employee who is transferred from one state agency to another will be credited by the receiving agency with the amount of sick leave accrued at the time of transfer. (3-31-22)~~

~~03. **Reasons for Use.** Sick leave must only be used in cases of actual illness or disability or other medical and health reasons necessitating the employee's absence from work, or in situations where the employee's personal attendance is required or desired because of serious illness, disability, or death and funeral in the family. For purposes of this rule, family means a spouse, child, foster child, parent, brother, sister, grandparent, grandchild, or the same relation by marriage, or legal guardian. (3-31-22)~~

~~04. **Serious Medical Conditions.** Sick leave may be used in conjunction with Family and Medical Leave. (Ref. Rule 242) (3-31-22)~~

~~05. **Notification.** It is the responsibility of the employee to notify his supervisor as soon as possible in the event of sickness or injury which prevents the employee from reporting for duty. (3-31-22)~~

~~06. **Donated Leave.** Vacation and sick leave may be transferred to another employee for the purposes of sick leave in accordance with Section 67-5334, Idaho Code. Such transfers are to be made from employee to employee. Vacation and sick leave is retained by the donating party until it is converted to sick leave in the receiving employee's account. (3-31-22)~~

~~07. **Sick Leave Abuse.** A predictable and reliable level of attendance is an essential function of almost all positions. Consistent with the provisions of the Americans with Disabilities Act and the Family Medical Leave Act, a supervisor may investigate suspected sick leave abuse including a pattern of unscheduled absences which have a negative impact on the requirements of the job and take appropriate action. When an employee is absent due to illness or injury in excess of three (3) days, a doctor's certificate of justifiable cause for the absence may be required of the employee at the discretion of the immediate supervisor. A doctor's certification of illness or injury may be required of an employee for periods of less than three (3) consecutive working days whenever the immediate supervisor or manager believes special investigation of the absence should be made. (Ref. Rule 190 and Section 67-5333, Idaho Code) (3-31-22)~~

~~241~~**0. WORKERS' COMPENSATION OR DISABILITY.**

~~01. **Use of Leave in a Workers' Compensation Claim.** In the event of a disability incurred on the job covered by workers' compensation, the employee will be given the choice of either: (3-31-22)~~

~~a. Leave of absence without pay while receiving workers' compensation; or (3-31-22)~~

~~b. Utilizing a portion of accrued sick or other paid leave to supplement workers' compensation to maintain his regular salary; however, no appointing authority may require an employee to accept sick leave, vacation leave, or compensatory time off for overtime in lieu of workers' compensation provided by law. Additionally, an employee may not waive his rights to workers' compensation and cannot accept earned leave or other benefits in lieu thereof. (3-31-22)~~

~~02~~**1. Layoff After Twelve Weeks Disability.** If the employee becomes disabled, whether or not due to a

workers' compensation injury, and is unable to fully return to work after twelve (12) weeks' absence during any consecutive fifty-two (52) week period ~~or when accrued sick leave has been exhausted, whichever is longer~~, the employee's position may be declared vacant unless otherwise prohibited by state or federal law. The twelve (12) weeks' period of absence need not occur consecutively. The employee's name is certified to a reemployment preference register when the administrator has been notified by the physician that the employee is able to return to work. ~~(Ref. Rule 101.01)~~ Conditional releases will be considered in accordance with the Americans with Disabilities Act. (3-31-22)()

~~242. FAMILY AND MEDICAL LEAVE.~~

~~01. **Applicability.** The provisions of the federal Family and Medical Leave Act (FMLA) apply without regard to the exclusion for worksites employing less than fifty (50) employees in a seventy five (75) mile area, and without the limitation on reinstatement of the highest paid employees. (Ref. 29 U.S.C. 2601 et seq.). The State is one (1) employer for the purposes of FMLA. For consistency, the administrator shall publish statewide guidance on FMLA policies. (3-31-22)~~

~~02. **Return to Work Release.** An appointing authority may request a return to work release if, due to the nature of the health condition and the job: (3-31-22)~~

~~a. Light or limited duty work or other accommodation is requested; or (3-31-22)~~

~~b. The agency, having a reasonable basis in fact to do so, requires assurance that returning to work would not create a significant risk of substantial harm to the employee or others. (3-31-22)~~

~~243. MATERNITY AND PATERNITY LEAVE.~~

~~01. **Use Of Sick Leave.** Pregnancy, childbirth or related medical conditions generally are considered temporary disabilities and are treated as such for sick leave purposes. Maternity and paternity leave are granted under the same conditions and requirements as other compensable and non-compensable leave under these rules, including the Family and Medical Leave Act. (4-6-23)~~

~~02. **Determination of Disability Period.** The employee's physician is considered the primary authority in determining the disability period insofar as compensable sick leave is concerned. (3-31-22)~~

~~03. **Additional Time Off.** Maternity and paternity leave preceding and following the time that the person is disabled is leave without pay unless the employee elects to use accrued vacation leave or compensatory time off for overtime. (3-31-22)~~

~~04. **Discrimination Prohibited.** Pregnancy discrimination is prohibited. The employee may continue to work as long as she is physically capable of performing the duties of her position and may return to work as soon as she is physically able as determined by her physician. (3-31-22)~~

~~05. **Adoption and Foster Care.** Leave will be granted for adoption and foster care as set forth in the Family and Medical Leave Act. (Ref. Rule 242) (3-31-22)~~

244.1. SEPARATION UPON FAILURE TO RETURN TO WORK.

Except for those employees on authorized leave or placed on a register with reemployment preference prescribed by Rule 241.02.a., an employee who has not returned to work within five (5) working days after approved paid or unpaid leave or release by his or her physician shall be considered as having voluntarily separated. Such separation shall be treated as a voluntary resignation, and the employee shall remain eligible for reinstatement ~~as provided under Rule 124~~. Written notification of his or her separation/resignation shall be mailed to the last known home address. Any objections by the employee to the notice, must be received within five (5) working days of receipt of the notice, or acceptance of the separation/resignation will be presumed. If objections are received within the timeline, a disciplinary separation (dismissal) or other formal disciplinary action may be pursued as provided in Rule 190. (3-31-22)()

245.2. -- 249. (RESERVED)

250. SPECIAL LEAVES.

~~01. Leave of Absence Without Pay. (3-31-22)~~

~~a. Approval. In addition to workers' compensation, family medical leave, disability, or other statewide leave policies, the appointing authority may grant an employee leave without pay for a specified length of time when such leave would not have an adverse effect upon the agency. The request for leave must be in writing and establish reasonable justification for approval. (3-31-22)~~

~~b. Reemployment. The appointing authority approving the leave of absence assumes full responsibility for returning the employee to the same position or to another position in a classification allocated to the same pay grade for which the employee meets minimum qualifications. (3-31-22)~~

~~c. Exhaustion of Accrued Leave. Unless prohibited by workers' compensation, family medical leave, disability, or other statewide leave policies, the appointing authority has discretion on whether the employee is required to exhaust accrued vacation leave or compensatory time off for overtime before commencing leave without pay. (Ref. Rule 240) (3-31-22)~~

~~d. Resignation. If vacation leave and compensatory time off for overtime are not exhausted and the employee resigns from state service while on leave, he will be paid for such accruals in accordance with Sections 67-5334 and 67-5328, Idaho Code. (3-31-22)~~

~~02. Leave Defaults. When an employee does not have accrued sick leave to cover an entire absence the following leave types will be used to the extent necessary to avoid leave without pay: accrued compensatory time and vacation. If abuse of sick leave is suspected see Rule 240.07. (3-31-22)~~

~~03. Military Leave With Pay. Employees who are members of the National Guard or reservists in the armed forces of the United States engaged in military duty ordered or authorized under the provisions of law, are entitled each calendar year to one hundred twenty (120) hours of military leave of absence from their respective duties without loss of pay, credited state service or evaluation of performance. Such leave is separate from vacation, sick leave, holiday, or compensatory time off for overtime. (Ref. Section 46-216, Idaho Code). (3-31-22)~~

~~04. Military Leave Without Pay. An employee whose employment is reasonably expected to continue indefinitely, and who leaves his position either voluntarily or involuntarily in order to perform active military duty, has reemployment rights as defined in Rule 124.05. The employee will either be separated from state service or placed in "inactive" status, at the option of the appointing authority. (3-31-22)~~

~~05. Leave of Absence With Pay. A period of absence from duty with the approval of the appointing authority, or as required or allowed by law or these rules, during which time the employee is compensated. Leaves of absence with pay have no adverse effect on the status of the employee and include the following: vacation leave; sick leave; special leave situations; compensatory time off for overtime worked; and administrative leave. (3-31-22)~~

~~06. Court and Jury Services and Problem Solving and Due Process Leave. (3-31-22)~~

~~a. Connected with Official State Duty. When an employee is subpoenaed or required to appear as a witness in any judicial or administrative proceeding in any capacity connected with official state duty, he is not considered absent from duty. The employee is not entitled to receive compensation from the court. Expenses (mileage, lodging, meals, and miscellaneous expenses) incurred by the employee must be reimbursed by his respective agency in accordance with agency travel regulations. (3-31-22)~~

~~b. Private Proceedings. When an employee is required to appear as a witness or a party in any proceeding not connected with official state duty, the employee must be permitted to attend. The employee may use accrued leave or leave without pay. (3-31-22)~~

~~c. Jury Service. When an employee is summoned by proper judicial authority to serve on a jury, he will be granted a leave of absence with pay for the time which otherwise the employee would have worked. The~~

~~employee is entitled to keep fees and mileage reimbursement paid by the court in addition to salary. Expenses in connection with this duty are not subject to reimbursement by the state. (3-31-22)~~

~~**d.** Problem-solving and due process procedures. Any employee who has been requested to serve as a mediator as provided by an agency problem solving or due process procedure or to appear as a witness or representative during such a proceeding will be granted leave with pay, without charge to vacation leave or compensatory time off for overtime, to perform those duties. (3-31-22)~~

~~**e.** Notification. An employee summoned for court and jury service or requested to serve as a witness or representative must notify his supervisor as soon as possible to obtain authorization for leave of absence. (3-31-22)~~

~~**07. Religious Leave.** Appointing authorities will make reasonable accommodations to an employee's need for leave for religious observances. Such leave is charged to the employee's accrued vacation leave or compensatory time off for overtime. (3-31-22)~~

~~**08. Leave During Facility Closure or Inaccessibility.** (3-31-22)~~

~~**a.** Authorization. When a state office/facility is closed or declared inaccessible by the Governor or Governor's designee because of severe weather, civil disturbances, loss of utilities or other disruptions, affected employees who are unable to work remotely or be reassigned may be authorized administrative leave by the administrator to cover all or a portion of their scheduled hours of work during the closure or inaccessibility or subject to a mandatory furlough or a reduction in force. If an employee was not scheduled to work on the day when an office/facility is declared closed, the employee is not eligible for administrative leave. (3-31-22)~~

~~**b.** In the interest of employee safety, appointing authorities may approve employee early release, delayed start time, or absence from work due to weather or other emergency conditions. Those affected employees will use their leave balances or leave without pay. Administrative leave or leave without pay may be granted to affected employees scheduled to work on a day the Governor or Governor's designee declares a state office/facility closed or inaccessible in accordance with Rule 250.08.a. (3-31-22)~~

~~**e.** Nothing in this rule prevents an employee who is authorized to code paid administrative leave from choosing to code accrued leave balances or leave without pay. (3-31-22)~~

~~**09. Red Cross Disaster Services Leave.** Employees who have been certified by the American Red Cross as disaster service volunteers will be granted up to one hundred twenty (120) hours of paid leave in any twelve (12) month period to participate in relief services pursuant to Section 67-5338, Idaho Code. (3-31-22)~~

~~**10. Employee Assistance Program Leave.** Employees may use sick leave or any paid or unpaid leave as approved to attend appointments through the Employee Assistance Program (EAP) during normal working hours. (3-31-22)~~

~~**11. Bone Marrow and Organ Donor Leave With Pay.** (3-31-22)~~

~~**a.** Approval. Upon request, a full-time employee will be granted five (5) work days' leave with pay to serve as a bone marrow donor or thirty (30) work days' leave with pay to serve as an organ donor. The employee must provide the appointing authority with written verification that the employee is the person serving as the donor. Paid leave, as provided in these rules, is limited to one-time bone marrow and one-time organ donor leave per employee. (Ref. Section 67-5343, Idaho Code) (3-31-22)~~

~~**b.** Use. An employee who is granted such leave of absence will receive compensation without interruption during the leave period. For purposes of determining credited state service, pay advancement, performance awards, or any benefit affected by a leave of absence, the service of the employee is considered uninterrupted by the paid leave of absence. (Ref. Section 67-5343, Idaho Code) (3-31-22)~~

2540. ADMINISTRATIVE LEAVE.

01. Investigation and Due Process Procedure. Administrative leave may be granted by an appointing authority for employee investigations and due process procedures in accordance with Rule 190.02. ()

02. Closure or Inaccessibility. Administrative leave for closure or inaccessibility of a state office/facility due to severe weather, emergencies or incidents that could jeopardize agency operations, or the safety of others ~~must be granted in accordance with Rule 250.08.~~ (3-31-22)()

03. Other Reasons. Administrative leave for reasons other than those listed above must be approved in advance by the administrator. ()

~~2521. -- 25971.~~ (RESERVED)

~~260. COMPENSABLE HOURS.~~

~~01. Biweekly Employees.~~ With the exception of holiday leave, no leave may be used if it results in pay in excess of the employee's regularly scheduled work week. (3-31-22)

~~02. Ineligible Employees.~~ Employees who are "executive" as defined by Section 67-5302(12), Idaho Code, are ineligible to earn or receive payment for hours worked or accrued beyond their regularly scheduled work week. (3-31-22)

~~261. HOURS WORKED.~~

~~01. Hours in Performance of Job.~~ Those hours actually spent in the performance of the employee's job, excluding holidays, vacation, sick leave other approved leaves of absence, and excluding on-call time. (3-31-22)

~~02. Travel Time.~~ Travel time is compensated pursuant to policy set forth by the Board of Examiners. (3-31-22)

~~03. Hours Outside of Regular Working Hours.~~ Attendance at lectures, meetings, training programs, and similar activities outside of the employee's regular working hours when attendance has been directed by the appointing authority or designee. (3-31-22)

~~262. OVERTIME.~~

~~01. Employing Agencies.~~ The state is considered as one (1) employer for determining the number of hours an employee works. If an employee works for more than one (1) agency, the agency employing the employee when the overtime occurs is liable for compensatory time off or cash compensation as provided by law. (3-31-22)

~~02. Compensation for Overtime.~~ Overtime accrual and compensation for classified employees is covered by Sections 67-5328 and 59-1607, Idaho Code, for nonclassified employees. Overtime is defined in Section 67-5302(20), Idaho Code. Overtime does not include any time, such as occasional or sporadic work, which is excluded from the overtime calculation by federal law. (3-31-22)

~~03. Modification of Workweek or Schedule.~~ No agency will alter a previously established work week for the purpose of avoiding overtime compensation. An agency may modify the employee's regular schedule of work to avoid or minimize overtime. (3-31-22)

~~263. -- 271.~~ (RESERVED)

272. POLICY MAKING AUTHORITY.

To address the need for all classified employees to be treated fairly, and in situations where the State may be considered as one (1) employer, the Division Administrator may issue guidance to provide consistent interpretation of federal law, state law, executive order or rule. Statewide policies governed by the administrator shall be adopted by appointing authorities. (3-31-22)()

273. -- 999. (RESERVED)

**IDAPA 15 – OFFICE OF THE GOVERNOR
IDAHO STATE LIQUOR DIVISION**

15.10.01 – RULES OF THE IDAHO STATE LIQUOR DIVISION

DOCKET NO. 15-1001-2301 (ZBR CHAPTER REWRITE, FEE RULE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has conducted proposed rulemaking procedures. The action is authorized pursuant to Sections 67-5220(1) and 67-5220(2), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

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

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

Under [Executive Order 2020-01, Zero-Based Regulation](#), the Idaho State Liquor Division is striving to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. The rule changes are intended to perform a comprehensive review of this chapter by collaborating with the public to streamline or simplify the rule language in this chapter.

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

This rulemaking does not impose a new fee or charge, or increase an existing fee or charge, beyond what has been previously submitted for review in the prior rules. IDAPA 15.10.01 Section 022 allows the following fees to be charged by the Division:

1. Cost Reimbursement. The Division may seek cost reimbursement, as determined by the Division, from Supplier Representatives for mailing, shipping, or other expenses incurred by the Division to distribute information or displays to liquor stores at the request of a Supplier Representative.
2. Maximum Fee for Samples. There will be a maximum fee of twenty-five dollars (\$25) per case charged to Supplier Representatives for Samples.
3. Maximum Fee for Annual Supplier Representative Permit. There will be a maximum fee of fifty dollars (\$50) charged to Supplier Representatives each year for an annual permit.

FISCAL IMPACT: The following is a specific 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 is not anticipated to have any fiscal impact on the state general fund because the FY2023 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by 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 April 6, 2022 Idaho Administrative Bulletin, [Vol. 22-04, pgs. 26-27](#), under docket 15-1001-2201.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Tony Eldeen, Rules Review Officer/Business Analyst, at 208-947-9456.

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 25, 2023.

DATED this 28th day of August, 2023.

Tony Eldeen
Rules Review Officer/Business Analyst
1349 E. Beechcraft Ct.
Boise, ID,83716
phone: 208-947-9456

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 15-1001-2301
(ZBR Chapter Rewrite)

15.10.01 – RULES OF THE IDAHO STATE LIQUOR DIVISION

000. LEGAL AUTHORITY.

~~These rules are adopted by the Director of the Idaho State Liquor Division pursuant to~~ Section 23-206(b), Idaho Code. (3-25-22)()

001. TITLE AND SCOPE.

~~This chapter is titled IDAPA 15.10.01, “Rules of the Idaho State Liquor Division,” Office of the Governor. These rules provide guidance regarding govern operational aspects of the Division and support and enforce applicable terms in the Idaho Liquor Act, Title 23, Idaho Code.~~ (3-25-22)()

002. DEFINITIONS.

The following terms, ~~whenever used in these rules, have the meanings ascribed thereto, unless the context in which they are used clearly requires otherwise.~~ apply: (3-25-22)()

01. Bailment. A system of storing Supplier-owned inventory in state-operated Warehouses. The Division holds the Liquor in trust until stock is needed at retail. ()

~~02 Central Office. The main business office and Warehouse of the Idaho State Liquor Division.~~ (3-25-22)

~~032. Close Relative.~~ A person related by blood or marriage within the second degree of kinship. ()

~~043. Delisting.~~ The process of discontinuing any product offered for sale resulting in the product's removal from the Division's Product Line. ~~The decision to retain or delist a product rests solely with the Director.~~ (3-25-22)()

~~054. Director.~~ The eChief executive officer of the Division. (3-25-22)()

~~065. Division.~~ The Idaho State Liquor Division. (3-25-22)()

~~07. Distressed Liquor.~~ Liquor which is not in its original state of packaging. (3-25-22)

086. Distributing Station. A privately owned business that sells Liquor. It operates under an Agreement with the Division pursuant to Title 23, Chapter 3, Idaho Code. Distributing Stations may also be termed Contract Stores. ()

097. Distillery Distributing Station. A privately owned business that holds a permit issued by the Alcohol and Tobacco Tax and Trade Bureau (TTB), an Idaho manufacturer's license, pursuant to Section 23-507, Idaho Code, and sells Liquor to retail customers, pursuant to a Special Distributor Agreement with the Division in accordance with Title 23, Chapter 3, Idaho Code. Distillery Distributing Stations are "manufacturers of distilled spirits" under Section 23-509A, Idaho Code. ~~Distillery Distributing Stations~~ They may also be termed Contract Stores for purposes of retail sales of Liquor within the state of Idaho. (3-25-22)()

108. Liquor. Liquor controlled by the Division has the definition ascribed to it by Section 23-105, Idaho Code, excluding certain beers as defined in Section 23-1002, Idaho Code, and certain Wines as defined in Section 23-1303, Idaho Code. ()

109. Licensee. Person authorized to sell beer or Wine by the drink or by the bottle, Liquor by the drink, or any combination thereof. ()

120. Listing (Listed). Liquor that is carried or approved to be carried in the Division's Product Line. ()

131. Political Office. A public office for which partisan politics is a basis for nomination, election, or appointment. ()

~~14. Price Quotation.~~ Written verification of detailed product information submitted to the Division by Suppliers. (3-25-22)

152. Product Line. Items offered for sale by the Division. ()

163. Promotional Samples. Liquor furnished by the liquor industry to local representatives for the purpose of promoting the product that are attached to another Liquor product in the liquor store as a value-added promotion. (3-25-22)()

174. Retail Store. Any State Store or Distributing Station. ()

185. Samples. Liquor furnished by the liquor industry to Supplier Representatives for the purpose of promoting the product. ()

196. Shortage. Any amount of cash or Liquor less than the true balance as maintained by the Central Office. Liquor Shortages are based on current retail value. ()

~~2017. Special Distributor (Distributor).~~ A private business owner authorized to operate a Distributing Station. A Special Distributor is not a state employee. (3-25-22)()

218. Special Distributor Agreement (Agreement). The contract signed by a Special Distributor acknowledging the conditions and terms for operation of a Distributing Station in accordance with Idaho Code and the rules of the Division. ()

~~22. Special Order.~~ Any item not regularly offered as part of the Division's Product Line. (3-25-22)

2319. State Store. A Retail Store that sells Liquor. It is operated by state employees under the direct supervision of the Division. ()

240. Supplier. Any manufacturer, rectifier, importer, wholesaler or Supplier of Liquor, Wine, or related products offered for sale by the Division. ()

251. Supplier Representative. An individual, company, or entity authorized to represent a Supplier in the state of Idaho. A Supplier Representative may be an individual, a group of individuals operating as a brokerage firm or may be a direct employee of the Supplier. ()

262. Warehouse. The main Division distribution center and satellite distribution points. ()

273. Wine. Alcoholic beverages defined in Section 23-1303, Idaho Code. ()

284. Wine Gallon. The liquid measure equivalent to the volume of two hundred thirty-one (231) cubic inches or one hundred twenty-eight (128) ounces. ()

003. -- 009. (RESERVED)

010. RETAIL STORES.

01. Retail Site Location. ~~Based on the criteria set forth in this section and in accordance with~~ Per Sections 23-301 and 23-302, Idaho Code, the Division will select ~~an~~ appropriate Retail Store sites ~~to adequately~~ serve the community. (3-25-22)()

02. Retail Site Selection Criteria. The following criteria will be used in selecting a location for a new Retail Store. (3-25-22)()

a. Public acceptability ~~of location in accordance with~~ per Sections 23-301 and 23-302, Idaho Code. (3-25-22)()

b. Location ~~and~~ suitability of premises. (3-25-22)()

c. Lease amount ~~may will~~ not be the sole determining factor ~~in site selection;~~ final selection will be determined at the discretion of the Director. (3-25-22)()

d. Compliance with local zoning. ()

03. Customer Refunds and Exchanges. ~~No refunds will be authorized without prior~~ Customer refunds and exchanges will be allowed only with approval ~~of from~~ the Director or his authorized agent. (3-25-22)()

~~a. Liquor may be exchanged for other Liquor of the same price upon approval of the store manager and presentation of a valid receipt. (3-25-22)~~

~~b. Liquor brought in for exchange or refund must have been purchased in Idaho through the Division. (3-25-22)~~

~~c. A re-shelving charge may be assessed on returned items in accordance with Section 23-311, Idaho Code. (3-25-22)~~

~~04. Disabled Customers.~~ Appropriate special services, in accordance with the Americans with Disabilities Act, will be provided to disabled customers. (3-25-22)

~~05. Prices.~~ All prices will be in accordance with the published price list set by the Director in accordance with Section 23-207(g), Idaho Code. (3-25-22)

~~06. Distressed Liquor.~~ Price adjustments can be made on Distressed Liquor with the approval of the Director or his authorized agent. (3-25-22)

~~07. Hours and Days of Operation.~~ Retail Store hours and days of business operation will be set by the Director in accordance with Section 23-307, Idaho Code. (3-25-22)

084. Audits. Designated personnel will perform periodic inspections of all Retail Stores. Such inspections may be on an unannounced basis and ~~may~~ include physical inventory counts ~~with the assistance of the store manager or authorized agent to assess the suitability of inventory levels and product mix and other evaluation procedures.~~ (3-25-22)()

095. Admission to State Store. Division personnel may refuse entry or take actions as are appropriate to cause the removal of a person from a State Store premises where such person is disrupting performance of the Division's duties or is inconsistent with the Division's charge to curtail the intemperate use of alcoholic beverages. (3-25-22)()

011. DISTRIBUTING STATIONS.

01. Term of Agreement. ~~Special Distributor Agreements are valid for a~~ A specified period as determined at the discretion of the Director. (3-25-22)()

02. Transfer of Agreement. ~~An~~ Special Distributor Agreement is a personal privilege and is not considered property nor is it assignable or transferable. (3-25-22)()

03. Agreement Renewal. ~~If a Distributing Station's operation exceeds Division expectations, agreement renewals may be allowed.~~ (3-25-22)

043. Agreement Evaluations. Periodic evaluations ~~of the~~ A ~~Agreements, in accordance with the guidelines set in Subsection 011.06 of these rules, will be considered~~ conducted ~~to ensure reasonable, uniform and non-discriminatory criteria and procedures for selection and renewal of special Distributing Stations~~ appropriate criteria pursuant to Section 23-302, Idaho Code. These criteria are applicable to the replacement of an existing Distributing Station and to the establishment of ~~a~~ new Distributing Station. (3-25-22)()

054. Acceptance of Applications. Applications for Distributing Stations are accepted only in response to public notices. Unsolicited applications may not be held on file pending future openings. ()

065. Applicant Selection. The selection ~~of the most qualified applicant~~ for a Distributing Station will be made by the Director in accordance with Section 23-304, Idaho Code. The Director reserves the right to refuse to select any and all applicants. Applicant selection will be based on the following criteria: (3-25-22)()

a. Public acceptability in accordance with Section 23-302, Idaho Code. ()

b. Location and suitability of premises. ()

c. An applicant who has been convicted of, or has plead guilty to, a felony or a crime of moral turpitude (an element of which is dishonesty or fraud) under the laws of any ~~state, U.S. Territory or protectorate, the District of Columbia, or the United States~~ jurisdiction will not be allowed to operate a Distributing Station. (3-25-22)()

d. An applicant may not be a Close Relative of, nor have a partnership or other close business relationship with any person employed by the Division who has the responsibility for establishing, approving, or influencing policies of the Division. (3-25-22)()

e. An applicant may be a spouse, child, employee, blood relative, relative through marriage, or business associate of the retiring or deceased Distributor. ()

f. Distributing Stations will not be established in a business that has a license to sell Liquor, Wine or beer by the drink. ()

~~g. Where a new Distributing Station is created by the conversion of a State Store, an employee of that former state store can be chosen by the Division as the Special Distributor.~~ (3-25-22)

hg. If an existing Distributing Station is sold, the purchaser may, at the sole and absolute discretion of

the Division, continue to operate the Distributing Station under comparable terms and conditions applied to the previous Special Distributor. ()

076. General Operational Obligations. Special Distributors will: ()

a. Furnish an adequate ~~building or facility with suitable shelving, display counters and storeroom facilities. It must be~~ premises that is kept clean and sanitary at all times. (3-25-22)()

b. ~~Not permit a person under the age of nineteen (19) to perform any acts for the Division.~~ (3-25-22)

c. ~~Keep the Distributing Station open for business in accordance with Section 23-307, Idaho Code.~~ (3-25-22)

db. Not hold a partisan state ~~elective~~ elected political office. He cannot be a Close Relative of, or be in a business partnership with a person in a partisan state ~~elective~~ elected Political Office. (3-25-22)()

ec. Not present his views as being representative of the views of the Division and not attempt to politically influence customers in any manner. ()

f. ~~Make and transmit all reports as required by the Division in the time frame established by the Division.~~ (3-25-22)

g. ~~Be responsible for and account to the Division for all Liquor furnished by the Division.~~ (3-25-22)

hd. Only sell Liquor received from the Division. ()

ie. Only sell ~~the~~ Liquor at prices set by the Division in accordance with Section 23-207(~~hg~~), Idaho Code. (3-25-22)()

jf. Not deliver Liquor off premise without explicit authorization of the Director. ()

087. Days and Hours of Operation. ()

a. ~~Standard store hours will be in accordance with Subsection 010.07 of these rules.~~ (3-25-22)

ba. The Distributor will not exceed the maximum legal selling hours as set by the Director. ()

098. Fiduciary Responsibility. ~~Any and a~~ All unremitted monies collected in trust for the Division, and upon their receipt, are assigned to the Division in accordance with Section 23-401, Idaho Code. (3-25-22)()

1009. Liquor Shortage. The Distributor must pay the monetary retail value of any Shortage immediately after receipt of the request for payment from the Division showing its calculation of the Shortage. (3-25-22)()

a. If the Distributor disputes Liquor or cash Shortages, he may request a hearing before the Director. ()

b. Any payment made by the Distributor for Liquor shortages may be refunded in whole or in part if the Distributor's position is upheld by the Director. ()

110. Compensation. The compensation paid by the Division to the Special Distributor ~~will be~~ represents full payment for ~~the furnishing of all facilities, operating costs and expenses incidental to the operation of the Distributing Station, as well as full consideration for~~ all services provided by the Distributor. Such compensation will be uniformly applied statewide in accordance with Section 23-305, Idaho Code. (3-25-22)()

12. Supplies. ~~The Division will furnish books, forms, and equipment for use by the distributor in transacting the business of the Division as required by law or as deemed necessary by the Director.~~ (3-25-22)

~~13~~**1.** Voluntary Agreement Termination. ()

~~a.~~ The Distributor Agreement may be voluntarily terminated by the Distributor upon written notice by certified mail or personal delivery to the Division or its specified representative specifying the date of termination. (3-25-22)

~~b~~**a.** The Distributor will allow reasonable time for the Division to conduct a final inventory audit and to remove all Liquor. ()

~~b~~**b.** The sale of the Distributor's business to any other party, the forfeiture of the business to a lien holder, or the foreclosure upon the business will be considered voluntary Agreement termination. ()

~~14.~~ ~~Automatic Agreement Termination.~~ Upon the death of the Distributor, the Distributor's estate, assisted by the Division, will be responsible for the operation of the Distributing Station until the termination date, as established by the Director. (3-25-22)

~~15.~~ ~~Agreement Termination for Cause.~~ The Division may terminate the Special Distributor Agreement for cause which includes, but is not limited to, any of the following: (3-25-22)

~~a.~~ A Distributor who at any time becomes insolvent or experiences a substantial change in financial condition that, in the judgment of the Director, creates a financial risk to the Division. (3-25-22)

~~b.~~ Significant breach of Distributor's obligations to manage the Distributing Station properly. (3-25-22)

~~e.~~ Intoxication of the Distributor while in discharge of his duties as a representative of the Division. (3-25-22)

~~d.~~ Participation of the Distributor in misappropriation of any assets of the Division. (3-25-22)

~~e.~~ Distributor having been found guilty of a felony or a misdemeanor involving moral turpitude. (3-25-22)

~~f.~~ Conduct detrimental to the good order of the Division as defined in IDAPA 15.04.01, "Rules of the Division of Human Resources and Personnel Commission," regarding classified conduct unbecoming state classified employees. Note—this Subsection in no way confers employee status on such Special Distributors, however outlines a specifically referenced standard of conduct. (3-25-22)

~~16~~**2.** Agreement Termination Procedure. ()

~~a.~~ The Division will notify the distributor in writing by email, by certified mail, or personal delivery, specifying the reasons for the proposed termination and its effective date. (3-25-22)()

~~b.~~ The Division may notify the Distributor that he is immediately suspended pending final determination of the proposed termination. At the time of notification, the Division reserves the right to conduct a final audit and remove all Division property pending a final determination. ()

~~c.~~ If ~~The Distributor wishes a~~ may request a hearing on the proposed termination ~~to present information relative to the reason given for termination, he will by notify~~ notifying the Division in writing within twenty seven (207) days ~~after of~~ receiving the termination notice ~~of the proposed termination~~. (3-25-22)()

~~d.~~ Upon termination of this agreement, the Division will: ()

~~i.~~ Remove all property owned by ~~it; and~~ them; (3-25-22)()

~~ii.~~ Cease compensation ~~to the Distributor~~ as of the date of termination date. (3-25-22)()

012. DISTILLERY DISTRIBUTING STATIONS.

01. Sample Tasting. ~~Distillery Distributing Stations may offer sample tastings on the premises of its distillery~~ **May be conducted** in accordance with Section 23-509A, Idaho Code. (3-25-22)()

02. Retail Sales. ~~Distillery Distributing Stations may sell Liquor manufactured on premises of such distillery to customers outside the state of Idaho in accordance with Section 23-507, Idaho Code. Distillery Distributing Stations may sell Liquor manufactured on the premises that is purchased from the Division to customers on the premises of its distillery in accordance with and pursuant to a Special Distributor Agreement with the Division. The Special Distributor Agreement will include governing terms and conditions for retail sale of Liquor manufactured on the premises within the state of Idaho in accordance with Title 23, Chapter 3, Idaho Code, and applicable rules of the Division governing retail sale operations.~~ (3-25-22)()

013. -- 019. (RESERVED)

020. STORE CONVERSIONS.

The Division reserves the right at any time to convert a State Store to a Distributing Station or to convert a Distributing Station to a State Store. ~~However, t~~This right will not be arbitrarily applied ~~and will not be exercised until relevant facts presented to the Director have been reviewed and there has been reasonable time during which appropriate public notice has been given.~~ (3-25-22)()

021. SUPPLIERS.

01. Price Quotations. ~~All Suppliers must submit a Liquor Price Quotation, on forms prescribed by the Division, for every item they have Listed with the Division.~~ (3-25-22)

021. Warranties Obligations. ~~Suppliers warranties~~ will conform to the requirements of the Tax and Trade Bureau of the U.S. Department of Treasury. (3-25-22)()

032. Liquor Shipments. Pursuant to Sections 23-203(a), 23-203(b) and 23-207(d), Idaho Code, all Liquor transported into the state of Idaho is under the direction of the Division. ()

a. It is a violation of Sections 23-203(a), 23-203(b) and 23-207(d), Idaho Code, for any Supplier or other party to ship Liquor into the state of Idaho for purposes not authorized by the Director. ()

b. The Division reserves the right to select the mode of transportation for all Liquor within the state of Idaho. ()

043. Title to Liquor, Wines and Related Products. Title to Product Line items ~~delivered to the Division~~ passes from the Supplier to the Division when the ~~Division~~ **product is accepted** ~~the product~~, unless Product Line items are delivered directly to Bailment status. (3-25-22)()

a. The Division reserves the right to conduct quality tests; ~~or to inspect products directly ordered or withdrawn from Bailment.~~ (3-25-22)()

b. The Division reserves the right ~~at any time~~ to reject any Product Line item ~~if, upon tests and inspections, it that~~ does not conform to requirements. (3-25-22)()

c. In the event the Division rejects any delivery, ownership ~~of products refused will~~ remains with the Supplier. ~~It will be is~~ the Supplier's responsibility to remove or relocate any refused products. (3-25-22)()

054. Product Returns. ~~Liquor, Wine, or related p~~Products **Line Items** may be returned to Suppliers by the Division; ~~in full or partial cases, for "ordinary and usual commercial reasons" in~~ accordance with the Tax and Trade Bureau of the U.S. Department of Treasury regulations. (3-25-22)()

a. ~~The Supplier will reimburse the Division the full invoice cost plus an additional amount, fixed by the Division, as reimbursement for the Division's expense in shipping to and from its stores and Warehouse.~~

~~(3-25-22)~~

065. New Listings. New Listings will be added at the discretion of the Director pursuant to Sections 23-203 and 23-207, Idaho Code. ()

076. Delisting. Delistings are at the discretion of the Director pursuant to Sections 23-203 and 23-207, Idaho Code. ()

087. Resident Supplier Representatives. All Suppliers doing business with the Division will have resident representation. A resident Supplier Representative cannot have been convicted of any felony. ()

098. Supplier Representative Permits. Supplier Representatives will obtain a permit from the Division, ~~that is renewed annually~~ to conduct business at any State Store or Distributing Station. ~~(3-25-22)()~~

a. Permits will not be issued to any ~~holder of a bartender's permit,~~ retail licensee, ~~a distributor of restaurant or bar supplies,~~ or a distributor of beer or Wine, ~~or to a food wholesaler.~~ ~~(3-25-22)()~~

b. Supplier Representatives may represent more than one (1) Supplier without additional permit fees. ()

~~**10. Facility Visitations.** Supplier Representatives, or anyone acting in that capacity, will obtain prior approval from the Director or his authorized agent to conduct business at any State Store or Distributing Station.~~ ~~(3-25-22)~~

~~**109. Samples.** Samples are limited to ~~ten~~ twenty (+20) Wine Gallons per month and the sizes of Samples are that which are permitted by federal regulation or statute.~~ ~~(3-25-22)()~~

120. Promotional Samples. Promotional Samples are limited to fifty (50) ml size bottles unless specified otherwise by the Director. ()

~~**131. Contact With Licensees.** No Supplier Representative, or anyone acting in that capacity, will deliver any Liquor, Wine, or beer sold by the Division to a Licensee's place of business, other than Samples of items that are: not carried in that Licensee's Product Line.~~ ~~(3-25-22)()~~

~~a. Limited to sizes permitted by federal regulation or statute.~~ ~~(3-25-22)~~

~~b. Only those items not carried in that Licensee's Product Line.~~ ~~(3-25-22)~~

142. Liquor Displays. The Division ~~will~~ regulates all Retail Store Liquor displays. ~~(3-25-22)()~~

~~**15. Advertising.** Advertising in all Retail Stores will be in accordance with Section 23-607, Idaho Code.~~ ~~(3-25-22)~~

163. Violations. Any Supplier Representative, or anyone acting in that capacity, who violates Title 23, Idaho Code, or any rule of the Division, may subject the manufacturer's, wholesaler's or Distributor's products to removal from the Division's Product Line or; the Director, at his discretion, may suspend (temporarily or permanently) their Supplier Representative permit. ()

022. SCHEDULE OF FEES.

The following fees may be charged by the Division. ()

01. Cost Reimbursement. The Division may seek cost reimbursement, as determined by the Division, from Supplier Representatives for mailing, shipping, or other expenses incurred by the Division to distribute information or displays to liquor stores at the request of a Supplier Representative. ()

02. Maximum Fee for Samples. There will be a maximum fee of twenty-five dollars (\$25) per case charged to Supplier Representatives for Samples. ()

03. Maximum Fee for Annual Supplier Representative Permit. There will be a maximum fee of fifty dollars (\$50) charged to Supplier Representatives each year for an annual permit. ()

023. -- 030. (RESERVED)

031. STATE STORES SOLICITATION AND PROMOTIONAL PRESENTATIONS.

No school, church, fraternal, civic, political or charitable organization or individual is allowed to solicit for donations or advertise for any purpose ~~within any State Store~~ on State Store premises. (3-25-22)()

~~032. WINES.~~

~~Wines may be sold in any State Store or Distributing Station at the discretion of the Director pursuant to Section 23-1305, Idaho Code. All rules of the Division applicable to Liquor are also applicable to Wines and beer sold by the Division.~~ (3-25-22)

~~033. LIQUOR FUND.~~

~~Determination of the final annual amount of cash available for distribution in the liquor account under Section 23-404, Idaho Code, is the amount of the Division's annual net income determined in accordance with Generally Accepted Accounting Principles, consistently applied. Notwithstanding the above, cash reserves are allowed under Section 23-403, Idaho Code. Further, the Director with the concurrence of the State Controller may hold back from distribution additional cash reserves needed for prudent operation of the Division. Such final annual amount of available cash will be disbursed no later than ninety (90) days following each fiscal year end.~~ (3-25-22)

~~034. -- 999. (RESERVED)~~

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.04 – IDAHO FOOD STAMP PROGRAM

DOCKET NO. 16-0304-2301 (ZBR CHAPTER REWRITE)

NOTICE OF PUBLIC HEARING AND EXTENSION OF WRITTEN COMMENT PERIOD

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5222, Idaho Code, notice is hereby given that this agency has scheduled a public hearing and extended the period of public comment. The action is authorized pursuant to Sections 56-202, 56-203, and 56-209, Idaho Code.

PUBLIC HEARING SCHEDULE: Two public hearings concerning this rulemaking will be held as follows:

VIRTUAL TELECONFERENCE Via WebEx
Tuesday, October 17, 2023 9:00 a.m. to 10:00 a.m. (MT)
<i>Join from the meeting link:</i> https://idhw.webex.com/idhw/j.php?MTID=mbd1765e8bffcc5bfcffefb53a37dfca7
<i>Join by meeting number:</i> Meeting number (access code): 2762 685 5746 Meeting password: PCyy3tgGw38 (72993844 from phones and video systems)
<i>Join by phone:</i> +1-415-527-5035 United States Toll +1-303-498-7536 United States Toll (Denver)

VIRTUAL TELECONFERENCE Via WebEx
Tuesday, October 17, 2023 2:00 p.m. to 3:00 p.m. (MT)
<i>Join from the meeting link:</i> https://idhw.webex.com/idhw/j.php?MTID=m3d72ff8818811148bc02be740427404e
<i>Join by meeting number:</i> Meeting number (access code): 2763 120 3319 Meeting password: YkpjVN28YR7 (95758628 from phones and video systems)
<i>Join by phone:</i> +1-415-527-5035 United States Toll +1-303-498-7536 United States Toll (Denver)

These public hearings are offered as virtual meetings. The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The summary of this action is found in Idaho Administrative Bulletin [Vol. 23-9, September 6, 2023, pages 109 through 186.](#)

This notice provides two (2) additional public hearings due to technical difficulties that occurred with the scheduled meetings provided under Proposed Docket No. 16-0304-2301 in the Idaho Administrative Bulletin, Vol. 23-9, for IDAPA 16.03.04, “Idaho Food Stamp Program.”

Under [Executive Order 2020-01: Zero-Based Regulation](#), the Department is striving to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. The rule changes are intended to perform a comprehensive review of this chapter by collaborating with the public to streamline or simplify this rule language.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Kristin Matthews at 208-334-5553.

SUBMISSION OF WRITTEN COMMENTS: The comment period for this rulemaking has been extended. Anyone may submit written comments regarding this rulemaking during this comment period or a written comment may be submitted at the public hearing in lieu of giving an oral presentation. Any written comments submitted at a public hearing carry the same weight as oral testimony and will be considered as such.

All written comments must be directed to the undersigned and must be delivered on or before October 17, 2023.

DATED this 27th day of September, 2023.

Trinette Middlebrook and Frank Powell
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
email: dhwrules@dhw.idaho.gov

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.05 – ELIGIBILITY FOR AID TO THE AGED, BLIND, AND DISABLED (AABD)

DOCKET NO. 16-0305-2301 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – PROPOSED RULE

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

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

<p>VIRTUAL TELECONFERENCE Via WebEx</p>
<p>Thursday, October 12, 2023 12:00 p.m. to 2:00 p.m. (MT)</p>
<p><i>Join from the meeting link:</i> https://idhw.webex.com/idhw/j.php?MTID=me93accfca5d5122469c484b34cf4bee3</p> <p><i>Join by meeting number:</i> Meeting number (access code): 2760 708 2319 Meeting password: pyPP8FHEz58 (79778343 from phones and video systems)</p> <p><i>Join by phone:</i> +1-415-527-5035 United States Toll +1-303-498-7536 United States Toll (Denver)</p>

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below. Each meeting will conclude after 30 minutes if no participants sign in or wish to comment in the meeting.

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

Under [Executive Order 2020-01: Zero-Based Regulation](#), the Department is striving to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. The rule changes are intended to perform a comprehensive review of this chapter by collaborating with the public to streamline or simplify this rule language.

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

This chapter contains no fees or charges.

FISCAL IMPACT: The following is a specific 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 is not anticipated to have any fiscal impact on the State General Fund, or any other known 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 April 5, 2023, Idaho Administrative Bulletin, [Vol. 23-4, pages 33 and 34](#).

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

This chapter of rule has incorporated by reference the following references:

1. “Medicare Modernization Act - Prescription Drug Program Guidance to States for the Low Income Subsidy (LIS),” dated May 25, 2005.
2. Social Security Administration Program Operations Manual System (POMS) SI 01320.00, Deeming Resources, effective 10/17/2022.
3. Social Security Administration Program Operations Manual System (POMS) SI 01330.00, Deeming Resources, effective 02/24/2010.
4. Social Security Administration Programs Operations Manual System (POMS) SI 02302.200, Charted Threshold Amounts for Calendar Year 2023, effective 01/24/2023.

These documents are incorporated by reference to save space in the chapter and ensure that it continues to have the force and effect of law.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Laura Schumaker at 208-799-4335.

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 25, 2023.

DATED this 1st day of September, 2023.

Trinette Middlebrook and Frank Powell
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5500 phone; (208) 334-6558 fax
dhwrules@dhw.idaho.gov email

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0305-2301
(ZBR Chapter Rewrite)

16.03.05 – ELIGIBILITY FOR AID TO THE AGED, BLIND, AND DISABLED (AABD)

000. LEGAL AUTHORITY.

~~The Idaho Department of Health and Welfare, according to~~ Section 56-202, Idaho Code, authorizes the Department to adopt ~~these~~ rules for the administration of public assistance programs. (3-17-22)()

001. ~~TITLE AND SCOPE.~~ (RESERVED)

~~01. Title. These rules are titled IDAPA 16.03.05, “Eligibility for Aid to the Aged, Blind, and Disabled (AABD).”~~ (3-17-22)

~~02. Scope. These rules provide standards for issuing AABD cash benefits and related Medicaid benefits.~~ (3-17-22)

002. INCORPORATION BY REFERENCE.

The ~~Department is adopting~~ following ~~are incorporated~~ by reference ~~the~~ ()

01. “Medicare Modernization Act - Prescription Drug Program Guidance to States for the Low Income Subsidy (LIS),” dated May 25, 2005. The guidelines may be viewed at the main office of the Department of Health and Welfare. It is also available online at <https://www.cms.gov/Medicare/Eligibility-and-Enrollment/LowIncSubMedicarePresCov/Downloads/StateLISGuidance021009.pdf>. (3-17-22)()

02. Social Security Administration Program Operations Manual System (POMS) SI 01320.00, Deeming Resources, effective date: 10/17/2022. This Deeming of Income section is available at: <https://secure.ssa.gov/apps10/poms.nsf/lrx/0501320000>. ()

03. Social Security Administration Program Operations Manual System (POMS) SI 01330.00, Deeming Resources, effective date: 02/24/2010. This Deeming of Resources section is available at: <https://secure.ssa.gov/apps10/poms.nsf/lrx/0501330000>. ()

04. Social Security Administration Program Operations Manual System (POMS) SI 02302.00 Charted Threshold Amounts for Calendar Year 2023, effective date: 01/24/2023. This Charted Threshold Amounts table is available at: <https://secure.ssa.gov/apps10/poms.nsf/lrx/0502302200>. ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

~~For purposes of this chapter, the following terms apply.~~ (3-17-22)

01. **AABD Cash.** An EBT payment to a participant, a participant’s guardian, or a holder of a limited power of attorney for EBT payments. AABD Cash is a payment of a supplemental cash amount to an individual who meets the program requirements. This payment may be made through direct deposit or an electronic benefits card. ()

02. **Applicant.** A person applying for public assistance from the Department, including individuals referred to the Department from a health insurance exchange or marketplace. ()

03. **Annuity.** A right to receive periodic payments, either for life, a term of years, or other interval of time, whether or not the initial payment or investment has been annuitized. It includes contracts for single payments where the single payment represents an initial payment or investment together with increases or deductions for interest or fees rather than an actuarially based payment from an insurance pool. ()

04. **Asset.** Includes all income and resources of the individual and the individual’s spouse, including any income or resources ~~which that~~ the individual or ~~such individual’s their~~ spouse is entitled to, but does not receive because of action by: (3-17-22)()

a. The individual or ~~such individual’s their~~ spouse; (3-17-22)()

b. A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or ~~such individual’s their~~ spouse; or (3-17-22)()

c. A person, including any court or administrative body, acting at the direction or upon the request of the individual or ~~such individual’s their~~ spouse. (3-17-22)()

05. **Asset Transfer for Sole Benefit.** An asset transfer is considered to be for the sole benefit of a spouse, blind or disabled child, or disabled individual if the transfer is arranged in such a way that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of transfer or at any time in the future. ()

06. **Child.** Any individual from birth through the end of the month of ~~his their~~ nineteenth birthday.

(3-17-22)()

07. Citizen. A person having status as a “national of the United States” defined in 8 USC 1101(a)(22) that includes both citizens of the United States and non-citizen nationals of the United States. ()

08. Department. The Department of Health and Welfare. ()

09. Direct Deposit. The electronic deposit of a participant’s AABD cash to the participant’s personal account with a financial institution. ()

10. Electronic Benefits Transfer (EBT). A method of issuing AABD cash to a participant, a participant’s guardian, or a holder of a limited power of attorney for EBT payments for a participant. ()

11. Essential Person. A person of the participant’s choice whose presence in the household is essential to the participant’s well-being. The essential person provides the services a participant needs to live at home. ()

12. Fair Market Value. The ~~fair market value of an asset is the~~ price for which ~~the an~~ asset can be reasonably expected to sell on the open market, in the geographic area involved. (3-17-22)()

13. Long-Term Care. ~~Long-term care services are s~~Services provided to an institutionalized individual as defined in 42 U.S.C. 1396p(c)(1)(C). (3-17-22)()

14. Medicaid. Idaho’s Medical Assistance Program administered by the Department, ~~and funded with federal and state funds according to See~~ Title XIX, ~~Social Security Act that provides medical care for eligible individuals.~~ (3-17-22)()

15. Medical Assistance Rules. ~~Idaho Department of Health and Welfare Rules, IDAPA 16.03.09, “Medicaid Basic Plan Benefits,” IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits,” and IDAPA 16.03.17, “Medicare/Medicaid Coordinated Plan Benefits.”~~ (3-17-22)

16. Medicaid for Families With Children Rules. ~~Idaho Department of Health and Welfare Rules, IDAPA 16.03.01, “Eligibility for Health Care Assistance for Families and Children.”~~ (3-17-22)

17.5. Needy. A person is considered needy for AABD cash payments if the person meets the non-financial requirements of Title XVI of the Social Security Act and the criteria in Section 514 of these rules. Title XVI of the Social Security Act, known as “Grants to States for Aid to the Aged, Blind, or Disabled,” is a program for financial assistance to needy individuals who are sixty-five (65) years of age or over, are blind, or are eighteen (18) years of age or over and permanently and totally disabled. (3-17-22)()

18.6. Non-Citizen. Same as “alien” defined in Section 101(a)(3) of the Immigration and Nationality Act (INA) (8 USC 1101 (a)(3)), and includes any individual who is not a citizen or national of the United States. ()

19.7. Participant. An individual who is eligible for, and enrolled in, a Health Care Assistance Program or Medicaid. ()

20.18. Partnership Policy. A ~~partnership policy is a~~ qualified long-term care insurance policy ~~as defined in under~~ Section 7702B(b) of the Internal Revenue Code of 1986, which meets the requirements of the long-term care insurance model regulation and ~~Long-term e~~Care ~~i~~nsurance ~~m~~odel ~~a~~Act promulgated by the National Association of Insurance Commissioners (NAIC), as incorporated in 42 USC 1396p(b)(5)(A). (3-17-22)()

21.9. Premium. A regular, periodic charge or payment for health coverage. ()

22.0. Reasonable Opportunity Period. A period ~~of time~~ allowed for an individual to provide requested proof of citizenship or identity. A reasonable opportunity period extends for ninety (90) days beginning on the 5th day after the notice requesting the proof has been mailed to the applicant. This period may be extended if the

Department determines that the individual is making a “good faith” effort to obtain necessary documentation. (3-17-22)()

~~231.~~ **Pension Funds.** ~~Pension funds are r~~Retirement funds held in individual retirement accounts (IRAs), as described by the Internal Revenue Code, or in work-related pension plans, including plans for self-employed individuals sometimes referred to as Keogh plans. (3-17-22)()

~~242.~~ **Sole Beneficiary.** The only beneficiary of a trust, including a beneficiary during the grantor’s life, a beneficiary with a future interest, and a beneficiary by the grantor’s will. ()

~~25.~~ **TAFI Rules.** ~~Idaho Department of Health and Welfare Rules, IDAPA 16.03.08, “Temporary Assistance for Families in Idaho.”~~ (3-17-22)

~~26.~~ **Title XVI.** ~~Title XVI of the Social Security Act, known as “Grants to States for Aid to the Aged, Blind, or Disabled,” is a program for financial assistance to needy individuals who are sixty-five (65) years of age or over, are blind, or are eighteen (18) years of age or over and permanently and totally disabled.~~ (3-17-22)

~~273.~~ **Title XIX.** ~~Title XIX o~~Of the Social Security Act, known as Medicaid, is a medical benefits program jointly financed by the federal and state governments and administered by the states that provides medical care for eligible individuals. Please see https://www.ssa.gov/OP_Home/ssact/title19/1900.htm. (3-17-22)()

~~284.~~ **Title XXI.** ~~Title XXI o~~Of the Social Security Act, known as the Children's Health Insurance Program (CHIP), is a federal and state partnership that provides health insurance to targeted, low-income children. Please see https://www.ssa.gov/OP_Home/ssact/title21/2101.htm. (3-17-22)()

~~295.~~ **Treasury Rate.** The five (5) year security note rate listed in the “Daily Treasury Yield Curve Rate” by the U.S. Treasury on January 1 of each year. The January 1 rate, and is used for the entire calendar year. (3-17-22)()

~~3026.~~ **Working Day.** A calendar day when regular office hours are observed by the state of Idaho. Weekends and state holidays are not considered working days. ()

011. -- 019. (RESERVED)

020. ABBREVIATIONS.

- ~~01.~~ **AABD.** Aid to the Aged, Blind, and Disabled. ()
- ~~02.~~ **AB.** ~~Aid to the Blind.~~ (3-17-22)
- ~~03.~~ **AFA.** ~~Application for Assistance.~~ (3-17-22)
- ~~04.~~ **APTD.** ~~Aid to the Permanently and Totally Disabled.~~ (3-17-22)
- ~~05.~~ **ASVI.** ~~Alien Status Verification Index.~~ (3-17-22)
- ~~062.~~ **COLA.** Cost of Living Adjustment. ()
- ~~073.~~ **CSA.** Community Spouse Allowance. ()
- ~~084.~~ **CSNS.** Community Spouse Need Standard. ()
- ~~095.~~ **CSRA.** Community Spouse Resource Allowance. ()
- ~~10.~~ **DHW.** ~~Department of Health and Welfare.~~ (3-17-22)
- ~~1106.~~ **EBT.** Electronic Benefits Transfer. ()

- ~~12~~**07.** EITC. Earned Income Tax Credit. ()
- ~~13.~~ ~~FMA. Family Member Allowance.~~ (~~3-17-22~~)
- ~~14~~**08.** FSI. Federal Spousal Impoverishment. ()
- ~~15~~**09.** HCBS. Home and Community Based Services. ()
- ~~16.~~ ~~HUD. The U.S. Department of Housing and Urban Development.~~ (~~3-17-22~~)
- ~~17.~~ ~~IEVS. Income and Eligibility Verification System.~~ (~~3-17-22~~)
- ~~10.~~ ~~ICF/IID. Intermediate Care Facility for Individuals with Intellectual Disabilities.~~ ()
- ~~18~~**1.** INA. Immigration and Nationality Act. ()
- ~~19.~~ ~~IRS. The U.S. Internal Revenue Service.~~ (~~3-17-22~~)
- ~~20.~~ ~~MA. Medical Assistance.~~ (~~3-17-22~~)
- ~~21.~~ ~~OAA. Old Age Assistance.~~ (~~3-17-22~~)
- ~~22~~**12.** PASS. Plan for Achieving Self-Support. ()
- ~~23~~**13.** RSDI. Retirement, Survivors, and Disability Insurance. ()
- ~~24.~~ ~~SAVE. Systematic Alien Verification for Entitlements.~~ (~~3-17-22~~)
- ~~25~~**14.** SSA. Social Security Administration. ()
- ~~26~~**15.** SSI. Supplemental Security Income. ()
- ~~27~~**16.** SSN. Social Security Number. ()
- ~~28~~**17.** TAFI. Temporary Assistance for Families in Idaho. ()
- ~~29.~~ ~~UIB. Unemployment Insurance Benefits.~~ (~~3-17-22~~)
- ~~30~~**18.** VA. Veterans Administration. ()

021. -- 048. (RESERVED)

049. SIGNATURES.

An individual applying for benefits, receiving benefits, or providing additional information as required by ~~this chapter~~ these rules, may do so with the depiction of the individual's name either handwritten, electronic, or recorded telephonically. Such signature serves as intention to execute or adopt the sound, symbol, or process for the purpose of signing the related record. (~~3-17-22~~)()

050. APPLICATION FOR ASSISTANCE.

01. Application Submitted by Participant. The participant must submit an application form to the Department. An adult participant, a legal guardian, or a representative must sign the application form. ()

02. Application Submitted Through ~~Social Security Administration (SSA)~~ Low-Income Subsidy Data Transmission. For low-income subsidy applicants identified on the SSA data transmission, the protected Medicare Savings Program application date is the day they applied for the low-income subsidy (~~LIS~~).

~~(3-17-22)~~()

051. EFFECTIVE DATE.

The effective date for aid is the first day of the month of application. Medicaid eligibility begins as described in ~~Subsections 051.01 through 051.04~~ this rule. ~~(3-17-22)~~()

01. AABD Cash. AABD cash aid is effective on the application date. ()

02. Normal Medicaid Eligibility. Medicaid coverage begins on the first day of the application month. ()

03. Retroactive (Backdated) Medicaid Eligibility. Medicaid benefits must be backdated to the first day of the calendar month, for each of the three (3) months before the month of application, if the participant was Medicaid-eligible during that month. If the participant is not eligible for Medicaid when ~~they~~ applies, retroactive eligibility is evaluated. ~~(3-17-22)~~()

04. Ineligible Non-Citizen Medicaid. Ineligible legal or illegal non-citizen coverage is restricted to emergency services. Coverage begins when the emergency treatment is required. Coverage ends with the last day emergency treatment is required. ()

~~**052. PERSONAL INTERVIEW.**~~

~~Each applicant for AABD must participate in a telephone interview unless good cause exists. Upon request, the Department may require a face to face interview.~~ ~~(3-17-22)~~

~~**053. -- 069. (RESERVED)**~~

070. TIME LIMITS.

The application must be processed within forty-five (45) days for an applicant sixty-five (65) years of age or older. The application must be processed within ninety (90) days for a disabled applicant. The time limit can be extended by events beyond the Department's control. ()

071. DEATH OF APPLICANT.

An application may be filed for a deceased person. The application must be filed within the backdated eligibility period. Medicaid can be approved, through the date of death, if an AABD applicant dies before eligibility is determined. ()

072. REQUIRED VERIFICATION.

Applicants must prove their eligibility for aid. The participant is allowed ten (10) calendar days to provide requested proof. The application is denied if the applicant does not provide proof in ten (10) calendar days of the written request and does not have good cause for not providing proof. The Department may also use electronic verification sources when they are available. ()

~~**073. -- 089. (RESERVED)**~~

~~**090. APPLICATIONS FOR MEDICAID.**~~

~~The Department must examine the potential eligibility of the participant for all Medicaid coverage groups when a participant applies for Medicaid.~~ ~~(3-17-22)~~

091. OUT-OF-STATE APPLICANTS.

A participant receiving AABD cash from another state must not receive AABD cash in Idaho until ~~they~~ is are living in Idaho and the cash benefit has ended in the other state. A participant may receive Medicaid in Idaho before AABD cash or Medicaid stops in another state. AABD cash from another state is unearned income for Medicaid. Out-of-state medical coverage is a Medicaid third-party resource. Idaho residents temporarily out of the state, and not receiving aid, may apply for aid in Idaho. ~~(3-17-22)~~()

092. CONCURRENT BENEFIT PROHIBITION.

If a person is potentially eligible for AABD cash, TAFI, or foster care, only one (1) program may be chosen.

()

093. -- 099. (RESERVED)

100. RESIDENCY.

The participant must be living in Idaho and have no immediate intention of leaving. For Medicaid, other persons are Idaho residents if they meet any of the following criteria ~~in Subsections 100.01 through 100.05 of this rule.~~

(3-17-22)()

01. **Foster Child.** A participant living in Idaho and receiving child foster care payments from another state. ()

02. **Incapable Participant.** A participant, who is incapable of indicating ~~his~~ their state of residency after age twenty-one (21); is considered a resident of Idaho when: (3-17-22)()

a. His/Their parent or guardian lives in Idaho; or (3-17-22)()

b. He/They resides in an Idaho institution. (3-17-22)()

03. **Placed in Another State by Idaho.** A participant placed by the state of Idaho in an institution in another state. ()

04. **Homeless.** A participant not maintaining a permanent home or having a fixed address who intends to remain in Idaho. ()

05. **Migrant.** A migrant working and living in Idaho. ()

101. TEMPORARY ABSENCE.

A participant may be temporarily absent from ~~his~~ their home and still receive AABD cash and Medicaid. A participant is temporarily absent if they intends to return home within one (1) month. Temporary absence may exceed one (1) month for a child attending school or vocational training or a participant in a medical institution, hospital, or nursing home. (3-17-22)()

102. US CITIZENSHIP VERIFICATION REQUIREMENTS.

Any individual who participates in AABD cash, Health Care Assistance, or Medicaid benefits must provide proof of U.S. citizenship unless they has ve otherwise met the requirements under ~~Subsection 104.06 of these rules~~ 42 CFR 435.406, Citizenship and Non-Citizen Eligibility. (3-17-22)()

~~01. **Citizenship Verified.** Citizenship must be verified by electronic means when available. If an electronic verification is not immediately obtainable, the Department may request documentation from the applicant. The Department will not deny the application until the applicant has had a reasonable opportunity period to obtain and provide the necessary proof of U.S. citizenship. (3-17-22)~~

~~02. **Benefits During Reasonable Opportunity Period.** Benefits are provided during the reasonable opportunity period that is provided to allow the applicant time to obtain and provide documentation to verify U.S. citizenship. No overpayment will exist for the reasonable opportunity period if the applicant does not provide necessary documentation during the reasonable opportunity period so that the application results in denial. (3-17-22)~~

~~03. **Electronic Verification.** Electronic interfaces initiated by the Department with agencies that maintain citizenship and identity information are the primary sources of verification of U.S. Citizenship and Identity. (3-17-22)~~

~~04. **Documents.** When verification is not available through an electronic interface, the individual must provide the Department with the most reliable document that is available. Documents can be: (3-17-22)~~

~~a. Originals; (3-17-22)~~

- ~~b. Photocopies; (3-17-22)~~
- ~~e. Facsimiles; (3-17-22)~~
- ~~d. Scanned; or (3-17-22)~~
- ~~e. Other type of copy of a document. (3-17-22)~~
- ~~05. **Accepted Documentation.** Other forms of documentation are accepted to the same extent as an original document, unless information on the submitted document is: (3-17-22)~~
 - ~~a. Inconsistent with other information available to the Department; or (3-17-22)~~
 - ~~b. The Department has good cause to question the validity of the document or the information on it. (3-17-22)~~
- ~~06. **Submission of Documents.** The Department accepts documents that are submitted: (3-17-22)~~
 - ~~a. In person; (3-17-22)~~
 - ~~b. By mail or parcel service; (3-17-22)~~
 - ~~e. Through an electronic submission; or (3-17-22)~~
 - ~~d. Through a guardian or authorized representative. (3-17-22)~~

103. SOCIAL SECURITY NUMBER (SSN) REQUIREMENT.

01. SSN Required. The applicant must provide ~~his social security number~~ their (SSN), or proof they ~~has~~ ve applied for an SSN, to the Department before approval of eligibility. If the applicant has more than one (1) SSN, all numbers must be provided. (3-17-22)()

a. The SSN must be verified by the ~~Social Security Administration (SSA)~~ electronically. An applicant with an unverified SSN is not eligible for AABD cash, Health Care Assistance, or Medicaid benefits. (3-17-22)()

b. The Department must notify the applicant in writing if eligibility is denied or lost for failure to meet the SSN requirement. ()

02. Application for SSN. To be eligible, the applicant must apply for an SSN, or a duplicate SSN when they cannot provide ~~his~~ their SSN to the Department. If the SSN has been applied for but not issued by the SSA, the Department cannot deny, delay, or stop benefits. The Department will help an applicant with required documentation when the applicant applies for an SSN. (3-17-22)()

03. Failure to Apply for SSN. The applicant may be granted a good cause exception for failure to apply for an SSN if they have a well-established religious objection to applying for an SSN. A well-established religious objection means the applicant: ()

a. Is a member of a recognized religious sect or division of the sect; and ()

b. Adheres to the tenets or teachings of the sect or division of the sect and for that reason is conscientiously opposed to applying for or using a national identification number. ()

04. SSN Requirement Waived. An applicant may have the SSN requirement waived when they ~~is~~ are: (3-17-22)()

a. Only eligible for emergency medical services ~~as described in Section 801 of these rules~~ under 42 CFR 438.114, Emergency and Poststabilization Services; or (3-17-22)()

b. A newborn child deemed eligible ~~as described in Section 800 of these rules~~ under 42 CFR 435.117, Deemed Newborn Children. (3-17-22)()

104. ~~105.~~ U.S. CITIZENSHIP AND IDENTITY DOCUMENTATION REQUIREMENTS. (RESERVED)

~~To be eligible for AABD cash and Medicaid, an individual must provide proof of U.S. citizenship and identity unless he has otherwise met the requirements under Subsection 104.06 of this rule. The individual must provide the Department with the most reliable document that is available. The Department will accept documents as described in Section 102 of these rules.~~ (3-17-22)

~~**01. Documents Accepted as Proof of Both U.S. Citizenship and Identity.** The following documents are accepted as proof of both U.S. citizenship and identity:~~ (3-17-22)

~~**a.** A U.S. passport, including a U.S. Passport card, without regard to expiration date as long as the passport or passport card was issued without limitation;~~ (3-17-22)

~~**b.** A Certificate of Naturalization; or~~ (3-17-22)

~~**c.** A Certificate of U.S. Citizenship.~~ (3-17-22)

~~**d.** Documentary evidence issued by a federally recognized Indian tribe. Such documents include:~~ (3-17-22)

~~**i.** A tribal enrollment card;~~ (3-17-22)

~~**ii.** A certificate of Degree of Indian Blood;~~ (3-17-22)

~~**iii.** A tribal census document; or~~ (3-17-22)

~~**iv.** Documents on tribal letterhead, issued under the signature of the appropriate tribal official.~~ (3-17-22)

~~**02. Documents Accepted as Evidence of U.S. Citizenship.** The following documents are accepted as proof of U.S. citizenship if the proof in Subsection 104.01 of this rule is not available. These documents are not proof of identity and must be used in combination with a least one (1) document listed in Subsections 104.03 and 104.04 of this rule to establish both citizenship and identity. If the applicant does not have one (1) of the documents listed below, he may submit an affidavit signed by another individual under penalty of perjury who can reasonably attest to the applicant's citizenship, and that contains the applicant's name, date of birth, and place of U.S. birth. The affidavit does not have to be notarized.~~ (3-17-22)

~~**a.** A U.S. birth certificate that shows the individual was born in one (1) of the following:~~ (3-17-22)

~~**i.** United States fifty (50) states;~~ (3-17-22)

~~**ii.** District of Columbia;~~ (3-17-22)

~~**iii.** Puerto Rico, on or after January 13, 1941;~~ (3-17-22)

~~**iv.** Guam;~~ (3-17-22)

~~**v.** U.S. Virgin Islands, on or after January 17, 1917;~~ (3-17-22)

~~**vi.** America Samoa;~~ (3-17-22)

~~**vii.** Swain's Island; or~~ (3-17-22)

- ~~viii. Northern Mariana Islands, after November 4, 1986; (3-17-22)~~
- ~~b. A certification of report of birth issued by the Department of State, Forms DS-1350 or FS-545; (3-17-22)~~
- ~~e. A report of birth abroad of a U.S. Citizen, Form FS-240; (3-17-22)~~
- ~~d. A U.S. Citizen I.D. card, DHS Form I-197; (3-17-22)~~
- ~~e. A Northern Mariana Identification Card; (3-17-22)~~
- ~~f. A final adoption decree showing the child's name and U.S. place of birth, or if the adoption is not final, a statement from the state approved adoption agency that shows the child's name and U.S. place of birth; (3-17-22)~~
- ~~g. Evidence of U.S. Civil Service employment before June 1, 1976; (3-17-22)~~
- ~~h. An official U.S. Military record showing a U.S. place of birth; (3-17-22)~~
- ~~i. A certification of birth abroad, FS-545; (3-17-22)~~
- ~~j. Verification with the Department of Homeland Security's Systematic Alien Verification for Entitlements (SAVE) database; (3-17-22)~~
- ~~k. Evidence of meeting the automatic criteria for U.S. citizenship outlined in the Child Citizenship Act of 2000; (3-17-22)~~
- ~~l. Medical records, including hospital, clinic, or doctor records, or admission papers from a nursing facility, skilled care facility, or other institution that indicate a U.S. place of birth; (3-17-22)~~
- ~~m. Life, health, or other insurance record that indicates a U.S. place of birth; (3-17-22)~~
- ~~n. Official religious record recorded in the U.S. showing that the birth occurred in the U.S; (3-17-22)~~
- ~~o. School records, including pre-school, Head Start, and daycare, showing the child's name and U.S. place of birth; or (3-17-22)~~
- ~~p. Federal or state census record showing U.S. citizenship or a U.S. place of birth. (3-17-22)~~
- ~~03. **Evidence of Identity.** The following documents are accepted as proof of identity, provided the document has a photograph or other identifying information including: name, age, sex, race, height, weight, eye color, or address. (3-17-22)~~
 - ~~a. A state or territory issued driver's license. A driver's license issued by a Canadian government authority is not a valid indicator of identity in the U. S.; (3-17-22)~~
 - ~~b. A federal, state, or local government issued identity card; (3-17-22)~~
 - ~~e. School identification card; (3-17-22)~~
 - ~~d. U.S. Military card or draft record; (3-17-22)~~
 - ~~e. Military dependent's identification card; (3-17-22)~~
 - ~~f. U. S. Coast guard Merchant Mariner card; (3-17-22)~~
 - ~~g. A cross-match with a federal or state governmental, public assistance, law enforcement, or~~

~~corrections agency's data system; (3-17-22)~~

~~**h.** A finding of identity from a federal or state governmental agency, when the agency has verified and certified the identity of the individual, including public assistance, law enforcement, internal revenue or tax bureau, or corrections agency; (3-17-22)~~

~~**i.** A finding of identity from another state benefits agency or program provided that it obtained verification of identity as a criterion of participation; (3-17-22)~~

~~**j.** Verification of citizenship by a federal agency or another state. If the Department finds that a federal agency or an agency in another state verified citizenship on or after July 1, 2006, no further documentation of citizenship or identity is required; (3-17-22)~~

~~**k.** Two (2) documents containing consistent information that corroborates the applicant's identity including: employer identification cards, high school or high school equivalency diplomas, college diplomas, marriage certificates, divorce decrees, property deeds or titles; or (3-17-22)~~

~~**l.** When the applicant does not have any documentation as specified in Subsections 104.03.a. through k. of this rule, the applicant may submit an affidavit signed by another individual under penalty of perjury, who can reasonably attest to the applicant's identity. The affidavit must contain the applicant's name and other identifying information to establish identity stated in Subsection 104.03 of this rule. The affidavit does not have to be notarized. (3-17-22)~~

~~**04. Identity Rules for Children.** For children under age nineteen (19), clinic, doctor, or hospital records, including pre-school or daycare records, may be used as additional sources of documentation of identity. (3-17-22)~~

~~**05. Eligibility for Medicaid Applicants Who Do Not Provide U.S. Citizenship and Identity Documentation.** If verification of U.S. citizenship and identity is not obtained through electronic means, or if the applicant is unable to provide documentation at the time of application, the applicant has ninety (90) days to provide proof of U.S. citizenship and identity. The ninety (90) days begins five (5) days after the date the notice is mailed requesting the documentation of citizenship and identity. Medicaid benefits will be approved pending verification if the applicant meets all other eligibility requirements. Medicaid will be denied if the applicant refuses to obtain documentation. (3-17-22)~~

~~**06. Individuals Considered as Meeting the U.S. Citizenship and Identity Documentation Requirements.** The following individuals are considered to have met the U.S. citizenship and identity documentation requirements, regardless of whether documentation required in Subsections 104.01 through 104.05 of this rule is provided: (3-17-22)~~

~~**a.** Supplemental Security Income (SSI) recipients; (3-17-22)~~

~~**b.** Individuals determined by the SSA to be entitled to or enrolled in any part of Medicare; (3-17-22)~~

~~**c.** Social Security Disability Income (SSDI) recipients; (3-17-22)~~

~~**d.** Adoptive or foster care children receiving assistance under Title IV B or Title IV E of the Social Security Act; (3-17-22)~~

~~**e.** Individuals deemed eligible for Medicaid as a newborn under Section 800 of these rules; and (3-17-22)~~

~~**f.** Individuals whose name and social security number are validated by the Social Security Administration data match as meeting U.S. citizenship status. (3-17-22)~~

~~**07. Assistance in Obtaining Documentation.** The Department will provide assistance to individuals who need assistance in securing satisfactory documentary evidence of citizenship. (3-17-22)~~

~~08. Provide Verification of U.S. Citizenship and Identity One Time.~~ When an individual's U.S. citizenship and identity have been verified, whether through electronic data matches or provision of documentation, changes in eligibility will not require an individual to provide the verification again. If later verification provides the Department with good cause to question the validity of the individual's citizenship or identity, the individual may be requested to provide further verification. (3-17-22)

~~105. CITIZENSHIP AND QUALIFIED NON-CITIZEN REQUIREMENTS.~~

~~To be eligible for AABD cash and Medicaid, an individual must be a member of one (1) of the groups listed in Subsections 105.01 through 105.16 of this rule. An individual must also provide proof of identity as provided in Section 104 of these rules.~~ (3-17-22)

~~01. U.S. Citizen.~~ A U.S. Citizen or a "national of the United States." (3-17-22)

~~02. Child Born Outside the U.S.~~ A child born outside the U.S., as defined in Public Law 106-395, is considered a citizen if all of the following conditions are met: (3-17-22)

~~a.~~ At least one (1) parent is a U.S. Citizen. The parent can be a citizen by birth or naturalization. This includes an adoptive parent; (3-17-22)

~~b.~~ The child is residing permanently in the U.S. in the legal and physical custody of a parent who is a U.S. Citizen; (3-17-22)

~~c.~~ The child is under eighteen (18) years of age; (3-17-22)

~~d.~~ The child is a lawful permanent resident; and (3-17-22)

~~e.~~ If the child is an adoptive child, the child was residing in the U.S. at the time the parent was naturalized and was in the legal and physical custody of the adoptive parent. (3-17-22)

~~03. Full-Time Active Duty U.S. Armed Forces Member.~~ A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) currently on full time active duty with the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard, or a spouse or unmarried dependent child of the U.S. Armed Forces member. (3-17-22)

~~04. Veteran of the U.S. Armed Forces.~~ A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) honorably discharged from the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard for a reason other than their citizenship status or a spouse, including a surviving spouse who has not remarried, or an unmarried dependent child of the veteran. (3-17-22)

~~05. Non-Citizen Entering the U.S. Before August 22, 1996.~~ A non-citizen who entered the U.S. before August 22, 1996, and is currently a qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) and remained continuously present in the U.S. until they became a qualified alien. (3-17-22)

~~06. Non-Citizen Entering on or After August 22, 1996.~~ A non-citizen who entered on or after August 22, 1996, and; (3-17-22)

~~a.~~ Is a refugee admitted into the U.S. under 8 U.S.C. 1157, and can be eligible for seven (7) years from their date of entry; (3-17-22)

~~b.~~ Is an asylee granted asylum into the U.S. under 8 U.S.C. 1158, and can be eligible for seven (7) years from the date their asylee status is assigned; (3-17-22)

~~c.~~ Is an individual whose deportation or removal from the U.S. has been withheld under 8 U.S.C. 1253 or 1231(b)(3) as amended by Section 305(a) of Division C of Public Law 104-208, and can be eligible for seven (7) years from the date their deportation or removal was withheld; (3-17-22)

~~d.~~ Is an Amerasian immigrant admitted into the U.S. under 8 U.S.C. 1612(b)(2)(A)(i)(V), and can be

eligible for seven (7) years from the date of entry; (3-17-22)

~~e. Is a Cuban or Haitian entrant to the U.S. under Section 501(e) of the Refugee Assistance Act, and can be eligible for seven (7) years from their date of entry; (3-17-22)~~

~~f. Is an Afghan special immigrant, as defined in Public Law 110-161, who has special immigration status after December 26, 2007; or (3-17-22)~~

~~g. Is an Iraqi special immigrant, as defined in Public Law 110-181, who has special immigration status after January 28, 2008. (3-17-22)~~

~~07. **Qualified Non-Citizen Entering on or After August 22, 1996.** A qualified non-citizen under 8 U.S.C. 1641(b) or (c), entering the U.S. on or after August 22, 1996, and who has held a qualified non-citizen status for at least five (5) years. (3-17-22)~~

~~08. **American Indian Born in Canada.** An American Indian born in Canada under 8 U.S.C. 1359. (3-17-22)~~

~~09. **American Indian Born Outside the U.S.** An American Indian born outside of the U.S., and is a member of a U.S. federally recognized tribe under 25 U.S.C. 450 b(e). (3-17-22)~~

~~10. **Qualified Non-Citizen Child Receiving Federal Foster Care.** A qualified non-citizen child as defined in 8 U.S.C. 1641(b) or (c), and receiving federal foster care assistance. (3-17-22)~~

~~11. **Victim of Severe Form of Trafficking.** A victim of a severe form of trafficking in persons, as defined in 22 U.S.C. 7102(13); who meets one (1) of the following: (3-17-22)~~

~~a. Is under the age of eighteen (18) years; or (3-17-22)~~

~~b. Is certified by the U.S. Department of Health and Human Services as willing to assist in the investigation and prosecution of a severe form of trafficking in persons; and (3-17-22)~~

~~i. Has made a bona fide application for a temporary visa under 8 U.S.C. 1104(a)(15)(T), which has not been denied; or (3-17-22)~~

~~ii. Is remaining in the U.S. to assist the U.S. Attorney General in the prosecution of traffickers in persons. (3-17-22)~~

~~12. **Qualified Non-Citizen Receiving Supplement Security Income (SSI).** A qualified non-citizen under 8 U.S.C. 1641(b) or (c), and is receiving SSI; or (3-17-22)~~

~~13. **Permanent Resident Receiving AABD Cash On August 22, 1996.** A permanent resident receiving AABD cash on August 22, 1996. (3-17-22)~~

~~14. **Individuals Not Meeting the Citizenship or Qualified Non-Citizen Requirements.** An individual who does not meet the citizenship or qualified non-citizen requirements in Subsections 105.01 through 105.13 of this rule, may be eligible for emergency medical services if he meets all other conditions of eligibility. (3-17-22)~~

106. (RESERVED) EMERGENCY MEDICAL CONDITION.

An individual who meets eligibility criteria for a category of assistance but does not meet US citizenship requirements or eligible non-citizen requirements may receive medical assistance under a Title XIX or Title XXI coverage group as follows: ()

01. **Emergency Medical Conditions.** An individual not meeting the US citizenship requirement may receive medical services necessary to treat an emergency medical condition, including labor and delivery. Emergency medical conditions have acute symptoms of severity, including severe pain. ()

02. Determination of Emergency Medical Conditions. The Department determines if a condition meets criteria of an emergency medical condition. ()

03. Limitation on Medical Assistance. Medical assistance is limited to the period established for the emergency medical condition. ()

04. Documentation Waived. For undocumented individuals with emergency medical conditions, the SSN requirement is waived because an SSN cannot be issued. Individuals must be otherwise eligible for Title XIX or XXI. ()

107. INSTITUTIONAL STATUS.

An institution provides treatment, services, food, and shelter to four (4) or more people, not related to the owner. A participant living in an ineligible institution an entire calendar month is not eligible for AABD cash, unless they qualifies for the institution payment exception. (3-17-22)()

01. Eligible Institutions for AABD and Medicaid. Eligible institutions for AABD and Medicaid are defined in Subsections 107.01.a. through 107.01.e. Are listed below. (3-17-22)()

a. Medical institution. A public or private medical institution, including a hospital, nursing care facility, or an ~~intermediate care facility for persons with intellectual disabilities ICF/IID~~ is an eligible institution. A participant is not eligible for AABD cash if they ~~is~~ are a resident of a medical institution the full month. (3-17-22)()

b. Child care institution. A non-profit private child care institution is an eligible institution. A public child care institution with no more than twenty-five (25) beds is an eligible institution. A child care institution must be licensed or approved by the Department. A detention facility for delinquent children is not a child care institution. A child care institution for mental diseases ~~(IMD)~~ is an eligible institution if it has sixteen (16) beds or less. A participant is not eligible for AABD cash if they ~~is~~ are a resident of a child care institution for the full month. (3-17-22)()

c. Community residence. A community residence is a facility providing food, shelter, and services to residents. A privately operated community residence is an eligible institution. A publicly operated community residence serving no more than sixteen (16) residents is an eligible institution. The Community Restorium in Bonners Ferry, Idaho, is an eligible institution even though more than sixteen (16) residents are served. ()

02. Ineligible Institutions for AABD and Medicaid. Ineligible institutions for AABD and Medicaid are defined in Subsections 107.02.a. through 107.02.d. Are listed below. (3-17-22)()

a. Public institutions ~~s.~~ ~~Public institutions are ineligible institutions~~ unless listed in Subsection 108.01 of these rules. (3-17-22)()

b. Institution for mental diseases ~~s.~~ ~~An institution for mental diseases for adults is an ineligible institution. A a facility is an institution for mental diseases if it is~~ maintained primarily for the care and treatment of persons with mental diseases. (3-17-22)()

c. Institution for tuberculosis ~~s.~~ ~~An institution for tuberculosis is an ineligible institution. A a facility is an institution for tuberculosis if it is~~ maintained primarily for the care and treatment of persons with tuberculosis. (3-17-22)()

d. Correctional institution ~~s.~~ ~~A correctional institution is an ineligible institution. A correctional institution is~~ a facility for prisoners, persons detained pending disposition of charges, or held under court order as material witnesses or juveniles. (3-17-22)()

03. Medicaid Exception for Inmates. An inmate can receive Medicaid while they are an inpatient in a medical facility. The inmate must meet all Medicaid eligibility requirements. ()

108. AABD ELIGIBILITY IN INELIGIBLE INSTITUTIONS.

A participant may get AABD cash in an ineligible institution or a medical institution if they meets one (1) of the conditions listed ~~in Subsections 108.01 and 108.02~~ below. (3-17-22)()

01. First Month in Institution. An AABD participant can get AABD cash for the month they entered the institution. Eligibility for the entry month applies to these residents: (3-17-22)()

a. Resident of a public institution. The person is a resident if they, or anyone, pays for his their food, shelter, and other services in the institution. (3-17-22)()

b. Patient in a medical institution. A ~~patient is a~~ person receiving room, board, and professional services in a medical institution, including an institution for tuberculosis or mental diseases. (3-17-22)()

02. Temporary Institution Stay. An AABD participant can get up to three (3) months' AABD payment during a temporary stay in an institution. A participant entering a public medical or psychiatric institution, a hospital, a nursing facility, or an ICF/IID may continue to get AABD payments. The Department must receive the temporary stay data no later than the ninetieth full day of confinement, or the release date, whichever is first. The payments may continue up to three (3) months if these conditions are met: ()

a. The Department is informed of the institutional stay. ()

b. A physician certifies the participant's stay is not likely to exceed three (3) full months. ()

c. A signed statement from the participant or a responsible party showing the participant's need to continue to maintain and pay for the place they intends to return to live. (3-17-22)()

109. CONDITIONS FOR TEMPORARY AABD IN INSTITUTIONS.

Special conditions for AABD when a participant is in an institution are listed ~~in Subsections 109.01 through 109.05~~ below: (3-17-22)()

01. Living Arrangement. AABD cash is paid based on the participant's living arrangement the month before the first month in the institution. Changes in living arrangement costs are used to determine AABD cash eligibility and benefit amount. ()

02. Participant Becomes Ineligible. If the participant becomes ineligible for AABD during his their temporary institutional stay, his their AABD payment must be ended after proper notice. (3-17-22)()

03. AABD Status. A participant must get AABD for the month they enters the institution to receive continued AABD payments. (3-17-22)()

04. Counting Three Full Months. A full month is a month the participant is in the institution every day of the month. If the participant enters after the first day of a month, the month of entry is not included in the three (3) full months. If the participant is discharged before the last day of the month, the month of discharge is not included in the three (3) full months. ()

05. SSI Benefits. If SSA decides a participant's SSI benefit will continue while the participant is in the institution, AABD payments can also continue. ()

110. -- 1289. (RESERVED)

~~**129. PARTICIPANT'S GUARDIAN FOR AABD CASH.**~~

~~A court appointed guardian can manage AABD cash for a participant who is not competent to do so. The Department may petition the District Court to appoint a guardian if one is needed.~~ (3-17-22)

130. ESTATE NOT IN PROBATE.

An administrator for public aid for a deceased participant's AABD cash can be court--appointed. The administrator must spend AABD cash, accessible through EBT before the participant's death, for the estate. The AABD cash can

only be spent to meet the needs of the participant, or ~~his~~ their dependents, for the month it was paid. If a participant had no debts for ~~th~~emself, or ~~his~~ their dependents, the administrator must return the AABD cash to the Department. AABD benefits paid by direct deposit or posted to the participant's EBT account, after the participant's death, are the property of the ~~s~~State of Idaho. (3-17-22)()

131. ESTATE IN PROBATE.

AABD cash received by a participant before ~~his~~ their death is disbursed as part of the participant's estate; if it is probated. The probate administrator spends the AABD cash under ~~his~~ their oath of administration. (3-17-22)()

132. -- 154. (RESERVED)

155. AABD FOR THE AGED.

To qualify for AABD for the aged, a person must be age sixty-five (65) or older. ()

156. AABD FOR THE BLIND OR DISABLED.

To qualify for AABD for the blind or disabled, a person must meet the definition of blindness or disability used by the SSA for RSDI and SSI benefits. (3-17-22)()

01. SSA Decision for Disabled. SSA's disability decision is binding on the Department unless: ()

a. The participant states ~~his~~ their disabling condition is different from, or in addition to, ~~his~~ their condition considered by SSA, and the participant has not reapplied for SSI; or (3-17-22)()

b. More than twelve (12) months have passed since the SSA made a final determination the participant was not disabled, and the participant states ~~his~~ their condition has changed or become worse since that final determination, and the participant has not reapplied for SSI. (3-17-22)()

02. Medicaid Pending SSA Appeal. When SSA decides a participant is no longer disabled, ~~they~~ meets the AABD disability requirement and can continue receiving Medicaid if ~~they~~ appeals SSA's decision. Medicaid ends if the SSA decision is upheld. (3-17-22)()

03. Grandfathered Participant for Aid to the Permanently and Totally Disabled (~~APT~~D) or Aid to the Blind (~~AB~~). A participant is disabled if ~~they~~ was were eligible as disabled in December 1973, and continues to meet the disability requirement in effect in December 1, 1973. ~~He~~They must also meet the other current eligibility requirements. (3-17-22)()

157. -- 165. (RESERVED)

166. FUGITIVE FELON OR PROBATION OR PAROLE VIOLATOR.

A participant is ineligible to receive AABD for any month during which ~~they~~ is are fleeing to avoid prosecution for a felony, fleeing to avoid custody or confinement after a felony conviction, or violating a federal or state condition of probation or parole. (3-17-22)()

167. FRAUDULENT MISREPRESENTATION OF RESIDENCY.

A participant is ineligible for AABD for ten (10) years if ~~they~~ was were convicted in a federal or state court of having fraudulently misrepresented residence to get AABD, SSI, TAFI, Food Stamps, or Medicaid from two (2) or more states at the same time. (3-17-22)()

168. -- 199. (RESERVED)

200. RESOURCES DEFINED.

Resources are cash, personal property, real property, and notes receivable. A participant, or spouse, must have the right, authority, or power to convert the resource to cash. The participant must have the legal right to use the resource for support and maintenance. Liquid resources are resources in cash or resources convertible to cash within twenty (20) workdays. Nonliquid resources are any resources, not in the form of cash, which cannot be converted to cash within twenty (20) workdays. (3-17-22)()

201. RESOURCE LIMIT.

The value of countable resources must be two thousand dollars (\$2,000) or less, for a single person to be AABD eligible. A married person must have countable resources of three thousand dollars (\$3,000) or less to be eligible for AABD cash. Resources are counted the first moment of each calendar month and apply to the entire month. ()

202. CHANGE IN VALUE OF RESOURCES.

A change in the value of resources is counted the first moment of the next month. ()

203. RESOURCES AND CHANGE IN MARITAL STATUS.

A change in marital status changes the resource limit. The resource limit change is effective the month after individual participants are married, divorced, separated, or one (1) spouse dies. ()

204. FACTORS MAKING PROPERTY A RESOURCE.

Property of any kind is a resource if the participant has an ownership interest in the property and the legal right to spend or convert the property to cash. ()

205. COUNTING RESOURCES AND INCOME.

An asset cannot be counted as income and resources in the same month. Assets received in cash or in-kind during a month are income. Income held past the month received is a resource. ()

~~**206. TYPES OF RESOURCES.**~~

~~Liquid resources are resources in cash or resources convertible to cash within twenty (20) working days. Nonliquid resources are any resources, not in the form of cash, which cannot be converted to cash within twenty (20) workdays. (3-17-22)~~

~~**207. EQUITY VALUE OF RESOURCES. (RESERVED)**~~

~~Equity value is the fair market value of a resource, minus any debts on it. (3-17-22)~~

208. SHARED OWNERSHIP RULE.

Except for checking and savings accounts and time deposits, each owner of shared property owns only ~~his~~ their fractional interest in the property. The total value of the property is divided among the owners, in direct proportion to each owner's share. (3-17-22)()

209. CONVERSION OR SALE OF A RESOURCE NOT INCOME.

Payment from the sale, exchange, or replacement of a resource is not income. The payment is a resource. ()

210. RESOURCES EXCLUDED BY FEDERAL LAW.

A resource excluded by federal law is not counted in determining the resource amount available to the participant. ()

211. -- 214. (RESERVED)

215. DEEMING RESOURCES.

~~Resources are deemed from a spouse to a participant, from a parent or spouse of a parent to a child participant, from an essential person to a participant, or from a sponsor to a legal non citizen participant.~~ Resource deeming is determined by the SSA Program Operations Manual System (POMS) SI 01330.00, Deeming Resources, incorporated by reference under Section 002 of these rules. †The participant's circumstances are assessed the first moment of the month. Deeming starts the first full calendar month the participant is in a deeming situation. Deeming ends the first full calendar month the participant is not in a deeming situation. Deeming to a child ends the month after the child's eighteenth birthday. (3-17-22)()

~~**01. Spouse of Adult Participant.** When a participant lives with a spouse, his resources include those of the spouse. The resource limit is for a couple, when the spouse was a member of the household as of the first moment of the benefit month. The AABD resource exclusions are subtracted. Pension funds the ineligible spouse has on deposit are excluded. (3-17-22)~~

~~02. Resources of Parent(s) of Child Under Age Eighteen.~~ When a child participant, under age eighteen (18), is living with his parent or the spouse of his parent, their resources are deemed to the child. When there is more than one (1) child participant in the household, deemed parental resources are divided equally among the child AABD cash participants. When the child lives with one (1) parent, resources over the single person resource limit are deemed to the child. When the child lives with both parents, resources over the couple limit are deemed to the child. A stepparent's resources are not deemed to the child for Medicaid eligibility. A stepparent's resources are deemed to the child for AABD cash. Resources and exclusions of the child participant, and the parents, are computed separately. Pension funds owned by an ineligible parent or parent's spouse are excluded from resources for deeming. (3-17-22)

~~03. Resources of Essential Person of Participant.~~ When a participant lives with an essential person, the resources of the essential person are deemed to the participant. The essential person's countable resources are combined with the participant's countable resources. When the essential person is not the participant's spouse, the single person resource limit is used. When the essential person is the participant's ineligible spouse, the couple resource limit is used. (3-17-22)

~~04. Resources of Legal Non-Citizen's Sponsor — No INS Form I-864 Signed.~~ A legal non-citizen's resources include those of his sponsor and of the sponsor's spouse. When the sponsor has not signed an I-864 affidavit of support, the resources deeming period is three (3) years after the legal non-citizen's admission to the U.S. A sponsor's resources are not deemed to the legal non-citizen for Medicaid eligibility. (3-17-22)

~~a. If the sponsor does not have a spouse living with him, the sponsor's countable resources over the single person resource limit are deemed to the legal non-citizen participant. (3-17-22)~~

~~b. If the sponsor's spouse lives with him, the sponsor couple's resources over the couple resource limit are deemed to the legal non-citizen participant. (3-17-22)~~

~~e. If a person sponsors two (2) or more legal non-citizen participants, the sponsor's deemed resources are divided and deemed equally to the legal non-citizen participants. (3-17-22)~~

~~05. Resources of Legal Non-Citizen's Sponsor — INS Form I-864 Signed.~~ For a legal non-citizen admitted to the U.S. on or after August 22, 1996, whose sponsor has signed an INS Form I-864 affidavit of support, all resources of the sponsor and sponsor's spouse are deemed to the legal non-citizen for AABD cash and Medicaid eligibility. Exceptions are listed in Subsections 215.05.a. and 215.05.b. of these rules. (3-17-22)

~~a. The legal non-citizen, or the legal non-citizen child's parent, was battered or subjected to extreme cruelty in the U.S. There is a substantial connection between the battery and the participant's need for assistance. The person subjected to the battery or cruelty no longer lives with the person responsible for the battery or cruelty. (3-17-22)~~

~~b. Alien sponsor deeming is suspended for twelve (12) months, if the legal non-citizen is not able to get food and shelter without AABD cash. (3-17-22)~~

216. HOUSEHOLD FOR RESOURCE COMPUTATIONS.

A participant living in an institution is not a household for resource computations. ()

217. UNKNOWN RESOURCES.

An asset is not a resource if the participant is unaware of ~~his~~ their ownership. The asset is a resource the month after discovery. (3-17-22)()

218. -- 221. (RESERVED)

222. VEHICLES AS A RESOURCE.

~~Vehicles are excluded as resources as described in Subsection 222.01 of these rules.~~ If more than one (1) vehicle is owned, the exclusion applies in the best way for the participant. (3-17-22)()

01. One Vehicle Excluded. One (1) vehicle is excluded, regardless of value. ()

02. Other Vehicles Not Excluded. The equity value of a vehicle not excluded under Subsection 222.01 of ~~these~~ this rules is a resource. (3-17-22)()

223. BURIAL FUNDS EXCLUDED FROM RESOURCE LIMIT.

Burial funds up to one thousand five hundred dollars (\$1,500) per person, set aside for the burial expenses of the participant or spouse, are excluded from resources. To be excluded, burial funds must be kept separate from assets not burial-related. A burial contract that can be revoked or sold, without significant hardship, is a resource. Any portion of the contract for the purchase of burial spaces is excluded from resources. A burial contract that cannot be revoked, and cannot be sold without significant hardship, is not a resource. The burial fund portion of the contract counts against the one thousand five hundred dollar (\$1,500) burial funds exclusion. The burial space portion of the contract does not count against the burial funds exclusion. Interest earned on excluded burial funds is also excluded. ()

01. Life Insurance Policy as Burial Funds. The participant can designate a countable life insurance policy as a burial fund. The face value of excluded life insurance policies on the participant counts against the burial funds exclusion. ()

02. Face Value of Burial Insurance Policies Not Counted. The face value of burial insurance policies does not count toward the one thousand five hundred dollar (\$1,500) life insurance limit, when computing the total face value of life insurance policies owned by a participant. Interest on excluded burial funds does not count toward the one thousand five hundred dollar (\$1,500) burial funds exclusion. ()

03. Effective Date of Burial Funds Exclusion. The exclusion is effective the month after the month the funds were set aside. Burial funds can be designated retroactively, back to the first day of the month the participant intended the funds to be set aside. The participant must confirm the designation in writing. ()

04. Penalty for Misusing Burial Funds. If the participant does not get SSI, burial funds used for another purpose lose the exclusion. An overpayment must be recovered. If the participant gets SSI, and is penalized by SSA because they used excluded burial funds for another purpose, ~~his~~ their AABD payment must not be increased to compensate the SSA penalty. (3-17-22)()

224. BURIAL SPACE OR PLOT EXCLUSION.

A burial space is a burial plot, grave site, crypt, mausoleum, casket, urn, niche, or other repository normally used for the deceased's remains. A burial space, or burial space purchase agreement, held for the burial of the participant, spouse, or other member of ~~his~~ their immediate family, is an excluded resource. (3-17-22)()

01. Burial Space Contract. ~~The burial space contract m~~ Must list all burial spaces and include a value for each space or the total value of all the spaces. The contract must not require further payment after the contract is signed. (3-17-22)()

02. Space Held by Ineligibles Excluded. A space held by an ineligible spouse or parent, for the burial of a participant, spouse, and any member of the participant's immediate family, is excluded. A space held by a legal non-citizen sponsor, or essential person, for ~~his~~ their own burial is excluded only if the sponsor is a member of the participant's immediate family. (3-17-22)()

225. -- 234. (RESERVED)

235. EXCLUDED HOUSEHOLD GOODS AND PERSONAL EFFECTS.

Household goods and personal effects are excluded from resources, regardless of their dollar value. ()

236. (RESERVED)

237. REAL PROPERTY DEFINITION.

Real property is land, including buildings or immovable objects attached permanently to the land. Real property is a resource unless excluded. ()

238. HOME AS RESOURCE.

An individual's home is property they owns, and serves as his their principal place of residence. His Their principal place of residence is the place they considers his their principal home. If the individual is absent from his their home, it is still his their principal place of residence if they intends to return. (3-17-22)()

01. AABD Cash, and Medicaid With the Exception of Long-Term Care. For AABD Cash and Medicaid ~~with the exception of~~ except for long-term care, the value of an individual's home is an excluded resource. (3-17-22)()

02. Long-Term Care Services. For long-term care services, when the value of a participant's equity in the home is seven hundred fifty thousand dollars (\$750,000) or less, the home is excluded as a resource. When the equity value exceeds seven hundred fifty thousand dollars (\$750,000), the individual is ineligible for long-term care services. The equity value, regardless of the amount, is an excluded resource when one (1) of the following applies: ()

a. The spouse of the individual lives in the home; or ()

b. The individual's child, who is under age twenty-one (21), or is blind, or meets the disability requirements for AABD cash, lives in the home. ()

239. SALE OF EXCLUDED HOME AND REPLACEMENT.

If the participant plans to buy another excluded home, proceeds from the sale of a participant's excluded home are excluded resources. Proceeds from the sale of an excluded home must be used to replace the home within three (3) calendar months. Proceeds retained beyond three (3) calendar months are a countable resource. ()

240. REPLACEMENT OF EXCLUDED RESOURCES.

Cash and in-kind payments for replacement or repair of lost, damaged, or stolen excluded resources, are excluded resources for nine (9) months from the date received. This exclusion can be extended for cash payments, up to an additional nine (9) months. The extension can be made if, for the first nine (9) months, circumstances beyond the participant's control prevent repair or replacement of the lost, damaged, or stolen property and keep the participant from contracting for repair or replacement. This exclusion can be extended for twelve (12) more months for a catastrophe the President declares a major disaster. Interest earned by funds excluded under this provision is excluded from resources. ()

241. UNDUE HARDSHIP EXCLUSION FROM SALE OF JOINTLY OWNED REAL PROPERTY.

A participant's ownership interest, in jointly owned real property, is an excluded resource as long as sale of the property will cause undue hardship to a co-owner. Undue hardship results if a coowner uses the property as his their principal place of residence, would have to move if the property were sold, and has no other readily available housing. (3-17-22)()

242. AMERICAN INDIAN PROPERTY EXCLUDED.

For the purposes of determining eligibility for an individual who is an American Indian, the following property is excluded: (3-17-22)()

01. Property. Real property and improvements located on a reservation, including any federally recognized Indian Tribe's reservation, pueblo, or colony, and Indian allotments on or near a reservation as designated and approved by the Bureau of Indian Affairs. ()

02. Natural Resources. Ownership interest in rents, leases, royalties, or usage rights related to natural resources resulting from the exercise of federally protected rights. ()

03. Other Ownership Interests or Usage Rights. Ownership interests in or usage rights to property not covered by Subsections 242.01 or 242.02 of this rule that have a unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or traditional lifestyle ~~according to~~ under applicable tribal law or custom. (3-17-22)()

243. RESOURCES ASSOCIATED WITH PROPERTY.

Resources associated with real property are mineral rights, timber rights, easements, leaseholds, water rights, remainder interests, and sale of natural resources. These resources are counted as real property. ()

244. RESOURCES ESSENTIAL FOR SELF-SUPPORT EXCLUDED.

Resources are excluded as essential to self-support, if they fall into one (1) of the categories described in Subsections 244.01 through 244.03 below. (3-17-22)()

01. Essential Property in Current Use. Property in current use in the type of activity that qualifies it as essential to self-support is excluded, regardless of value or rate of return. Trade or business property, government permits, and personal property used by an employee for work are excluded regardless of value or rate of return. If the property is not in current use, for reasons beyond the participant's control, there must be a reasonable expectation the required use will resume. If the participant does not intend to resume the self-support activity, the property is a countable resource for the month after the month of last use. ()

02. Nonbusiness Property Producing Goods or Services. Up to six thousand dollars (\$6,000) of the equity value of nonbusiness property, used to produce goods or services essential to daily activities, is excluded regardless of rate of return. Equity value over six thousand dollars (\$6,000) is not excluded. This exclusion is not used for income-producing property. ()

03. Nonbusiness Income-Producing Property. Up to six thousand dollars (\$6,000) equity in nonbusiness income-producing property is excluded if it produces at least a six percent (6%) rate of return. The property must produce a net annual return equal to at least six percent (6%) of the excluded equity. If a participant owns more than one (1) piece of income-producing property, the six percent (6%) return requirement applies to each. The six thousand dollars (\$6,000) equity value limit applies to the total equity value of all the properties meeting the six percent (6%) return requirement. If the earnings decline is for reasons beyond the participant's control, up to twenty-four (24) months can be allowed for the property to resume producing a six percent (6%) return. If the property still is not producing a six percent (6%) return at the end of the twenty-four (24) month extension, the resource exclusion must end the month after the month the twenty-four (24) month period ends. (3-17-22)()

245. RESOURCES SET ASIDE AS PART OF A PLAN FOR ACHIEVING SELF-SUPPORT (PASS) EXCLUDED.

PASS allows blind and disabled participants to set aside income and resources necessary for the achievement of its goals. Resources set aside as part of an approved PASS are excluded. The PASS disregard must not be applied to resources unless the participant would be ineligible due to excess resources. To disregard resources, the PASS must show how resources the participant has or will receive under the plan, will be used to obtain the PASS goal. The PASS must show how the disregarded resources will be identified separately from the participant's other resources. The PASS must list items or activities requiring savings or purchases and the amounts the participant anticipates saving or spending. The PASS must and show a specific target date to achieve the objective. (3-17-22)()

~~246. LIMITED AWARD TO CHILD WITH LIFE THREATENING CONDITION.~~

~~Any gift from a tax exempt nonprofit organization to a child under age eighteen (18), who has a life threatening condition, is excluded from resources under the conditions in Subsections 246.01 through 246.02. (3-17-22)~~

~~**01. In-Kind.** An in-kind gift is excluded if the gift is not converted to cash. (3-17-22)~~

~~**02. Cash.** Cash gifts are excluded up to two thousand dollars (\$2,000) for the calendar year the cash gifts are made. (3-17-22)~~

~~247. LIFE ESTATE INTEREST IN ANOTHER'S HOME.~~

~~The purchase of a life estate interest in another individual's home is a resource unless the purchaser resides in the home for a period of at least twelve (12) consecutive months after the date of purchase. ()~~

~~248. -- 254. (RESERVED)~~

~~255. RETROACTIVE SSI AND RSDI BENEFITS.~~

~~Retroactive SSI and RSDI benefits are issued after the calendar month for which they are paid. Retroactive SSI and~~

RSDI benefits are excluded from resources for nine (9) calendar months after the month they are received. Interest earned by excluded funds is counted as income. ()

256. (RESERVED)

257. DISASTER ASSISTANCE.

Assistance received because of a major disaster declared by the President is excluded from resources. Interest earned on excluded funds is excluded from income and resources. ()

258. CASH TO PURCHASE MEDICAL OR SOCIAL SERVICES.

Cash paid by a recognized medical or social services program, for the participant to purchase medical or social services, is not a resource for one (1) calendar month after receipt. The cash must not be repayment for a bill already paid. ()

259. (RESERVED)

260. ALASKA NATIVE CLAIMS SETTLEMENT ACT.

Payments to Alaska Natives and their descendants from the Alaska Native Claims Settlement Act, under ~~public Law PL 100-241~~, are excluded from resources. ~~(3-17-22)()~~

261. STOCK IN ALASKA REGIONAL OR VILLAGE CORPORATIONS.

Stock held by Alaska natives in regional or village corporations is inalienable for a twenty (20) year period under Sections 7(h) and 8(c) of the Alaska Native Claims Settlement Act. ()

262. VICTIMS' COMPENSATION PAYMENTS.

Payments, from a fund set up by a State to aid victims of crime, are excluded from resources for nine (9) months. Interest earned on unspent victims' compensation payments is counted for income and resources. ()

263. -- 264. (RESERVED)

265. TAX ADVANCES AND REFUNDS RELATED TO EARNED INCOME TAX CREDITS.

A federal tax refund or payment made by an employer, related to Earned Income Tax Credits (EITC), is excluded from resources for the month after the month the refund or payment is received. Interest earned on unspent tax refunds related to EITC is counted for income and resources. ()

266. IDENTIFYING EXCLUDED FUNDS COMMINGLED WITH FUNDS NOT EXCLUDED.

Excluded funds must be separately identifiable to remain excluded. ()

267. DEDICATED ACCOUNT FOR SSI PARTICIPANT.

A dedicated account for past-due SSI benefits, set up in a financial institution for an SSI participant under age eighteen (18) is an excluded resource. The account must be set up by the child's SSI representative payee, and excluded by SSA. ()

268. SUPPORT AND MAINTENANCE ASSISTANCE ~~(HOME ENERGY ASSISTANCE).~~

~~Support and Maintenance Assistance (SMA) is in-kind support and maintenance, or cash paid for food or shelter needs. It includes Home Energy Assistance. SMA Home Energy Assistance is aid to meet the costs of heating or cooling a home. SMA and Home Energy Assistance are excluded resources.~~ Support and Maintenance Assistance (SMA) is in-kind support and maintenance, or cash paid for food or shelter needs. It includes Home Maintenance Assistance aid to cover costs of heating or cooling a home. SMA is an excluded resource. ~~(3-17-22)()~~

269. -- 270. (RESERVED)

271. ~~VA MONETARY ALLOWANCES TO A CHILD BORN WITH SPINA BIFIDA.~~

~~VA monetary allowances to a child born with spina bifida, who is the child of a Vietnam veteran, are excluded resources.~~ ~~(3-17-22)~~

272. WALKER V. BAYER PAYMENTS.

Class action settlement payments in *Susan Walker v. Bayer Corporation, et al.* are excluded from resources for Medicaid by ~~Public Law~~ 105-33. These payments are not excluded for AABD cash. (3-17-22)()

273. -- 275. (RESERVED)

276. EXCLUDED REAL ESTATE CONTRACT.

The principal balance of a real estate contract is excluded from resources of a participant in long-term care when the Department determines it is in the Department's best interest to exclude the contract. The determination by the Department of its best interest is final. ()

277. FEES PAID TO A CONTINUING CARE RETIREMENT COMMUNITY (CCRC) OR LIFE CARE COMMUNITY.

An entrance fee to a CCRC or a life care community is a resource if the participant or applicant for long-term care has discretion to spend the fee or if the fee may be used to pay for care in a contingency. A CCRC or life care community is a type of long-term care facility that offers varying levels of care and in which a resident contracts with the facility to obtain care that is intended to endure for the remainder of the resident's life in exchange for valuable consideration. ()

278. TRUSTS.

A trust is a resource to a participant with the legal right to revoke the trust, and use the principal for ~~his~~ their own support and maintenance. See Sections 838 through 873 in these rules for treatment of trusts for Medicaid. (3-17-22)()

279. RETIREMENT FUNDS.

Retirement funds are work-related plans for providing income or pensions when employment ends. A retirement fund, owned by a participant, is a resource if they have the option of withdrawing a lump sum, even though ~~they is~~ are not yet eligible for periodic retirement payments. If the participant is eligible for periodic retirement payments, the fund is not a countable resource. The value of a retirement fund is the amount of money a participant can currently withdraw from the fund. (3-17-22)()

280. INHERITANCE.

An inheritance is cash, a right, including probate allowances, trust payments and annuities, or noncash items received as the result of someone's death. Cash or noncash items in an inheritance are income the month received and a resource the next month. Participants are required to make claims and take all reasonable action necessary to obtain any inheritance to which they may be entitled. Failure to make such claims or take reasonable steps to obtain an inheritance is an asset transfer. A contested inheritance is not counted as a resource until the contest is settled and money is distributed. ()

281. LIFE INSURANCE.

A life insurance policy is an excluded resource if its face value, plus the face value of all other life insurance policies the participant owns on the same insured person, totals one thousand five hundred dollars (\$1,500) or less. If the face values exceed one thousand five hundred dollars (\$1,500) the policies are a resource in the amount of the cash surrender value. ()

282. CONSERVATORSHIP.

Funds required to be made available for the care and maintenance of a participant, under a court order, are the participant's resource. This is true even if the participant or ~~his~~ their agent is required to petition the court to withdraw funds for the participant's care. (3-17-22)()

283. CONDITIONAL BENEFITS.

A participant ineligible due solely to excess nonliquid resources, can receive AABD cash and related Medicaid. The participant must meet two (2) conditions. First, ~~his~~ their countable liquid resources must not exceed three (3) times the participant's AABD cash budgeted needs. Second, the participant agrees, in writing, to sell excess nonliquid resources at their fair market value, within three (3) months. The value of excess real property is not counted as a resource, ~~as long as~~ if the participant makes reasonable efforts to sell the property at its fair market value, and ~~his~~ their reasonable efforts to sell are not successful. This exclusion is also used to compute deemed resources. (3-17-22)()

01. Conditional Benefits Payments Disposal/Exclusion Period. The disposal ~~period~~ and exclusion period for excess nonliquid resources begins on the date the participant signs the Agreement to Sell Property. The disposal and exclusion periods can begin earlier for a participant who met all requirements to receive conditional benefits before ~~his their~~ first opportunity to sign the Agreement to Sell Property. The participant must sign the Agreement to Sell Property before ~~his their~~ application is approved. (3-17-22)()

02. Time Period for Disposal of Excess Resources. The disposal period for excess nonliquid personal property is three (3) months. One (1) three (3) month extension, for sale of personal property, is allowed when good cause exists. (3-17-22)()

03. Good Cause for Not Making Efforts to Sell Excess Property. The participant has good cause ~~exists~~ for not making efforts to sell property, when circumstances beyond ~~his their~~ control prevent ~~his their~~ taking the required actions. Without good cause, the participant's countable resources include the value of the excess property, retroactive to the beginning of the conditional benefits period. (3-17-22)()

284. RESOURCE TRANSFER FOR LESS THAN FAIR MARKET VALUE.

~~Starting November 1, 2000,~~ AABD cash participants are subject to a period of ineligibility if they transfer resources for less than fair market value. The participant is not subject to a period of ineligibility if ~~his their~~ total countable resources in the transfer month were under two thousand dollars (\$2,000), even if ~~they~~ had ~~ve~~ kept the transferred resources. Excluded resources, except for the excluded home and associated property, are not subject to the resource transfer period of ineligibility. The exceptions to the period of ineligibility for transfer of resources are listed in Section 292 ~~of these rules~~. (3-17-22)()

01. Transfer of Resources. ~~Transfer of resources i~~Includes reducing or eliminating the participant's ownership or control of the resource. Transfer of resources includes giving away cash resources without receiving fair market value. (3-17-22)()

02. Transfer of Participant's Resources by a Spouse of Either Spouse's Resources. ~~A transfer by the participant's spouse of either spouse's resources s~~Subjects the participant to the resource transfer period of ineligibility. (3-17-22)()

03. Transfer of Participant's Resources by a Co-Owner. ~~Transfer of the participant's resources by a co-owner s~~Subjects the participant to a period of ineligibility based on ~~his their~~ share of the co-owed resources. (3-17-22)()

04. Transfer of Participant's Resources by a Legal Representative Such as a Legal Guardian or Parent of Minor Child. ~~Transfer of the participant's resources by a legal representative such as a legal guardian or parent of a minor child s~~Subjects the participant to a period of ineligibility. (3-17-22)()

285. AABD PERIOD OF INELIGIBILITY FOR RESOURCE TRANSFERS.

The resource transfer period of ineligibility is a period of AABD ineligibility for up to sixty (60) months. The period of ineligibility begins the first day of the month after the transfer month. The participant must be notified in writing at least ten (10) days before a resource transfer period of ineligibility is imposed. ()

286. RESOURCE TRANSFER LOOK-BACK PERIOD.

The resource transfer penalty applies to any transfer for less than fair market value made during a period preceding a request for cash assistance. ~~The look-back period is determined as follows:~~ (3-17-22)

01. Transfers Prior to February 8, 2006. ~~For any resource transferred prior to February 8, 2006, the look-back period is thirty-six (36) months. The look-back period is counted from the month prior to the month the application was submitted.~~ (3-17-22)

02. Transfers On or After February 8, 2006. Any resource transferred ~~on or after February 8, 2006,~~ regardless of type, is subject to a look-back period of sixty (60) months. The look-back period is counted from the date of the application for cash, or the date of the transfer, whichever is later in time. (3-17-22)()

287. CALCULATING THE PERIOD OF INELIGIBILITY FOR RESOURCE TRANSFERS.

The period of ineligibility is the number of months computed by dividing the difference between the fair market value of the resource and the amount the participant received for the resource by the full AABD allowances for the participant's living arrangement. For an applicant, the Department will use the full AABD allowance for the application month. For a participant, the Department will use the full AABD allowances for the transfer month. For an AABD couple, the period of ineligibility is computed by dividing the difference between the fair market value of the resource and the amount the participant received for the resource by the full AABD allowances for the couple's living arrangement. The number of months of ineligibility is computed to two (2) decimal places and rounded down to the nearest whole number. If the amount transferred is less than the participant's AABD allowances for one (1) month, the participant is not subject to a period of ineligibility. (3-17-22)()

288. LENGTH OF PERIOD OF INELIGIBILITY.

The period of ineligibility begins with the month after the month the transfer took place. The period of ineligibility continues whether or not the participant receives AABD. Ineligibility continues until all the resources are returned to the participant or spouse, adequate consideration for all the resources is received, sixty (60) months passes, or the penalty period ends. ()

289. SPOUSE APPLIES AFTER PERIOD OF INELIGIBILITY IS COMPUTED.

If the spouse applies after the period of ineligibility is computed, the Department will compute the spouse's period of ineligibility by multiplying the number of months in the period of ineligibility already expired by the full AABD allowances for the couple's living arrangement. The Department will ~~S~~subtract the total from the original difference between the fair market value of the resource and the amount the participant received for the resource. The Department will ~~D~~divide the remaining difference between the fair market value of the resource and the amount the participant received for the resource by the full AABD allowances for the couple's living arrangement for the first month of ineligibility. (3-17-22)()

290. MULTIPLE RESOURCE TRANSFERS.

If the participant makes more than one (1) resource transfer, the difference between the fair market value of all the transferred resources and the amount the participant received for all the transferred resources is used to determine the length of the period of ineligibility. The period of ineligibility begins with the month after the month of the first transfer. ()

291. TRANSFERS TO TRUSTS.

A trust established from the participant's resources is a resource transfer for less than fair market value, unless it meets an exception in Section 292 of these rules. If the trust includes resources of another person, the resource transfer period of ineligibility applies to the participant's share of the trust. ()

01. Payment from Trust Not for Participant. If a payment is made to another individual from a trust counted as a resource, and the payment is not for the benefit of the participant, the payment is a resource transfer for less than fair market value. ()

02. Payment from Trust Restricted. If the participant ~~takes action~~ acts so no payment from a trust counted as a resource can be made for any reason, the trust is a resource transfer for less than fair market value. By taking the action, the participant causes the trust to be no longer counted as a resource and the participant is subject to the period of ineligibility. The date of the action restricting payment is the date of the transfer. (3-17-22)()

292. PERIOD OF INELIGIBILITY EXCEPTIONS.

A participant or spouse is not subject to the resource transfer period of ineligibility if one (1) of the following conditions is satisfied. ()

01. Home to Spouse. Title to the home is transferred solely to the spouse. ()

02. Home to Minor Child or Disabled Adult Child. Title to the home is transferred to the child of the participant or spouse. The child must be under age twenty-one (21), blind or totally disabled under Social Security and SSI rules in 20 CFR Part 416. ()

03. Home to ~~Brother or Sister~~ Sibling. Title to the home is transferred to a ~~brother or sister~~ sibling of ()

the participant or spouse who must have had an equity interest or life estate in the transferred home and was residing in that home for at least one (1) year immediately before the month the home was transferred. (3-17-22)()

04. Home to Adult Child. Title to the home was transferred to a ~~son or daughter~~ **child** of the participant or spouse, other than a child under the age of twenty-one (21). The ~~son or daughter~~ **child** must have resided in that home for at least two (2) years immediately before the month the participant entered a medical facility or long-term care. The ~~son or daughter~~ **child** must have provided care to the participant, which permitted ~~them~~ **them** to live at home rather than enter a medical facility or long-term care. (3-17-22)()

05. Benefit of Spouse. Resources, other than the home, were transferred to the participant's spouse or to another person for the sole benefit of the spouse. ()

06. Transfer from Spouse. The resources were transferred from the participant's spouse to another person for the sole benefit of the participant's spouse. ()

07. Transfer to Child. The resources were transferred to the participant's child or to a trust established solely for the benefit of the participant's child. The child must be blind or totally disabled under Social Security and SSI rules in 20 CFR Part 416. The child may be any age. ()

08. Transfer to Trust for Person Under Sixty-Five. The resources were transferred to a trust for the sole benefit of a person under age sixty-five (65); **who is** blind or totally disabled under Social Security and SSI rules in 20 CFR Part 416. ~~The person must be blind or totally disabled under Social Security and SSI rules in 20 CFR Part 416.~~ (3-17-22)()

09. Transfer to a Trust That Is a Countable Resource. The resources were transferred to a trust and the trust is a countable resource for AABD in the amount of the transfer. ()

10. Intent to Receive Fair Market Value. The participant or spouse proves ~~they~~ **they** intended to dispose of the resources at fair market value or for other adequate consideration, but can prove good cause for not doing so. (3-17-22)()

11. Resources Returned. All resources transferred for less than fair market value have been returned to the participant. ()

12. No AABD Purpose. The participant or spouse proves the resources were transferred exclusively for a purpose other than qualifying for AABD. Purposes other than qualifying for AABD include: ()

- a. After the resource transfer the participant has a traumatic onset of disability. ()
- b. After the resource transfer a previously unknown disabling condition is diagnosed. ()
- c. After the resource transfer the participant has an unexpected loss of income or resources resulting in eligibility for AABD. ()
- d. The resource was excludable in the transfer month. ()
- e. The transfer of resources was court-ordered, provided the participant did not petition the court to order the transfer. ()
- f. The participant took a vow of poverty and gave the resources to a religious order. ()

13. Undue Hardship. The participant proves failure to receive AABD would deprive ~~them~~ **them** of food or shelter and ~~his their~~ **their** total available funds, including income and liquid resources, are less than ~~his their~~ **their** AABD allowances for the month ~~they~~ **they** claim undue hardship. Undue hardship must be proven for each month of the period of ineligibility. When determining total available funds for a child, the Department will count any income and resources deemed from ~~his their~~ **their** parents. (3-17-22)()

14. Exception to Fair Market Value. The amount received is reasonable, even if less than fair market value if a forced sale was done under reasonable circumstances, and little or no market demand exists for the type of resource transferred, or the resource was transferred to settle a legal debt approximately equal to the fair market value of the transferred resource. ()

15. No Benefit to Participant. The participant received no benefit from the resource because ~~they~~ or ~~their~~ spouse held title to the property only as a trustee for another person, or the transfer was done to clear title to property and the participant or spouse had no interest in the property that would benefit ~~them~~. (3-17-22)()

16. Fraud Victim. The resource was transferred because the participant or spouse was the victim of fraud, misrepresentation, or coercion. The participant or spouse must take all possible steps to recover the resources or property or its equivalent in damages. The participant must assign recovery rights to the State of Idaho. ()

293. EFFECT ON MEDICAID ELIGIBILITY.

Ineligibility for AABD cash because of property transfer does not make the participant ineligible for Medicaid. ()

294. -- 299. (RESERVED)

300. INCOME DEFINITION.

Income is anything that can be used to meet needs for food, or shelter. Income is cash, wages, pensions, in-kind payments, inheritances, gifts, awards, rent, dividends, interest, or royalties the participant receives during a month. ()

01. Cash Income. ~~Cash income~~ is currency, checks, money orders, or electronic funds transfers. Cash income includes Social Security checks, unemployment checks, and payroll checks. (3-17-22)()

02. In-Kind Income. ~~In-kind income~~ is not cash. In-kind income is food or shelter. Wages paid as in-kind earnings, such as food or shelter, are counted as unearned income. Other in-kind income is not counted. (3-17-22)()

03. Inheritances. ~~An inheritance~~ is cash, a right, or noncash items received as the result of someone's death. Cash or noncash items in an inheritance are income the month received and a resource the next month. A contested inheritance is not counted as income until the contest is settled and money is distributed. (3-17-22)()

301. APPLICATION FOR POTENTIAL BENEFITS.

The participant must apply for benefits, including RSDI, VA, pensions, Workman's Compensation, or Unemployment Insurance, when there is potential eligibility. The participant must apply when ~~they~~ reaches the earliest age to qualify for the benefit. (3-17-22)()

01. SSI. To get AABD cash, the participant must apply for SSI benefits, if ~~they~~ ~~is~~ ~~are~~ potentially eligible. To get AABD-Medicaid, the participant does not have to apply for SSI benefits. (3-17-22)()

02. VAIP. Participants entitled to a VA pension as of December 31, 1978, are not required to file for Veterans Administration Improved Pension Plan (VAIP), to get AABD cash or AABD-related Medicaid. ()

03. Other Benefits. EITC, TAFI, BIA General Assistance, and victim's compensation benefits are exempt from the filing requirement. ()

302. RELATIONSHIP OF INCOME TO RESOURCES.

Income is counted as income in the current month. If the participant keeps countable income after the month received, it is counted as a resource. ()

303. WHEN INCOME IS COUNTED.

Income is counted the earliest of when received, when credited to a participant's account, or when set aside for the participant's use. Income from SSA, SSI, or VA is counted for the month it is intended to cover. ()

304. PROSPECTIVE ELIGIBILITY.

Eligibility for AABD cash and Medicaid is prospective. Expected income for the month is compared to the participant's income limit that month. ()

305. PROJECTING MONTHLY INCOME.

Income is projected for each month to determine AABD cash amount. Past income may be used to project future income. Expected changes must be considered. Income received less often than monthly ~~is~~ and patient liability income are not prorated or converted. ~~Patient liability income is not prorated or converted.~~ (3-17-22)()

306. CRITERIA FOR PROJECTING MONTHLY INCOME.

Monthly income is projected as described ~~in this Subsections 306.01 through 306.08~~ below. (3-17-22)()

01. Converting Income to a Monthly Amount. If a full month's income is expected, but is received on other than a monthly basis, the Department will convert the income to a monthly amount using one (1) of the formulas in ~~Subsections 306.01.a. through 306.01.d~~ the table below.

TABLE 306.01 MONTHLY CONVERSION OF INCOME		
	Conversion	Procedure
a.	Weekly to Monthly	Multiply weekly amounts by 4.3.
b.	Biweekly to Monthly	Multiplying bi-weekly amounts by 2.15.
c.	Semimonthly to Monthly	Multiplying semi-monthly amounts by 2.
d.	Exact Amount	Use the exact monthly income if it is expected for each month.

(3-17-22)()

02. Income Already Received. ~~The Department will~~ Count income already received during the month ~~and will~~ convert the actual income to a monthly amount if a full month's income has been received or is expected to be received as described ~~in Subsections 306.02.a. and 306.02.b~~ below. (3-17-22)()

a. ~~Actual income.~~ If the actual amount of income from any pay period a month is known, the Department will use the actual pay period amounts to determine the total month's income ~~and will~~ convert the actual income to a monthly amount if a full month's income has been received or is expected. (3-17-22)()

b. ~~Projecting income.~~ If no pay changes are expected, the Department will use the known actual pay period amounts for the past thirty (30) days to project future income ~~and will~~ convert the actual income to a monthly amount if a full month's income has been received or is expected. (3-17-22)()

03. Expected Income. ~~The Department will~~ Count income that the participant and the Department believe the participant will get. The Department will convert expected income to a monthly amount as described ~~in Subsections 306.03.a. through 306.03.d~~ below. (3-17-22)()

a. ~~Exact income unknown.~~ If the exact income amount is uncertain or unknown, the uncertain or unknown portion must not be counted. The certain or known amount is counted. (3-17-22)()

b. ~~Income not changed.~~ If the income has not changed and no changes are expected, past income can be used to project future income. (3-17-22)()

c. ~~Income changes.~~ If income changes, and income received in the past thirty (30) days does not reflect expected income, income received over a longer period is used to project future income. (3-17-22)()

d. ~~Seasonal income changes.~~ If income changes seasonally, income from the last comparable season is used to project future income. (3-17-22)()

04. Ongoing Income. ~~Ongoing income~~ comes from an ongoing source. It was received in the past

and is expected to be received in the future. The Department will ~~convert~~ ongoing income to a monthly amount as described ~~in Subsections 306.04.a. through 306.04.d below.~~ (3-17-22)()

a. ~~Full month's income not expected from ongoing source.~~ If a full month's income is not expected from an ongoing source, the Department will count the amount of income expected for the month. If actual income is known, the Department will use actual income. If actual income is unknown, the Department will project expected income. and will ~~convert~~ income to a monthly amount. The Department will ~~use~~ zero (0) income for any pay period in which income was not received that month. (3-17-22)()

b. ~~Income from new source.~~ If a full month's income from a new source is not expected, the Department will count the actual income expected for the month. ~~The Department will~~ not convert the income to a monthly amount. (3-17-22)()

c. ~~Income stops.~~ If income stops and no additional income is expected from the terminated source, the Department will count the actual income received during the month. ~~The Department will~~ not convert the terminated source of income. (3-17-22)()

d. ~~Full month's income not expected from new or stopped source.~~ If a full month's income is not expected from a new or terminated source, the Department will count the income expected for the month. If the actual income is known, the Department will use the known income. If the actual income is unknown, the Department will project the income. ~~and will~~ not convert the income to a monthly amount if a full month's income from a new or terminated source is not expected. (3-17-22)()

05. Income Paid on Salary. Income paid on salary, rather than an hourly wage, is counted at the expected monthly salary rate. ()

06. Income Paid at Hourly Rate. The Department will ~~compute~~ expected income paid on an hourly basis by multiplying the hourly pay by the expected number of hours the participant will work in the pay period. The Department will ~~convert~~ the pay period amount to a monthly basis. (3-17-22)()

07. Monthly Income Varies. When monthly income varies each pay period and the rate of pay remains the same, the Department will average the income from the past thirty (30) days to determine the average pay period amount. and will ~~convert~~ the average pay period amount to a monthly amount. When income changes and income from the past thirty (30) days is not a valid indicator of future income, a longer period of income history is used to project income. (3-17-22)()

08. Income Received Less Often Than Monthly. Recurring income, such as quarterly payments or annual income, is counted in the month received, even if the payment is for multiple months. The income is not prorated or converted. If the amount is known, the Department will use the actual. If the amount is unknown, the Department will use the best information available to project income. (3-17-22)()

307. COUNTING RESOURCES AND INCOME.

An asset cannot be counted as income and resources in the same month. Assets received in cash or in-kind during a month are income. Income held past the month received is a resource. ()

308. -- 309. (RESERVED)

310. ADOPTION ASSISTANCE UNDER TITLE IV-B OR TITLE XX.

Adoption assistance payments, provided under Title IV-B or Title XX of the Social Security Act, are excluded income. Adoption assistance payments using funds provided under Title IV-E are income. The twenty dollar (\$20) standard disregard is not subtracted. (3-17-22)()

311. -- 312. (RESERVED)

313. ASSISTANCE BASED ON NEED (ABON).

ABON is aid paid under a program using income as a factor of eligibility. ABON is funded wholly by a State, or a political subdivision of a State, or an Indian tribe, or a combination of these sources. Federal funds are not used.

ABON is excluded income. (3-17-22)()

314. (RESERVED)

315. BUREAU OF INDIAN AFFAIRS (BIA) FOSTER CARE.

BIA foster care payments are social services. They are excluded income for the foster child and foster family. (3-17-22)()

316. BLIND OR DISABLED STUDENT EARNED INCOME.

To qualify for this exclusion, the student must be blind or disabled. ~~The student must and~~ be under age twenty-two (22). The student must be regularly attending high school, college, university, or a course of vocational or technical training designed to prepare them for gainful employment. The maximum monthly and annual exclusions cannot exceed the limits set by SSI for the current year. (3-17-22)()

317. "BUY-IN" REIMBURSEMENT.

The SSA reimbursement for self-paid Medicare Part B "Buy-In" premiums is excluded. ()

~~**318. - 319. COMMODITIES, FOOD STAMPS, AND FOOD PROGRAMS. (RESERVED)**~~

~~Food, under the Federal Food Stamp Program, Donated Commodities Program, School Lunch Program, and Child Nutrition Program, is excluded. This includes free or reduced price food for women and children under the National School Lunch Act and the Child Nutrition Act of 1966. (3-17-22)~~

~~**319. CONTRIBUTIONS FOR RESIDENTIAL AND ASSISTED LIVING FACILITY RESIDENTS.**~~

~~Contributions from a third party, for a participant residing in a Residential and Assisted Living Facility, are excluded. The contribution must be paid directly to the facility. The contribution must pay for items or services provided to the participant by the facility. The items or services must not be included in the participant's State Plan Personal Care Services or his Personal Care Supplement or must be charges for rent, utilities, or food exceeding the Personal Care Supplement Allowance. The participant must not be charged a higher rate than other residents of the facility. The person making the contribution must provide a signed statement identifying the item or service the payment covers, the reason the item or service is needed by the participant, and the monthly amount of the payment. (3-17-22)~~

320. CONVERSION OR SALE OF A RESOURCE NOT INCOME.

Payment from the sale, exchange, or replacement of a resource is excluded. The payment is a resource that changed form. ()

321. CREDIT LIFE OR DISABILITY INSURANCE PAYMENTS.

Credit life or credit disability insurance covers payments on loans and mortgages, in case of death or disability. Insurance payments are made directly to loan or mortgage companies and are not available to the participant. These payments are excluded. ()

322. DEPARTMENT OF EDUCATION SCHOLARSHIPS.

Any grant, scholarship, or loan to an undergraduate for educational purposes, made or insured under any program administered by the Commissioner of Education, is excluded. ()

~~**323. GIFTS OF DOMESTIC TRAVEL TICKETS. (RESERVED)**~~

~~A ticket for domestic travel received as a gift by a participant or spouse is excluded. (3-17-22)~~

324. GRANTS, SCHOLARSHIPS, AND FELLOWSHIPS.

Any grant, scholarship, or fellowship, not administered by the Commissioner of Education, and used for paying tuition, fees, or required educational expenses is excluded. This exclusion does not apply to any portion set aside or actually used for food or shelter. (3-17-22)()

325. DISASTER ASSISTANCE.

Payments received because of a major disaster, declared by the President, are excluded. This includes payments to repair or replace the person's own home or other property and disaster unemployment aid. ()

326. DOMESTIC VOLUNTEER SERVICE ACT PAYMENTS.

Compensation, other than wages, provided to volunteers in the Foster Grandparents Program, RSVP, and similar National Senior Volunteer Corps programs under Sections 404(g) and 418 of the Domestic Volunteer Service Act is excluded. ()

327. EARNED INCOME TAX CREDITS.

Earned Income Tax Credits advance payments and refunds are excluded. ()

328. FEDERAL HOUSING ASSISTANCE.

Federal housing assistance ~~listed in Subsections 328.01 through 328.05~~ is excluded. (3-17-22)()

~~01. United States Housing Act of 1937. United States Housing Act of 1937, Section 1437 et seq. of 42 U.S. Code. (3-17-22)~~

~~02. The National Housing Act. The National Housing Act, Section 1701 et seq. of 12 U.S. Code. (3-17-22)~~

~~03. Housing and Urban Development Act of 1965. Section 101 of the Housing and Urban Development Act of 1965, Section 1701s of 12 U.S. Code, and Section 1451 of 42 U.S. Code. (3-17-22)~~

~~04. Housing Act of 1949. Title V of the Housing Act of 1949, Section 1471 et seq. of 42 U.S. Code. (3-17-22)~~

~~05. Housing Act of 1959. Section 202(h) of the Housing Act of 1959. (3-17-22)~~

329. FOSTER CARE PAYMENTS.

Foster care payments using funds provided under Title IV-B or Title XX of the Social Security Act are excluded. Payments for foster care of a non-SSI child placed by a public or private non-profit child placement or child care agency are excluded. Foster care payments using funds provided under Title IV-E are income. The twenty dollar (\$20) standard disregard is not subtracted. ()

330. EXPENSE OF OBTAINING INCOME.

Essential expenses of obtaining unearned income are subtracted from the income. An expense is essential if the participant would not receive the income unless they paid the expense. Expenses of receiving income, such as withheld taxes, are not subtracted. (3-17-22)()

331. GARNISHMENTS.

Garnishments of unearned income are counted as unearned income. Garnishments of earned income are counted as earned income. ()

332. GERMAN REPARATIONS. (RESERVED)

~~Reparations payments from the Federal Republic of Germany received on or after November 1, 1984 are excluded. (3-17-22)~~

333. GOVERNMENT MEDICAL OR SOCIAL SERVICES.

Governmental payments authorized by federal, state, or local law, for medical or social services, are excluded. Any cash provided by a nongovernmental medical or social services organization (including medical and liability insurers) for medical or social services already received is excluded. ()

~~01. Medical Services. Medical services are diagnostic, preventive, therapeutic, or palliative treatment. Treatment must be performed, directed, or supervised by a state-licensed health professional. Medical services include room and board provided during a medical confinement. Medical services include and in-kind medical items such as prescription drugs, eye glasses, prosthetics, and their maintenance. In-kind medical items include devices intended to bring the physical abilities of a handicapped person to a par with an unaided person who is not handicapped. Electric wheelchairs, modified scooters, and service animals and their food are in-kind medical items. (3-17-22)()~~

~~02. Social Service. A social service is any service, other than medical. A social service helps a~~

~~handicapped or socially disadvantaged person to function in society on a level comparable to a person not handicapped or disadvantaged.~~ Housebound and Aid and Attendance Allowances, including Unusual Medical Expense Allowances, received from the Veterans Administration are excluded. (3-17-22)()

334. HOME ENERGY ASSISTANCE (HEA) AND SUPPORT AND MAINTENANCE ASSISTANCE (SMA).

~~SMA is in-kind support and maintenance, or cash paid for food or shelter needs. SMA includes HEA. HEA is aid to meet the costs of heating or cooling a home. SMA must be provided in kind by a nonprofit organization. HEA must be provided in cash or in kind by suppliers of home heating gas or oil or a municipal utility providing home energy. SMA and HEA and SMA are excluded.~~ (3-17-22)()

335. ~~HOME PRODUCE FOR PERSONAL USE.~~(RESERVED)

~~Home produce is excluded if it is consumed by the participant or his household. Home produce includes livestock grown for personal consumption.~~ (3-17-22)

336. IN-HOME SUPPORTIVE SERVICES.

Payments made by Title XX or other governmental programs to pay an ineligible spouse or ineligible parent for in-home supportive services provided to a participant are excluded. In-home supportive services include attendant care, chore services, and homemaker services. ()

337. INCOME EXCLUDED BY LAW.

Any income excluded by federal statute is excluded. ()

338. INFREQUENT OR IRREGULAR INCOME.

The first thirty dollars (\$30) of earned income and the first sixty dollars (\$60) of unearned income per calendar quarter are excluded when they are infrequent or irregular payments. Income is infrequent if the participant receives it once in a calendar quarter from a single source. Income is irregular if the participant could not reasonably expect to receive it. ()

339. (RESERVED)

340. LOANS.

Loans are excluded if the participant has signed a written repayment agreement. The signed agreement must state how the loan will be repaid. The signed written agreement can be obtained after the loan is received. Items bought on credit are paid with a loan and are not income. Money repaid to a participant on the principal of a loan is not income, it is a resource. Interest received by a participant on money loaned by them is countable income. ()

341. ~~MANPOWER DEVELOPMENT AND TRAINING ACT PAYMENTS.~~(RESERVED)

~~Payments made under the Manpower Development and Training Act of 1962, as amended by the Manpower Act of 1965 are excluded.~~ (3-17-22)

342. NATIVE AMERICAN PAYMENTS.

Payments authorized by law made to people of Native American ancestry are excluded. ()

343. (RESERVED)

344. NUTRITION PROGRAMS FOR OLDER AMERICANS.

Payments, other than a wage or salary, made under Chapter 35, ~~of Title 42, of the U.S. Code,~~ Programs for Older Americans, are excluded. (3-17-22)()

345. PERSONAL SERVICES.

A personal service performed for a participant is excluded. Personal services include lawn mowing, house cleaning, grocery shopping, and babysitting. ()

346. (RESERVED)

347. REBATES, REFUNDS, AABD UNDERPAYMENTS, AND REPLACEMENT CHECKS.

Rebates, refunds, AABD underpayments, and returns of money already paid are excluded. A replacement check is excluded. ()

348. RELOCATION ASSISTANCE.

Relocation payments under Title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, Subchapter II, Chapter 61, Title 42, USC, are excluded. Relocation payments paid to civilians of World War II per PL 100-383, are excluded. ()

349. REPLACEMENT OF INCOME ALREADY RECEIVED.

Replacement of a participant's lost, stolen, or destroyed income is excluded. ()

350. RETURN OF MISTAKEN PAYMENTS.

A returned mistaken payment is excluded. If the participant keeps the mistaken payment, it is income. ()

351. TAX REFUNDS.

Refunds of ~~F~~ederal, ~~S~~tate, or local taxes paid on income, real property, or food bought by the participant and ~~his~~ their family, are excluded. (3-17-22)()

352. UTILITY PAYMENTS.

Payments for utility costs made to low-income housing tenants by a local housing authority are excluded when paid directly to the tenant or jointly to the tenant and the utility company. ()

353. (RESERVED)

354. VICTIMS' COMPENSATION PAYMENTS.

Any payment made from a State-sponsored fund to aid victims of crime is excluded. ()

355. VOCATIONAL REHABILITATION SERVICES PAYMENTS.

Payments other than wages made to an eligible handicapped individual employed in a Vocational Rehabilitation Services project under Title VI of the Rehabilitation Act of 1973, are excluded. ()

356. VOLUNTEER SERVICES INCOME.

Payments to volunteers under Chapter 66, Title 42, USC Domestic Volunteer Services (ACTION programs) are excluded. Payments are not excluded if the Director of the ACTION agency determines the value, adjusted for hours served, is equal to or greater than the federal or state minimum wage. ()

357. WALKER V. BAYER PAYMENTS.

Class action settlement payments in Susan Walker v. Bayer Corporation, et al., are excluded for Medicaid but not for AABD cash. ()

358. WEATHERIZATION ASSISTANCE.

Weatherization assistance is excluded. ()

359. TEMPORARY CENSUS INCOME.

For Medicaid only, all wages paid by the Census Bureau for temporary employment related to US Census activities are excluded. ()

360. -- 399. (RESERVED)

400. EARNED INCOME.

Earned income remaining after disregards and exclusions are subtracted, is counted in computing AABD cash. Wages are counted the month they become available to the participant. ()

401. COMPUTING SELF-EMPLOYMENT INCOME.

Countable self-employment income is the difference between the gross receipts and the allowable costs of producing the income, if the amount is expected to continue. Self-employment income is computed using one (1) of the methods listed in Subsections 401.01 through 401.03 of this rule. Subsection 401.04 of this rule can be used as an income

deduction, if applicable.

(3-17-22)()

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

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

03. Monthly Increase or Decrease. If a monthly average does not reflect actual monthly income because of an increase or decrease in business, the self-employment income is counted monthly. This method is not used for businesses with seasonal or unusual income peaks at certain times of the year. ()

04. Net Self-Employment Income Seven and Sixty-Five Hundredths Percent Deduction. If net self-employment income is over four hundred dollars (\$400) per year, seven and sixty-five hundredths percent (7.65%) is deducted. This deduction compensates for Social Security taxes paid. If self-employment Social Security tax is not paid, this deduction is not allowed. ()

402. SELF-EMPLOYMENT ALLOWABLE EXPENSES.

Allowable operating expenses subtracted from self-employment income are the allowable Internal Revenue Service self-employment expenses, except for those listed in under Subsections 402.01 through 402.17 of this these rules.

(3-17-22)()

~~**01. Labor.** Labor paid to individuals not in the family. (3-17-22)~~

~~**02. Materials.** Materials such as stock, seed and fertilizer. (3-17-22)~~

~~**03. Rent.** Rent on business property. (3-17-22)~~

~~**04. Interest.** Interest paid to purchase income producing property. (3-17-22)~~

~~**05. Insurance.** Insurance paid for business property. (3-17-22)~~

~~**06. Taxes.** Taxes on income producing property. (3-17-22)~~

~~**07. Business Transportation.** Business transportation as defined by the IRS. (3-17-22)~~

~~**08. Maintenance.** Landscape and grounds maintenance. (3-17-22)~~

~~**09. Lodging.** Lodging for business related travel. (3-17-22)~~

~~**10. Meals.** Meals for business related travel. (3-17-22)~~

~~**11. Use of Home.** Costs of partial use of home for business. (3-17-22)~~

~~**12. Legal.** Business related legal fees. (3-17-22)~~

~~**13. Shipping.** Business related shipping costs. (3-17-22)~~

~~**14. Uniforms.** Business related uniforms. (3-17-22)~~

~~**15. Utilities.** Utilities for business property. (3-17-22)~~

~~**16. Advertising.** Business related advertising. (3-17-22)~~

~~**17. Depreciation.** Depreciation for equipment, machinery, or other capital investments. (3-17-22)~~

403. SELF-EMPLOYMENT EXPENSES NOT ALLOWED.

Self-employment expenses not allowed are ~~listed in Subsections 403.01 through 403.08.~~ as follows: (3-17-22)()

01. Payments on the Principal of Real Estate. Payments on the principal of real estate mortgages on income-producing property. ()

02. Purchase of Capital Assets or Durable Goods. Purchases of capital assets, equipment, machinery, and other durable goods. Payments on the principal of loans for these items. ()

03. Federal, State, and Local Income Taxes. ~~Federal, state, and local income taxes.~~ (3-17-22)()

04. Savings. Monies set aside for future use such as retirement or work-related expenses. ()

05. Labor Paid to Any Family Member. ~~Labor paid to any family member.~~ (3-17-22)()

06. Loss of Farm Income Subtracted From Other Income. ~~Loss of farm income subtracted from other income.~~ (3-17-22)()

07. Personal Transportation. ~~Personal transportation.~~ (3-17-22)()

08. Net Losses from Previous Periods. ~~Net losses from previous periods.~~ (3-17-22)()

404. ROYALTIES.

Royalties received as part of a trade or business, or for publication of the participant's work, are earned income. Other royalties are unearned income. ()

405. HONORARIA.

An honorarium for services rendered is earned income. An honorarium for travel expenses and lodging for a guest speaker is unearned income in the amount it exceeds the expenses. The portion that equals the expenses is excluded as an expense of obtaining the income. ()

406. SHELTERED WORKSHOP OR WORK ACTIVITIES CENTER PAYMENTS.

Payments for services performed in a sheltered workshop or work activities center are earned income. ()

407. JOB TRAINING PARTNERSHIP ACT (JTPA).

JTPA payments are earned income. JTPA payments for child care, transportation, medical care, meals, and other reasonable expenses, provided in cash or in-kind, are not income. ()

408. PROGRAMS FOR OLDER AMERICANS.

Wages or salary paid under Chapter 35, Title 42, USC, Programs for Older Americans, is earned income. ()

409. UNIFORMED SERVICES PAY AND ALLOWANCES.

Basic pay is earned income. All other pay and allowances are unearned income. ()

410. RENTAL INCOME.

Net rental income is unearned income, unless from the business of renting real property. Net unearned rental income is gross rent less the expenses on the rental property as listed in Subsections 410.01 through 410.06 below. Net rental income from the business of renting properties is self-employment earned income. (3-17-22)()

01. Interest. Interest and escrow portions of a mortgage payment. ()

02. Real Estate Insurance. ~~Real estate insurance.~~ (3-17-22)()

03. Repairs. Minor repairs to an existing rental structure. ()

04. Property Taxes. ~~Property taxes.~~ (3-17-22)()

05. **Yard Care.** Lawn care, including tree and shrub care and snow removal. ()
06. **Advertising ~~Costs for Tenants.~~ ~~Advertising costs for tenants.~~** (3-17-22)()
- 411. OVERPAYMENT WITHHOLDING OF UNEARNED INCOME.**
Money withheld by any benefit program to recover an overpayment is counted as income. Money withheld is not income if the overpaid benefit amount was used to compute AABD cash. ()
- 412. RETIREMENT, SURVIVORS, AND DISABILITY INSURANCE (RSDI).**
RSDI monthly benefits are unearned income. The income is the amount reported by SSA, regardless of penalties to recover an SSI overpayment. ()
- 413. SSI PAYMENTS.**
SSI monthly payments are unearned income. The income is the amount reported by SSA, regardless of penalties to recover an SSI overpayment. An advance SSI payment to an applicant appearing SSI-eligible with a financial emergency, is not income the month received. When SSA reduces ongoing SSI to recover the advance, the SSI payment before the reduction continues to be counted as income. ()
- 414. BLACK LUNG BENEFITS.**
Black Lung payments are unearned income. ()
- 415. RAILROAD RETIREMENT PAYMENTS.**
Railroad Retirement Board payments are unearned income. ()
- 416. UNEMPLOYMENT INSURANCE BENEFITS.**
Unemployment insurance benefits received under state and federal unemployment laws are unearned income. ()
- 417. UNIFORM GIFTS TO MINORS ACT (UGMA).**
UGMA payments from the custodian to the minor are income to the minor. UGMA property, including earnings or additions, are not income to the minor until the month the minor becomes eighteen (18) years ~~of age old.~~ (3-17-22)()
- 418. WORKERS' COMPENSATION.**
Workers' compensation, less expenses required to get the payment, is unearned income. ()
- 419. MILITARY PENSIONS.**
Military pensions are unearned income. ()
- 420. VA PENSION PAYMENTS.**
VA pension payments are unearned income. The twenty dollar (\$20) standard disregard is not subtracted, except by a special act of Congress. ()
- 421. VA COMPENSATION PAYMENTS.**
VA compensation payments to a veteran, spouse, child, or widow(er) are unearned income. ()
- 422. VA EDUCATIONAL BENEFITS.**
VA educational payments funded by the government are excluded. ()
- 423. ALIMONY, SPOUSAL, AND ADULT SUPPORT.**
Alimony, spousal, and other adult support payments are unearned income. ()
- 424. CHILD SUPPORT PAYMENTS.**
Child support payments are unearned income. One-third (1/3) of a child support payment is excluded for the child receiving support. Child support collected by a State and retained for TAFI payments is not income. ()
- 425. DIVIDENDS AND INTEREST.**

Dividends and interest are unearned income. ()

426. AWARDS, GIFTS, PRIZES.
Awards, ~~gifts, and prizes~~ are unearned income. (3-17-22)()

~~427. GIFTS.~~
~~Gifts are unearned income.~~ (3-17-22)

~~428. PRIZES.~~
~~Prizes are unearned income.~~ (3-17-22)

~~429.~~ **WORK-RELATED UNEARNED INCOME.**
Work-related payments that are not salary or wages are unearned income. ()

~~428 – 430. COMMUNITY SERVICE BLOCK GRANTS. (RESERVED)~~
~~Community service block grant distributions are unearned income, unless excluded by the type of aid, such as medical services or Support and Maintenance Assistance.~~ (3-17-22)

431. FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) EMERGENCY FOOD DISTRIBUTION AND SHELTER PROGRAMS.
FEMA funds are unearned income, unless excluded by the type of aid, such as medical services or Support and Maintenance Assistance. ()

432. BUREAU OF INDIAN AFFAIRS GENERAL ASSISTANCE (BIA GA).
BIA GA payments are unearned income. ~~BIA GA payments and~~ are ~~F~~federally- funded income based on need. They are paid in cash or in-kind. The twenty dollar (\$20) standard disregard is not subtracted. (3-17-22)()

433. BIA ADULT CUSTODIAL CARE (ACC) AND CHILD WELFARE ASSISTANCE (CWA) PAYMENTS.
BIA ACC and CWA payments, other than foster care made to participants out of an institution, are unearned income. ()

434. INDIVIDUAL INDIAN MONEY (IIM) ACCOUNTS.
Deposits to an unrestricted IIM account are income in the month deposited. ()

435. ACCELERATED LIFE INSURANCE INCOME.
Accelerated life insurance payments are unearned income in the month received. ()

436. REAL ESTATE CONTRACT INCOME.
Payments received on the interest of a negotiable real estate contract are unearned income for Medicaid eligibility. Payments received on the principal of a negotiable real estate contract are a resource for Medicaid eligibility. Payments received on a nonnegotiable real estate contract are unearned income. Principal and interest payments received on an excluded real estate contract of a long-term care participant are unearned income for patient liability. ()

437. LIMITED AWARD TO CHILD WITH LIFE-THREATENING CONDITION.
Any gift from a tax-exempt nonprofit organization to a child under age eighteen (18), who has a life-threatening condition, is excluded from income under the conditions ~~in Subsections 437.01 through 437.02~~ below. (3-17-22)()

01. **In-Kind Gift.** ~~An in-kind gift i~~s excluded if the gift is not converted to cash. (3-17-22)()

02. **Cash Gifts.** ~~Cash gifts a~~re excluded up to two thousand dollars (\$2,000) for the calendar year the cash gifts are made. (3-17-22)()

438. -- 450. (RESERVED)

451. DEEMING INCOME.

Income deeming counts the income of another person as available to an AABD participant, for eligibility and the amount of AABD cash. Income is deemed to the participant from ~~his~~ their ineligible spouse. ~~Income is deemed, and~~ to the child participant from ~~his~~ their ineligible parent. Income deeming starts the first full calendar month the participant is in a deeming situation. Deeming ends the first full calendar month the participant is not in a deeming situation. Deeming to a child ends the month after the child's eighteenth birthday. (3-17-22)()

01. Ineligible Parent. A natural or adoptive ~~father or mother, parent~~ or ~~a~~ stepparent, who does not receive AABD and lives in the same household as a child. (3-17-22)()

02. Ineligible Spouse. A participant's ~~husband or wife, spouse~~ living with the participant, ~~and~~ not receiving AABD is an ineligible spouse. The ineligible ~~husband or wife, spouse~~ of the parent of a child participant, living with the child participant and ~~his~~ their parent, is an ineligible spouse. (3-17-22)()

03. Ineligible Child. A child under age twenty-one (21) who does not receive AABD, and lives with the AABD participant. ()

04. Income Deeming Exclusions. Income excluded from deeming is listed in ~~Table 451.04~~ POMS Chapter SI 01320.000, incorporated by reference under Subsection 002.02 of these rules.

TABLE 451.04—INCOME DEEMING EXCLUSIONS			
Type of Income	Ineligible Spouse or Parent, Ineligible Child, Eligible Legal Non-citizen	Essential Person	Sponsor of Legal Non-citizen
Income excluded by Federal laws other than the Social Security Act.	Excluded	Excluded	Excluded
Public Income Maintenance Payments (PIM). Public income maintenance payments include TAFI, AABD, SSI, refugee cash assistance, BIA-GA, VA payments based on need, local, county and state payments based on need, and payments under the 1974 Disaster Relief Act.	Excluded	Not Excluded	Not Excluded
Income used by a PIM program for amount of payment to someone other than an SSI recipient.	Excluded	Not Excluded	Not Excluded
Grants, scholarships, fellowships.	Excluded	Not Excluded (unless excluded by Federal laws)	Not Excluded (unless excluded by Federal laws)
Foster care payments.	Excluded	Not Excluded	Not Excluded
Food Stamps and Dept. of Agriculture donated foods.	Excluded	Not Excluded	Not Excluded
Home grown produce.	Excluded	Not Excluded	Not Excluded
Tax refunds on real property or food.	Excluded	Not Excluded	Not Excluded
Income used in an approved plan for achieving self-support (PASS).	Excluded	Not Excluded	Not Excluded

TABLE 451.04 – INCOME DEEMING EXCLUSIONS			
Type of Income	Ineligible Spouse or Parent, Ineligible Child, Eligible Legal Non-citizen	Essential Person	Sponsor of Legal Non-citizen
Income used to pay court-ordered or Title IV-D support payments.	Excluded	Not Excluded	Not Excluded
Payments based to Alaskans based on age and residence.	Excluded (not applicable to children)	Not Excluded	Not Excluded
Disaster Assistance.	Excluded	Excluded	Excluded
Infrequent or irregular income.	Excluded	Not Excluded	Not Excluded
Blind Work Expenses (BWE).	Excluded	Not Excluded	Not Excluded
Payments to provide in-home support.	Excluded	Not Excluded	Not Excluded
Home energy assistance and support and maintenance assistance.	Excluded	Excluded	Excluded
Child's earned income, up to one thousand two hundred and ninety dollars (\$1,290) per month and five thousand two hundred dollars (\$5,200) per year.	Excluded (not applicable to spouses or parents)	Does Not Apply	Does Not Apply
Impairment related work expenses (IRWE).	Excluded	Not Excluded	Not Excluded
Interest on burial funds, appreciation in the value of burial space purchase agreements excluded from resources and interest on the value of burial space purchase agreements.	Excluded	Not Excluded	Not Excluded

(3-17-22)()

452. DEEMING INCOME FROM INELIGIBLE SPOUSE TO PARTICIPANT.

Income is deemed from an ineligible spouse to the participant, if they live together. Income is deemed as described in Subsections 452.01 through 452.08 [POMS Chapter SI 01320.000, incorporated by reference under Subsection 002.02 of these rules.](#)

TABLE 452—INCOME DEEMED FROM INELIGIBLE SPOUSE	
Step	Procedure
01. Compute Child's Living Allowance.	<p>Compute the living allowance for each ineligible child in the household. The living allowance is the difference between the basic allowance for a person living alone and the basic allowance for a couple. Round up cents to the next dollar. A child receiving public income maintenance payments does not get a living allowance.</p> <p>Subtract the child's unearned income from his living allowance. Subtract the child's earned income from any living allowance remaining.</p>
02. Adjust Spouse Income with Child's Living Allowance	Subtract the remaining living allowance, for each ineligible child in the household, from the ineligible spouse's gross unearned income, then from gross earned income.
03. Add Adjusted Earned and Unearned Incomes	Add adjusted earned and unearned income. This is the deemed income of the ineligible spouse.
04. Compute Participant's Needs as a Single Person	Compute the participant's budgeted AABD needs as if he was a single person, living alone.
05. Deemed Income Equal to or Less Than One Half of Participant's Needs	If the deemed income is equal to, or less than, one half of the participant's budgeted needs, computed as if he was a single person living alone, no income is deemed from the ineligible spouse.
06. Deemed Income More Than One Half Participant's Needs	If the deemed income is more than one half of the participant's budgeted needs, computed as if he was a single person living alone, continue the deeming process.
07. Compute Participant's Income	<p>Add the remaining earned and unearned ineligible spouse deemed income (after the ineligible child deduction) to the gross earned and unearned incomes of the participant. This is the total earned and unearned income.</p> <p>Subtract the standard disregard of twenty dollars (\$20) from the total unearned income.</p> <p>If the total unearned income is less than twenty dollars (\$20), subtract the remainder from the total earned income.</p> <p>Subtract the earned income disregard of sixty five dollars (\$65) from the earned income.</p> <p>Subtract one-half of the remaining earned income.</p> <p>Combine the remaining unearned income and the remaining earned income to compute the participant's total countable income.</p> <p>Determine the couple's budgeted needs as if they were an eligible couple.</p> <p>If the participant's countable income, including deemed income, is more than the couple's budgeted needs, the participant is ineligible.</p> <p>If the participant's countable income, including deemed income, is less than the couple's budgeted needs compute the participant's AABD cash.</p>

TABLE 452—INCOME DEEMED FROM INELIGIBLE SPOUSE	
Step	Procedure
08. Determine AABD Cash	<p>Subtract the participant's countable and deemed incomes from the couple's budgeted needs, to compute the budget deficit.</p> <p>Compute a second budget deficit, using the participant's income, and the single person budgeted needs.</p> <p>AABD cash is the smaller of the two (2) budget deficits.</p>

(3-17-22)()

453. DEEMING INCOME FROM INELIGIBLE PARENT TO AABD CHILD.

Income is deemed from an ineligible parent, or ~~his~~ their ineligible spouse, to a child participant under age eighteen (18) living in the same household. A stepparent's income is deemed to the child for AABD cash, but not Medicaid. The income is deemed as described in ~~Subsections 453.01 through 453.11~~ POMS Chapter SI 01320.000, incorporated by reference under Subsection 002.02 of these rules.

TABLE 453—INCOME DEEMED FROM INELIGIBLE PARENT	
Step	Procedure
01. Compute Child's Living Allowance	<p>Compute the living allowance for each ineligible child in the household. The living allowance is the difference between the basic allowance for a person living alone and the basic allowance for a couple. Round up cents to the next dollar. A child receiving public income maintenance payments does not get a living allowance.</p> <p>Subtract the child's unearned income from his living allowance. Subtract the child's earned income from any living allowance remaining.</p> <p>Subtract the remaining living allowance, for each ineligible child in the household, from the ineligible parents unearned income. If any living allowance remains subtract it from the parent's earned income.</p>
02. Remaining Parental Income	The parent may have remaining income. Go to Subsection 453.03.
03. Subtract Income Disregard	Subtract one (1) standard twenty dollar (\$20) disregard from the unearned income of the parents. If unearned income is less than twenty dollars (\$20) subtract the balance of the twenty dollars (\$20) from the earned income of the parents.
04. Subtract Earned Income Disregard	Subtract one (1) sixty five dollar (\$65) earned income disregard from the earned income of the parents. Subtract one half (1/2) of the remaining balance of the earned income of the parents.
05. Combine Income	Combine any remaining parental earned income with any remaining parental unearned income.

TABLE 453—INCOME DEEMED FROM INELIGIBLE PARENT	
Step	Procedure
06. Compute Living Allowance for Parent	Compute a living allowance for the ineligible parent. For one (1) parent, the living allowance is the basic allowance for a person living alone. For two (2) parents, the living allowance is the basic allowance for a couple. A parent receiving public income maintenance payments does not get a living allowance.
07. Subtract Living Allowance	Subtract the parent living allowance from the remaining balance of the parent's income. This is the deemed parental income.
08. Divide Deemed Income	If there is more than one (1) child participant in the household, the deemed parental income is divided equally between those children. Each child's share of parental income must only reduce the amount of his AABD cash to zero, when combined with the child's own countable income. Excess deemed parental income, remaining after a child participant's AABD cash is reduced to zero, is divided equally between the other child participants in the household. The excess deemed income is combined with their share of the parental income available for deeming.
09. Subtract Disregard	Subtract the standard twenty dollar (\$20) disregard from each child participant's unearned income, including deemed income. If a child's total unearned income is less than twenty dollars (\$20), subtract the balance of the standard disregard from the child's earned income.
40. Subtract Disregard	Subtract the sixty five dollar (\$65) earned income disregard and one-half of the balance from each child's own earned income.
44. Combine Income	Combine each child's unearned income with his earned income. If the child's remaining countable income is less than his actual budgeted needs, the child has a budget deficit. If the child is otherwise eligible, his AABD cash is the budget deficit.

(3-17-22)()

454. DEEMING INCOME FROM ESSENTIAL PERSON TO PARTICIPANT.

If a participant and an essential person live in the same household, the essential person's income is deemed to the participant. If essential person deeming makes the participant ineligible, ~~do~~ the Department will not use essential person deeming. The income is deemed as described in Subsections 454.01 through 454.06 POMS Chapter SI 01320.000, incorporated by reference under Subsection 002.02 of these rules.

TABLE 454—DEEMING FROM ESSENTIAL PERSON TO PARTICIPANTS	
Step	Procedure
01. Compute Income	Compute the total earned and unearned income of the essential person. Subtract income exclusions.
02. Subtract Disregard	Subtract income exclusions and disregards from the participant's income.
03. Add Unearned Income	Add the income from Subsection 454.01 to the participant's unearned income.
04. Add Earned Income	Add the participant's remaining earned income from Subsection 454.02 to the income in Subsection 454.03. This is the participant's countable income.

TABLE 454—DEEMING FROM ESSENTIAL PERSON TO PARTICIPANTS		
Step	Procedure	
05.	Compute Needs	Compute the participant's budgeted needs, as though the participant and the essential person were an AABD couple.
06.	Subtract Income	Subtract participant's income in Subsection 454.04 from his budgeted needs. The difference is the participant's AABD cash.

(3-17-22)()

455. DEEMING INCOME FROM INELIGIBLE SPOUSE TO PARTICIPANT AND CHILD PARTICIPANT.

If a participant, ~~his~~ their ineligible spouse, and their child participant live in the same household, income is deemed from the participant to the child participant. The income is deemed as described in ~~Subsections 455.01 through 455.03~~ POMS Chapter SI 01320.000, incorporated by reference under Subsection 002.02 of these rules.

TABLE 455—DEEMING FROM INELIGIBLE SPOUSE TO PARTICIPANT AND CHILD PARTICIPANT		
Step	Procedure	
01.	Compute AABD cash	Use the procedures in Table 452, to determine if the participant is eligible for AABD cash. If the participant is eligible, no income is deemed to the child participant.
02.	Participant Not Eligible	If the participant has too much income, including deemed income, to be eligible for AABD cash, all income over the amount needed to reduce the participant's AABD cash to zero is deemed to the child participant.
03.	Divide Deemed Income	If there is more than one (1) child participant in the household, the deemed parental income is divided equally between those children. Each child's share of parental income must only reduce the amount of his AABD cash to zero, when combined with the child's own countable income. Excess deemed parental income, remaining after a child participant's AABD cash is reduced to zero, is divided equally between the other child participants in the household. The excess deemed income is combined with their share of the parental income available for deeming.

(3-17-22)()

456. DEEMING INCOME FROM SPONSOR TO LEGAL NON-CITIZEN PARTICIPANT -- NO I-864 AFFIDAVIT OF SUPPORT.

~~The Department will D~~ deem income as described in this ~~Section~~ rule, if the legal non-citizen's sponsor signed an affidavit of support other than the I-864. The deemed income is counted, even if the participant does not live in the sponsor's household. The sponsor's income is not deemed to the participant for Medicaid. (3-17-22)()

01. Three-Year Limit. ~~Effective October 1, 1996 t~~ The deeming period, regardless of admission date, is three (3) years after the date the legal non-citizen is lawfully admitted. Deeming stops the end of the month, three (3) years from the date the sponsored participant lawfully entered the U.S. for permanent residence. (3-17-22)()

02. Sponsored Legal Non-Citizen Exempt from Deeming. A lawfully admitted legal non-citizen participant is exempt from sponsor deeming if one (1) or more of the following conditions ~~in Subsections 456.02.a. through 456.02.m.~~ applies. (3-17-22)()

a. Refugee. The legal non-citizen was admitted to the U.S. as a refugee, asylee, or parolee. (3-17-22)()

- b. ~~Applied before October 1, 1980.~~ The legal non-citizen first applied for AABD before October 1, 1980. ~~(3-17-22)()~~
- c. ~~Permanent resident.~~ The legal non-citizen is a lawful permanent resident ~~under color of law.~~ ~~(3-17-22)()~~
- d. ~~Sponsored with job.~~ The legal non-citizen's entry into the U.S. was sponsored by a church, other social service organization, or an employer who has offered ~~him~~ them a job. ~~(3-17-22)()~~
- e. ~~Blind or disabled.~~ The legal non-citizen becomes blind or disabled after ~~they~~ is ~~are~~ admitted to the U.S. ~~(3-17-22)()~~
- f. ~~Legal non-citizen lives with spouse.~~ The legal non-citizen was sponsored by and resides in the same household with ~~his~~ their ineligible spouse or ineligible parent. The Department will ~~use~~ use ineligible spouse and ineligible parent deeming, not sponsor deeming. ~~(3-17-22)()~~
- g. ~~Sponsor dies.~~ The legal non-citizen's sponsor dies. ~~(3-17-22)()~~
- h. ~~Legalized legal non-citizen.~~ The legal non-citizen was legalized under the Immigration Reform and Control Act of 1986. ~~(3-17-22)()~~
- i. ~~Resided for thirty-six (36) months.~~ The legal non-citizen has lived in the U.S. for thirty-six (36) months beginning with the month ~~they was~~ were admitted for permanent residence or granted permanent residence status. ~~(3-17-22)()~~
- j. ~~Registry legal non-citizen.~~ The legal non-citizen was admitted under Section 249 of the INA as a registry legal non-citizen. ~~(3-17-22)()~~
- k. ~~Amerasian legal non-citizen.~~ The legal non-citizen is an applicant for permanent residence who is an Amerasian or a specified relative of an Amerasian. The Amerasian must be born in Vietnam between January 1, 1962, and January 1, 1976. A specified relative is a spouse, child, parent, or stepparent of the Amerasian, or someone who has acted in the place of a parent of an Amerasian and/or ~~his~~ their spouse or child. ~~(3-17-22)()~~
- l. ~~Cuban/Haitian.~~ The legal non-citizen is an applicant for adjustment under the Cuban/Haitian provisions of Section 202 of the Immigration Reform and Control Act of 1986. ~~(3-17-22)()~~

03. Sponsor/Legal Non-Citizen Relationships. Sponsor/legal non-citizen relationships and deeming rules are listed in ~~Subsections 456.03.a. through 456.03.f~~ POMS Chapter SI 01320.000, incorporated by reference under Subsection 002.02 of these rules.

TABLE 456.03— SPONSOR/LEGAL NON-CITIZEN RELATIONSHIPS AND DEEMING		
	Step	Procedure
a.	Sponsor is Spouse	If the legal non-citizen's sponsor is his ineligible spouse, and the couple does not live together, sponsor to legal non-citizen deeming is used.
b.	Legal Non-Citizen is a Child	If the legal non-citizen is a child, and does not live with his sponsor parent(s), sponsor to legal non-citizen deeming is used.
c.	Child With Ineligible Parent	If the participant is a child whose ineligible parent(s) and sponsor both have income available for deeming to him, the income of the ineligible parent(s) is deemed as in Section 376.
d.	Child Eligible After Parent Deeming	If the child remains eligible after income is deemed from his ineligible parent(s), the sponsor's income is deemed to him under the sponsor to legal non-citizen deeming procedures.

TABLE 456.03—SPONSOR/LEGAL NON-CITIZEN RELATIONSHIPS AND DEEMING		
e.	Participant Couple With Sponsors	If each member of a participant couple has his own sponsor, separate deeming computations are used. The couple's countable income includes the combined deemed incomes.
f.	Member of Couple Not Eligible	If one (1) member of a couple with separate sponsors is not eligible, the ineligible spouse's income is deemed to the participant as in Section 379. This is in addition to income deemed from the sponsor.

(3-17-22)()

04. **Sponsor to Legal Non-Citizen Deeming Procedures.** The Department will Budget the legal non-citizen's actual needs, as if they is are a single person living alone. The Department will Subtract the legal non-citizen's own income, less exclusions and disregards. The Department will Subtract the couple's income, less exclusions, from their needs. If there is no budget deficit, the participant is not eligible. If there is a budget deficit, the Department will follow the procedures in Subsections 456.04.a. through 456.04.d. POMS Chapter SI 01320.000, incorporated by reference under Subsection 002.02 of these rules, to compute sponsor deemed income.

TABLE 456.04—SPONSOR TO LEGAL NON-CITIZEN DEEMING PROCEDURES		
	Step	Procedure
a.	Compute Income	Compute the gross monthly earned and unearned income of the sponsor, and the sponsor's spouse, if living with him.
b.	Subtract Living Allowance	Subtract a living allowance for the sponsor the sponsor's spouse, if living with him. The sponsor's living allowance is the basic allowance for a single person living alone. The living allowance for the sponsor's spouse is one half the basic allowance for a single person living alone. Round up cents to the next dollar.
c.	Subtract Dependent Living Allowance	Subtract a living allowance for each dependent claimed by the sponsor on his most recent Federal tax return. Do not subtract an allowance for the sponsor's spouse in this step. The living allowance is one half the basic allowance for a single person living alone. Round up cents to the next dollar. Do not reduce the living allowance by the dependent's income.
d.	Deem Income	Income remaining is deemed to the participant from the sponsor.

(3-17-22)()

457. **DEEMING INCOME FROM SPONSOR TO LEGAL NON-CITIZEN -- SPONSOR SIGNED INS FORM I-864 AFFIDAVIT OF SUPPORT.**

If the legal non-citizen's sponsor has signed an INS form I-864 affidavit of support, all income of the sponsor and the sponsor's spouse is deemed to the legal non-citizen for AABD cash and Medicaid eligibility. Deeming continues until the legal non-citizen becomes a naturalized citizen or has forty (40) quarters of work. Exceptions are listed in Subsections 457.01 and 457.02, below: (3-17-22)()

01. **Battery Exception.** The legal non-citizen or the legal non-citizen child's parent was battered or subjected to extreme cruelty in the US. There is a substantial connection between the battery and the participant's need for assistance. The person subjected to the battery or cruelty no longer lives with the person responsible for the battery or cruelty. ()

02. **Indigence.** Alien sponsor deeming is suspended for twelve (12) months, if the legal non-citizen is not able to get food and shelter without AABD cash. ()

458. -- 499. (RESERVED)

500. FINANCIAL NEED.

The participant has financial need if ~~his~~ their allowances, as described in Sections 501 through 513 of these rules, are more than ~~his~~ their income. (3-17-22)()

501. BASIC ALLOWANCE.

Each participant receives a basic allowance unless they lives in a nursing facility. The basic allowance for each living arrangement is listed in ~~Subsections 501.01 through 501.03 of~~ this rule. The Semi-Independent Group Residential Facility, Room and Board, Residential and Assisted Living Facility, and Certified Family Home basic allowances ~~are those in effect January 1, 2001. They~~ do not change with the annual cost-of-living increase in the federal SSI benefit amount. (3-17-22)()

01. **Single Participant.** ~~Through December 31, 2000, a~~ participant is budgeted five hundred forty-five dollars (\$545) monthly as a basic allowance when living in a situation ~~described in Subsections 501.01.a. through 501.01.e. of these rules listed below.~~ Beginning January 1, 2001, the basic allowance increase for a single participant is the dollar amount of the annual cost-of-living increase in the federal SSI benefit rate for a single person. (3-17-22)()

- a. Living alone. ()
- b. Living with ~~his~~ their ineligible spouse. (3-17-22)()
- c. Living with another participant who is not ~~his~~ their spouse. (3-17-22)()
- d. Living in another's household. This includes a living arrangement where the participant purchases lodging (room) and meals (board) from ~~his~~ their parent, child, or sibling. (3-17-22)()
- e. Living with ~~his~~ their TAFI child. (3-17-22)()

02. **Couple or Participant Living with Essential Person.** ~~Through December 31, 2000, a~~ participant living with ~~his~~ their participant spouse or ~~his~~ their essential person is budgeted seven hundred sixty-eight dollars (\$768) monthly as a basic allowance. Beginning January 1, 2001, the basic allowance increase for a couple is the dollar amount of the annual cost-of-living increase in the federal SSI benefit rate for a couple. The increase may be rounded up. (3-17-22)()

03. **SIGRIF.** A participant living in a semi-independent group residential facility (SIGRIF) is budgeted three hundred forty-nine dollars (\$349) monthly as a basic allowance. ()

502. SPECIAL NEEDS ALLOWANCES.

Special needs allowances are a restaurant meals allowance and a service animal food allowance. ()

01. **Restaurant Meals Allowance.** ~~The restaurant meals allowance is~~ fifty dollars (\$50) monthly. A physician must state the participant is physically unable to prepare food in ~~his~~ their home. A participant able to prepare ~~his~~ their food, but living in a place where cooking is not permitted, may be budgeted the restaurant meals allowance for up to three (3) months. (3-17-22)()

02. **Service Animal Food Allowance.** ~~The service animal food allowance is~~ seventeen dollars (\$17) monthly. The allowance is budgeted for a blind or disabled participant, using a trained service animal. (3-17-22)()

503. -- 511. (RESERVED)

512. ROOM AND BOARD HOME ALLOWANCE.

Room and board is a living arrangement where the participant purchases lodging (room) and meals (board) from a person they lives with who is not ~~his~~ their parent, child, or sibling. (3-17-22)()

01. Budgeted Room and Board Allowance. Beginning January 1, 2006, a participant living in a room and board home is budgeted six hundred ninety-three dollars (\$693). Beginning July 1, 2013, the Room and Board allowance will be adjusted annually by the percentage of the annual cost-of-living increase in the federal SSI benefit rate for a single person. This adjustment will be effective on January 1st of each year. The room and board allowance increase will be rounded to the next dollar. ()

02. Basic Allowance for Participant in Room and Board Home. A participant living in a room and board home is budgeted seventy-seven dollars (\$77) monthly as a basic allowance. Beginning July 1, 2013, this basic allowance will be adjusted annually by the percentage of the annual cost-of-living increase in the federal SSI benefit rate for a single person. This adjustment will be effective on January 1st of each year. The basic allowance increase will be rounded to the nearest dollar. ()

513. RESIDENTIAL ASSISTED LIVING FACILITY (RALF) AND CERTIFIED FAMILY HOME (CFH) ALLOWANCES.

A participant living in a ~~Residential Assisted Living Facility (RALF), in accordance with under~~ IDAPA 16.03.22, "Residential Assisted Living Facilities," or a ~~Certified Family Home (CFH), in accordance with under~~ IDAPA 16.03.19, "Certified Family Homes," is budgeted a basic allowance of ninety-six dollars (\$96) monthly. Beginning July 1, 2013, this basic allowance will be adjusted annually by the percentage of the annual cost-of-living increase in the federal SSI benefit rate for a single person. This adjustment will be effective on January 1st of each year. The basic allowance increase will be rounded to the nearest dollar. (3-17-22)()

01. Budgeted Monthly Allowance Based On Level of Care. A participant is budgeted a monthly allowance for care based on the level of care received as described in Section 515 of these rules. If the participant does not require State Plan Personal Care Services (PCS), ~~his~~ their eligibility and allowances are based on the Room and Board rate in Section 512 of these rules. (3-17-22)()

02. Care Levels and Monthly Allowances. Beginning January 1, 2006, care levels and monthly allowances are those listed in Table 513.02 ~~of these rules~~ below. Beginning July 1, 2013, the RALF and CFH allowances for participants living in a RALF or CFH on State Plan PCS will be adjusted annually by the percentage of the annual cost-of-living increase in the federal SSI benefit rate for a single person. This adjustment will be effective on January 1st of each year. This increase will be rounded to the next dollar.

TABLE 513.02 - STATE PLAN PCS CARE LEVELS AND ALLOWANCES AS OF 1-1-06		
	Level of Care	Monthly Allowance
a.	Level I	Eight hundred and thirty-five dollars (\$835)
b.	Level II	Nine hundred and two dollars (\$902)
c.	Level III	Nine hundred and sixty-nine dollars (\$969)

(3-17-22)()

03. CFH Operated by Relative. A participant living in a ~~Certified Family Home (CFH)~~ operated by ~~his~~ their parent, child, or sibling is not entitled to the CFH State Plan PCS allowances. ~~He~~ They may receive the allowance for a person living with a relative as described in Section 501 of these rules. A relative for this purpose is the participant's parent, child, sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild by birth, marriage, or adoption. (3-17-22)()

514. AABD CASH PAYMENTS.

Only a participant who receives an SSI payment for the month is eligible for an AABD cash payment in the same month. The AABD cash payment amount is based on the participant's living arrangement described in Subsections 514.01 through 514.04 of this rule. An AABD cash payment is the difference between a participant's financial need and ~~his~~ their countable income. If the difference is not an even dollar amount, AABD cash is paid at the next higher dollar. ~~AABD cash is paid electronically as provided in IDAPA 16.03.20, "Electronic Payments of Public Assistance, Food Stamps, and Child Support."~~ (3-17-22)()

01. **Single Participant Maximum Payment.** For a single participant described in Subsection 501.01 of these rules, the maximum monthly AABD cash payment amount is fifty-three dollars (\$53). ()

02. **Couple or Participant Living with Essential Person Maximum Amount.** For participants described in Subsection 501.02 of these rules, the maximum monthly AABD cash payment amounts are: ()

a. A couple receives twenty dollars (\$20); or ()

b. A participant living with essential person receives eighteen dollars (\$18). ()

03. **Semi-Independent Group Maximum Payment.** For a participant described in Subsection 501.03 and Section 511 of these rules, the maximum monthly AABD cash payment amount is one hundred sixty-nine dollars (\$169). (3-17-22)()

04. **Room and Board Maximum Payment.** For a participant described in Section 512 of these rules, the maximum monthly AABD cash payment is one hundred ninety-eight dollars (\$198). ()

05. **RALF and CFH.** A participant residing in a RALF or CFH is not eligible for an AABD cash payment. ()

515. ~~RESIDENTIAL AND ASSISTED LIVING FACILITY~~ RALF CARE AND ~~CERTIFIED FAMILY HOME~~ CFH ASSESSMENT AND LEVEL OF CARE.

The participant's need for care, level of care, plan of care, and the ~~licensed facility's~~ RALF's or CFH's ability to provide care is assessed by the Bureau of Long-Term Care (BLTC) when a participant is admitted. The BLTC must approve the placement before Medicaid can be approved. (3-17-22)()

516. CHANGE IN LEVEL OF CARE.

A change in the participant's level of care affects eligibility as ~~described in Subsections 516.01 and 516.02 of this rule listed below.~~ (3-17-22)()

01. **Increase in Level of Care.** ~~An increase in level of care~~ is effective the month the BLTC reassesses the level of care. (3-17-22)()

02. **Decrease in Level of Care.** When the BLTC verifies the participant has a decrease in ~~his~~ their level of care, and ~~his~~ their income exceeds ~~his~~ their new level of care, ~~his~~ their Medicaid must be stopped after timely notice. When the BLTC determines the participant no longer meets any level of care, ~~his~~ their eligibility and allowances are based on the Room and Board rate in Section 512 of these rules. (3-17-22)()

517. -- ~~520.~~ (RESERVED)

521. ~~MOVE FROM RESIDENTIAL ASSISTED LIVING FACILITY OR CERTIFIED FAMILY HOME TO LIVING SITUATION OTHER THAN A NURSING HOME OR HOSPITAL.~~

~~A participant may move from a licensed facility to a living situation, other than a nursing home or hospital. No change to his Medicaid income limit is made, based on the move, until the next month.~~ (3-17-22)

~~522.~~ 523. (RESERVED)

524. MOVE FROM NURSING HOME OR HOSPITAL.

If a participant moves from a nursing home or hospital to a different living situation, other than a ~~residential and assisted living facility~~ RALF or ~~certified family home~~ CFH, ~~his~~ their AABD cash for the month is determined as if ~~they~~ they lived in ~~his~~ their new situation the entire month. ~~His~~ Their AABD cash is ~~his~~ their AABD allowances less ~~his~~ their countable income. (3-17-22)()

525. -- 530. (RESERVED)

531. COUPLE BUDGETING.

Income of an AABD participant and ~~his~~ their participant spouse living in the same household is combined. The twenty dollar (\$20) standard income disregard and the sixty-five dollar (\$65) earned income disregard are subtracted once a month, per couple. Each member of a couple living in an institution must have income budgeted as a single person. A couple living together as of the first day of a month, is counted as living together throughout that month. Budgeting as a couple continues through the month the couple stops living together. For couple budgeting, a household is a home, a rental, another's household, or room and board. (3-17-22)()

532. -- 539. (RESERVED)

540. STANDARD DISREGARD.

The standard disregard is twenty dollars (\$20). ~~The standard disregard, and~~ is first subtracted from unearned income. If the unearned income is less than the standard disregard, the remainder of the standard disregard is subtracted from earned income. The participant retains the standard disregard for ~~his~~ their personal use. (3-17-22)()

01. Standard Disregard and a Couple. The Department will ~~S~~subtract the standard disregard only once a month from the combined income of a couple in the same household. (3-17-22)()

02. Standard Disregard Exception. The standard disregard must not be subtracted from nonservice-connected VA payments, Title IV-E foster care payments, or BIA General Assistance. ()

541. SUBTRACTION OF EARNED INCOME DISREGARDS.

Earned income disregards are subtracted from AABD earned income in the order listed in Sections 542 through 547. They are subtracted the month the income is paid. ()

542. SIXTY-FIVE DOLLAR EARNED INCOME DISREGARD.

Sixty-five dollars (\$65) of earned income in a month are not counted. The Department will ~~S~~subtract the sixty-five dollar (\$65) disregard only once a month from the combined income of a couple in the same household. The sixty-five dollar (\$65) disregard is a work incentive. The participant retains the sixty-five dollar (\$65) disregard for ~~his~~ their personal use. (3-17-22)()

543. IMPAIRMENT-RELATED WORK EXPENSE (IRWE) DISREGARD.

~~Impairment related work expenses~~ IRWEs are items and services needed and used by a disabled AABD participant to work. The items must be needed because of the participant's impairment. ~~The items, and~~ may be bought or rented. The cost for ~~impairment related work expenses~~ IRWEs is subtracted from the participant's earned income, for eligibility and AABD cash amount. An item disregarded as a blindness work expense, or as part of a PASS, cannot be disregarded as an ~~impairment related work expense~~ IRWE. (3-17-22)()

544. ONE-HALF REMAINING EARNED INCOME DISREGARD.

One-half (1/2) of remaining earned income, after the IRWE is subtracted, is not counted. The one-half (1/2) of remaining earned income is a work incentive. The participant retains the one-half (1/2) of remaining earned income for ~~his~~ their personal use. (3-17-22)()

545. BLINDNESS WORK EXPENSE DISREGARD.

The cost of earning income is subtracted from the earned income of a blind person. The blind person must be under age sixty-five (65). If the blind person is age sixty-five (65) or older, they must receive SSI for blindness, or have received AABD the month before they became sixty-five (65). (3-17-22)()

01. Blind Work Expense Limit. Blindness work expenses are subtracted from earned income. The amount subtracted must not exceed the participant's monthly earnings. ()

02. No Duplication for Blind Work Expenses. Expenses, subtracted under the ~~impairment related work expense~~ IRWE disregard, cannot be subtracted again under this disregard. (3-17-22)()

546. PLAN TO ACHIEVE SELF-SUPPORT (PASS).

A blind or disabled participant, with an approved ~~plan to achieve self support~~ (PASS), must have income and resources disregarded. Conditions for this disregard are listed ~~in Subsections 546.01 through 546.03~~ below. (3-17-22)()

01. Under Age Sixty-Five. The participant must be under sixty-five (65), or receive AABD for the blind or disabled during the month of ~~his~~ their sixty-fifth birthday. (3-17-22)()

02. Approved PASS. A participant receiving SSI must have a PASS approved by SSA. A participant not receiving SSI must have a PASS approved by the Department. ()

03. Income Necessary for Self-Support. The income and resources disregarded under the PASS must be necessary for the participant to achieve self-support. ()

547. PASS APPROVED BY DEPARTMENT.

A PASS approved by the Department must be in writing. ~~The PASS must, and~~ contain all the following items ~~in Subsections 547.01 through 547.06.:~~ (3-17-22)()

01. Occupational Objective. The PASS must have a specific occupational objective. ()

02. Specific Goals. The PASS must have specific goals for using the disregarded income and resources to achieve self-support. ()

03. Time Limit. The PASS must show a specific target date to achieve the goal. An approved PASS is limited to an initial period of eighteen (18) months. Extensions may be granted if needed. ()

a. The first extension period lasts up to eighteen (18) months. ()

b. A second eighteen (18) month extension period can be granted. ()

c. A final extension, up to twelve (12) months can be granted. The PASS can be extended a total of forty-eight (48) months, when the original PASS goal required extensive education or vocational training. ()

04. No Duplication of Disregards. An item disregarded as an ~~impairment-related work expense IRWE~~ or under the blindness exception cannot be disregarded under the PASS. (3-17-22)()

05. Resource Limitation. The PASS disregard must not be used for resources, unless the resources cause the participant to be ineligible without the PASS disregard. ()

06. Disregard of Resources. The PASS must list the participant's resources. The PASS must list any resources the participant will receive under the plan. ~~The PASS must, and~~ show how the resources will be used toward the occupational goal. The PASS must list goal-related items or activities requiring savings or purchases and the amounts the participant plans to save or spend. ~~The PASS must, and~~ list resources disregarded under the plan. The PASS must show resources disregarded under the plan can be identified separate from the participant's other resources. (3-17-22)()

548. -- 599. (RESERVED)

600. DEPARTMENT NOTICE RESPONSIBILITY.

The participant must be notified of changes in eligibility or AABD cash amount. The notice must give the effective date, the reason for the action, the rule that supports the action, and appeal rights. See 42 CFR 435.917. (3-17-22)()

601. ADVANCE NOTICE RESPONSIBILITY.

When a reported change results in closure or decrease, the participant must be notified at least ten (10) calendar days before the effective date of the action. ()

602. ADVANCE NOTICE NOT REQUIRED.

Advance notice is not required when a condition listed ~~in Subsections 602.01 through 602.12~~ below exists. The participant must be notified by the date of the action. (3-17-22)()

01. **The Department has Proof of the Participant's Death of Participant.** ~~The Department has proof of the participant's death.~~ (3-17-22)()
02. **Participant Requests Closure in Writing.** ~~The participant requests closure in writing.~~ (3-17-22)()
03. **Participant in Institution.** The participant is admitted or committed to an institution. Further payments to the participant do not qualify for federal financial participation under the State Plan. ()
04. **Nursing Care.** The participant is placed in a nursing facility, or ~~Intermediate Care for Persons with Intellectual Disabilities~~ **an ICF/IID.** (3-17-22)()
05. **Participant Address Unknown.** The participant's whereabouts are unknown. Department mail is returned with no forwarding address. ()
06. **Participant is Approved for Aid in Another State.** ~~A participant is approved for aid in another state.~~ (3-17-22)()
07. **Eligible One Month.** The participant is eligible for aid only during the calendar month of ~~his~~ **their** application for aid. (3-17-22)()
08. **Non-Citizen With Emergency.** The participant is an illegal or legal non-citizen whose Medicaid eligibility ends the day ~~his~~ **their** emergency medical condition stops. (3-17-22)()
09. **Retroactive Medicaid.** The participant's Medicaid eligibility is for a prior period. ()
10. **Special Allowance.** A special allowance granted for a specific period is stopped. ()
11. **Patient Liability or Participant Participation Changes.** ~~Patient liability or client participation changes.~~ (3-17-22)()
12. **Participant's Level of Care Changes.** ~~The participant's level of care changes.~~ (3-17-22)()
603. (RESERVED)
604. **PARTICIPANT DETERMINED SSI ELIGIBLE AFTER APPEAL.**
If the SSA finds a participant is blind or disabled, based on an appeal of an SSA decision, the participant meets the disability requirements for AABD cash and related Medicaid on the effective date determined by SSA. AABD cash payments are effective no earlier than the month SSA issues the favorable decision for SSI payments. ()
605. **REPORTING REQUIREMENTS.**
The participant must report changes in circumstances verbally or in writing, by the tenth of the month following the month in which the change occurred. The participant must show good cause for not reporting changes. If failure to report a change results in an overpayment, the overpayment must be recovered. ()
606. **REQUIRED PROOF.**
The participant must prove continuing eligibility for aid when a change could affect eligibility. ~~The participant, and~~ is allowed ten (10) calendar days to provide requested proof. The case is closed if the participant does not provide proof within ten (10) days and does not have good cause for not providing proof. (3-17-22)()
607. **CHANGES AFFECTING ELIGIBILITY OR AABD CASH AMOUNT.**
If a participant reports a change that results in an increase, AABD cash is increased effective the month of report. If a participant reports a change that results in a decrease, AABD cash is decreased or ended effective the first month after proper notice. ()
608. **AABD CASH UNDERPAYMENT.**
If the Department is at fault for issuing a payment less than the participant should have received, the Department will

issues a supplemental payment for the difference.

(3-17-22)()

609. AABD CASH OVERPAYMENT.

If the participant is paid more AABD cash than ~~they~~^{is} ~~is~~ ~~are~~ eligible for, the Department must collect the overpayment. The Department must notify the participant of the right to a hearing, the method for repayment, and the need for a repayment interview.

(3-17-22)()

610. OFFSET OF OVERPAYMENT AND UNDERPAYMENT.

When an underpayment is computed, any overpayment for that month is subtracted from the underpayment. When an overpayment is computed, any underpayment for the month is subtracted.

()

611. -- 616. (RESERVED)

617. HEARING REQUEST.

A participant may request a hearing to contest a Department decision. The participant must make the request within ~~thirty~~ ~~ninety~~ (390) days of the date the Department mailed the notice of decision. Hearings will be conducted according to IDAPA 16.05.03, "~~Rules Governing~~ Contested Case Proceedings and Declaratory Rulings."

(3-17-22)()

618. CONTINUED BENEFITS PENDING A HEARING DECISION.

The participant may continue to receive benefits upon request, pending the hearing decision. The Department must receive the participant's request for continued benefits before the effective date of the Department's action stated in the notice of decision. An applicant cannot receive continued benefits when appealing a denial for failure to provide citizenship and identity verification after the expiration of a reasonable opportunity period.

()

01. Amount of Assistance. The Department will continue the participant's assistance at the current month's level while the hearing decision is pending, unless another change affecting assistance occurs.

()

02. Continued Eligibility. The participant must continue to meet all eligibility requirements not related to the hearing issue.

()

03. Overpayment. When the hearing decision is in the Department's favor, the participant must repay assistance received while the hearing decision was pending.

()

619. (RESERVED)

620. MEDICAID OVERPAYMENT.

If the participant receives Medicaid services during a month ~~they~~^{is} ~~is~~ ~~are~~ not eligible, the Department must collect the overpayment. If too little patient liability or ~~client~~ ~~participant~~ participation is computed, the Department must collect the overpayment. The participant must be notified of the overpayment.

(3-17-22)()

621. CHANGES IN PATIENT LIABILITY.

01. Increase in Patient Liability. If the patient liability is increased for the current or a past month, the Department will collect the patient liability directly from the ~~client~~ ~~participant~~.

(3-17-22)()

02. Decrease in Patient Liability. If the patient liability is decreased for a current or past month, the funds will be paid to the provider and the provider must reimburse the ~~client~~ ~~participant~~ for the portion of the costs the ~~client~~ ~~participant~~ paid ~~in excess of~~ ~~more than~~ their patient liability.

(3-17-22)()

622. (RESERVED)

623. ELIGIBILITY REDETERMINATION.

An eligibility redetermination is completed at least once every year and when a change affecting eligibility occurs.

()

624. -- 649. (RESERVED)

650. COOPERATION WITH THE QUALITY CONTROL PROCESS.

When the Department or federal government selects a case for review in the quality control process, the participant must cooperate in the review of the case. Benefits must be stopped, following advance notice, when a participant is unwilling to take part in the quality control process. If the participant reapplies for benefits, they must fully cooperate with the quality control process before the application can be approved. ()

651. -- 699. (RESERVED)

700. MEDICAID ELIGIBILITY.

A participant must meet the eligibility requirements for at least one (1) Medicaid coverage group to be eligible for Medicaid benefits. Income and circumstances in the current month are used for eligibility for the current month. Resources are counted as of the first moment of the month. ()

701. MEDICAID APPLICATION.

An adult participant, a legal guardian, or a representative of the participant must sign the application. The participant must submit the application to the Department. A Medicaid application may be made for a deceased person. ()

702. MEDICAL SUPPORT COOPERATION.

Medical support rights are assigned to the Department by signature on the application. The participant must cooperate with the Department to secure medical support and payments; to be eligible for Medicaid. The participant must cooperate on behalf of ~~themselves~~ and any participant for whom ~~they~~ can legally assign rights. A participant who cannot legally assign ~~his~~ ~~their~~ own rights must not be denied Medicaid if the legally responsible person does not cooperate. (3-17-22)()

703. CHILD SUPPORT COOPERATION.

The participant must cooperate to identify and locate the noncustodial parent, establish paternity, and establish, modify, and enforce a child medical support order; to be eligible for Medicaid. This includes support payments received directly from the noncustodial parent. The cooperation requirement is waived for poverty level pregnant women exempt from cooperating in establishing paternity and obtaining medical support from, or derived from, the father of a child born out of wedlock. A participant who cannot legally assign ~~his~~ ~~their~~ own rights must not be denied Medicaid if the legally responsible person does not cooperate. (3-17-22)()

704. COOPERATION DEFINED.

Cooperation includes ~~but is not limited to~~, providing all information to identify and locate the noncustodial parent. Cooperation for Medicaid includes identifying other liable third-party payers. (3-17-22)()

01. Name of Noncustodial Parent. The participant must provide the first and last name of the noncustodial parent. ()

02. Information About Noncustodial Parent. The participant must also provide at least two (2) pieces of information, about the noncustodial parent, listed ~~in Subsections 703.02.a. through 703.02.g.~~ below: (3-17-22)()

- a. Birth Date. ()
- b. ~~Social Security Number.~~ (3-17-22)()
- c. Current address. ()
- d. Current phone number. ()
- e. Current employer. ()
- f. Make, model, and license number of any motor vehicle owned by the noncustodial parent. ()

- g. Names, phone numbers, and addresses of the parents of the noncustodial parent. ()

705. GOOD CAUSE FOR NOT COOPERATING IN SECURING MEDICAL AND CHILD SUPPORT.

The participant may claim good cause for failure to cooperate in securing medical and child support for ~~himself~~ or a minor child. Good cause is limited to the ~~reasons listed in Subsections 705.01 through 705.03,~~ following:

(3-17-22)()

- 01. Rape or Incest.** There is proof the child was conceived ~~as a result~~ because of incest or rape.

(3-17-22)()

02. Physical or Emotional Harm. There is proof the child's non-custodial parent may inflict physical or emotional harm to the participant, the child, the custodial parent, or the caretaker relative. There is proof another person may inflict physical or emotional harm to an AABD-related participant if the participant cooperates in securing medical and child support. ()

03. Minimum Information Cannot Be Provided. Substantial and credible proof is provided indicating the participant cannot provide the minimum information regarding the non-custodial parent. ()

706. CLOSURE AFTER REVIEW OF GOOD CAUSE REQUEST.

If the participant claims good cause for not cooperating, but the Department determines there is not good cause, the participant must be given the opportunity to withdraw the application or have their Medicaid closed. ()

707. APPLICATION REQUIREMENTS FOR POTENTIAL MEDICAL COVERAGE.

01. Group Health Plan Enrollment Requirement. Each participant must apply for and enroll in a cost-effective employer group health plan as a condition of eligibility for Medicaid. Medicaid coverage must not be denied, delayed, or stopped pending the start of a participant's group health insurance coverage. A child entitled to enroll in a group health plan must not be denied Medicaid coverage solely because ~~his~~ their caretaker fails to apply for the child's enrollment. (3-17-22)()

02. Medicare Enrollment Requirement. Each participant who may be eligible for Medicare must apply for all parts of Medicare parts A, B, and D for which ~~they is~~ are likely to be eligible, as a condition of eligibility for Medicaid. (3-17-22)()

708. MEDICAID QUALIFYING TRUST PAYMENTS.

For Medicaid Qualifying Trusts established before August 11, 1993, the maximum payment permitted to be made to a participant from the trust must be counted for Medicaid eligibility. The maximum is counted whether or not the trustee actually distributes payments. ()

709. MEDICAID ELIGIBILITY FOR AABD PARTICIPANT.

A participant eligible for AABD cash is eligible for Medicaid, unless ~~they is~~ are in an ineligible institution, receives excess payment from a Medicaid Qualifying Trust, or has ~~ve~~ an irrevocable trust that is not exempt. (3-17-22)()

710. -- 719. (RESERVED)

720. LONG-TERM CARE RESIDENT AND MEDICAID.

A resident of a long-term care facility must meet the AABD eligibility criteria to be eligible for Medicaid. A long-term care facility is a nursing facility or an ~~intermediate care facility for persons with intellectual disabilities~~ ICF/IID. The need for long-term care is determined using IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits."

(3-17-22)()

01. Resources of Resident. The resident's resource limit is two thousand dollars (\$2,000). Resources of a married person in long-term care are computed using Federal Spousal Impoverishment rules. Under the SSI method, spouses can use the three thousand dollar (\$3,000) couple resource limit if more advantageous. The couple must have lived in the nursing home, in the same room, for six (6) months. ()

02. Medicaid Income Limit of Long-Term Care Resident Thirty Days or More. The monthly income limit for a long-term care facility resident is three (3) times the federal SSI benefit for a single person. To qualify for this income limit, the participant must be, or be likely to remain, in long-term care at least thirty (30) consecutive days. ()

03. Medicaid Income Limit of Long-Term Care Resident Less Than Thirty Days. The monthly income limit, for the resident of a long-term care facility for less than thirty (30) consecutive days, is the AABD income limit for the participant's living situation before long-term care. Living situations before long-term care do not include hospital stays. ()

04. Income Not Counted. The income listed in Subsections 720.04.a. through 720.04.e. of this rule is not counted to compute Medicaid eligibility for a long-term care facility resident. This income is counted in determining participation in the cost of long-term care. ()

a. Income excluded or disregarded in determining eligibility for AABD cash is not counted. ()

b. The September 1972 RSDI increase is not counted. ()

c. Any VA Aid and Attendance allowance, including any increment that is the result of a VA Unusual Medical Expense allowance, is not counted. These allowances are not counted for patient liability, unless the veteran lives in a state-operated veterans' home. ()

d. RSDI benefit increases from cost-of-living adjustments (COLA) after April 1977 are not counted if they made the participant lose SSI or AABD cash. The COLA increases after SSI or AABD cash stopped are not counted. ()

e. Income paid into an income trust exempt from counting for Medicaid eligibility under Subsection 872.02 of these rules is used for patient liability. Income paid to the trust and not used for patient liability is subject to the asset transfer penalty. ()

05. Medicaid Participant Residing in a Skilled Nursing Facility. When a Medicaid participant who is a resident of a skilled nursing facility and meets that level of care as evidenced by the PASARR defined in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," [Section 227](#), the resident is determined to be disabled for the duration of ~~his~~ their residency in the skilled nursing facility. [\(3-17-22\)](#)()

721. QUALIFIED LONG-TERM CARE PARTNERSHIP POLICY.

Participants who have received, or are entitled to receive, benefits under a Qualified Long-Term Care Partnership policy issued in Idaho after November 1, 2006, will have certain resources disregarded as described ~~in Subsections 721.01 and 721.02 of these rules~~ [below](#). [\(3-17-22\)](#)()

01. Value of the Participant's Resources. The total dollar amount of the insurance benefits paid out for a policy holder of a Qualified Long-Term Care Partnership policy is disregarded in calculating the value of the participant's resources for long-term care Medicaid eligibility. The amount that is disregarded is determined on the effective date of an initial application approval for long-term care Medicaid benefits. ()

02. Resource Disregard Excluded from Estate Recovery. The amount of the resources disregarded from a Qualified Long-Term Care Partnership policy under Subsection 721.01 of this rule, is deducted from the assets of the estate for Medicaid estate recovery. ()

722. PATIENT LIABILITY.

Patient liability is the participant's income counted toward the cost of long-term care. Patient liability begins the month after the first full calendar month the patient is receiving benefits in a long-term care facility. ()

723. PATIENT LIABILITY FOR PERSON WITH NO COMMUNITY SPOUSE.

For a participant with no community spouse, patient liability is computed as described ~~in Subsections 723.01 through 723.03 of this rule~~ [below](#). [\(3-17-22\)](#)()

01. Income of Participants in Long-Term Care. For a single participant, or participant whose spouse is also in long-term care and chooses the SSI method of calculating the amount of income and resources, the patient liability is ~~his~~ their total income less the deductions in Subsection 723.03 of this rule. (3-17-22)()

02. Community Property Income of Long-Term Care Participant with Long-Term Care Spouse. Patient liability income for a participant, whose spouse is also in long-term care, choosing the community property method, is one-half (1/2) ~~his~~ their share of the couple's community income, plus ~~his~~ their own separate income. The deductions ~~in Table under Subsection~~ 723.03 of this rule are subtracted from ~~his~~ their income. (3-17-22)()

03. Income of Participant in Facility. A participant residing in the long-term care facility at least one (1) full calendar month, beginning with ~~his~~ their most recent admission, must have the deductions in ~~Subsection 723.03 below~~ subtracted from ~~his~~ their income, after the AABD exclusions are subtracted from the income. Total monthly income includes income paid into an income (Miller) trust that month. The income deductions must be subtracted in the order listed. Remaining income is patient liability. (3-17-22)()

a. AABD Income Exclusions. ~~Subtract i~~ Income excluded in determining eligibility for AABD cash is subtracted. (3-17-22)()

b. Aid and Attendance and UME Allowances. ~~Subtract a~~ VA Aid and Attendance allowance and Unusual Medical Expense (UME) allowance for a veteran or surviving spouse is subtracted, unless the veteran lives in a state operated veterans' home. (3-17-22)()

c. SSI Payment Two (2) Months. ~~Subtract t~~ The SSI payment for a participant entitled to receive SSI at ~~his~~ their at-home rate for up to two (2) months is subtracted, while temporarily in a long-term care facility. (3-17-22)()

d. AABD Payment. ~~Subtract t~~ The AABD payment, and income used to compute the AABD payment, for a participant paid continued AABD payments up to three (3) months in long-term care is subtracted. (3-17-22)()

e. First Ninety (\$90) Dollars of VA Pension. ~~Subtract t~~ The first ninety (\$90) dollars of a VA pension for a veteran in a private long-term care facility or a State Veterans Nursing Home is subtracted. (3-17-22)()

f. Personal Needs. ~~Subtract f~~ Forty dollars (\$40) is subtracted for the participant's personal needs. For a veteran or surviving spouse in a private long-term care facility or a State Veterans Nursing Home the first ninety (\$90) dollars of VA pension substitutes for the forty dollar (\$40) personal needs deduction. (3-17-22)()

g. Employed and Sheltered Workshop Activity Personal Needs. For an employed participant or participant engaged in sheltered workshop or work activity center activities, ~~subtract~~ the lower of the personal needs deduction of two hundred dollars (\$200) or ~~his~~ their gross earned income is subtracted. The participant's total personal needs allowance must not exceed two hundred and thirty dollars (\$230). For a veteran or surviving spouse with sheltered workshop or earned income, and a protected VA pension, the total must not exceed two hundred dollars (\$200). This is a deduction only. No actual payment can be made to provide for personal needs. (3-17-22)()

h. Home Maintenance. ~~Subtract t~~ Two hundred and twelve dollars (\$212) is subtracted for home maintenance cost if the participant had an independent living situation, before ~~his~~ their admission for long-term care. His/Their physician must certify in writing the participant is likely to return home within six (6) months, after the month of admission to a long-term care facility. This is a deduction only. No actual payment can be made to maintain the participant's home. (3-17-22)()

i. Maintenance Need. ~~Subtract a~~ maintenance need deduction for a family member, living in the long-term care participant's home is subtracted. A family member is claimed, or could be claimed, as a dependent on the Federal Income Tax return of the long-term care participant. The family member must be a minor or dependent child, dependent parent, or dependent sibling of the long-term care participant. The maintenance need deduction is the AFDC payment standard for the dependents, computed according to the AFDC State Plan in effect before July 16,

1996.

(3-17-22)()

j. Medicare and Health Insurance Premiums. ~~Subtract e~~Expenses for Medicare and other health insurance premiums, and deductibles or coinsurance charges are subtracted, and not subject to payment by a third party. Deduction of Medicare Part B premiums is limited to the first two (2) months of Medicaid eligibility. Medicare Part B premiums must not be subtracted, if the participant got SSI or AABD cash the month prior to the month for which patient liability is being computed. (3-17-22)()

k. Mandatory Income Taxes. ~~Subtract f~~Taxes mandatorily withheld from unearned income for income tax purposes are subtracted. To qualify for deduction of mandatory taxes, the tax must be withheld from income before the participant receives the income. (3-17-22)()

l. Guardian Fees. ~~Subtract e~~Court-ordered guardianship fees of the lesser of ten percent (10%) of the monthly benefit handled by the guardian, or twenty-five dollars (\$25) are subtracted. Where the guardian and trustee is the same person, the total deduction for guardian and trust fees must not exceed twenty-five dollars (\$25) monthly. (3-17-22)()

m. Trust Fees. ~~Subtract u~~Up to twenty-five dollars (\$25) monthly paid to the trustee for administering the participant's trust is subtracted. (3-17-22)()

n. Impairment-~~Related~~ Work Expenses (IRWE). ~~Subtract impairment-related work expenses IRWEs~~ IRWEs are purchased or rented items and services that are purchased or rented to perform work. The items must be needed because of the participant's impairment. The actual monthly expense of the impairment-related items is subtracted. Expenses must not be averaged. (3-17-22)()

o. Income Garnished for Child Support. ~~Subtract i~~Income garnished for child support to the extent the expense is not already accounted for in computing the maintenance need standard is subtracted. (3-17-22)()

p. Incurred Medical Expenses. ~~Subtract a~~Amounts for certain limited medical or remedial care expenses that have current balances owed and are deemed medically necessary as defined in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," are subtracted. Current medical expenses that are not covered by the Idaho Medicaid Plan, or by a third party, may be deducted from the base participation amount. (3-17-22)()

q. Pre-existing Medical Expenses. ~~Subtract a~~Amounts for medical and remedial care expenses incurred within the three (3) months prior to the month of application are subtracted. The deductions for medical and remedial care expenses are limited to those medically necessary expenses incurred by the participant for the participant's care. ~~These deductions for medical and remedial care expenses is~~ are limited to the amount of liability owed by the participant, and if applicable, after any third-party insurance has been applied. The deduction for medical and remedial care expenses that were incurred as the result of imposition of a transfer of assets penalty period is limited to zero. (3-17-22)()

724. INCOME OWNERSHIP OF PARTICIPANT WITH COMMUNITY SPOUSE.

Income ownership of a long-term care participant with a community spouse is determined before patient liability is computed. The participant's income ownership is counted as shown ~~in Subsections 724.01 through 724.04 below~~. (3-17-22)()

01. **Income Paid in the Name of Spouse.** Income paid solely in the name of a spouse, and not paid from a trust, is the separate income of the spouse. ()

02. **Payment in Name of Both Spouses.** Income paid in the names of both the long-term care participant and the community spouse is divided evenly between each spouse. ()

03. **Payment in Name of Spouse or Spouses and Another Person.** Income paid in the names of the participant and/or the community spouse and another person is counted as available to each spouse, in proportion to the spouse's ownership. If payment is made to both spouses, and no proportion of ownership is specified, one-half of the income is counted to each spouse. ()

04. Payment of Aid and Attendance. In the case of VA Aid and Attendance Allowance paid in the veteran's name, with an increment for the veteran's spouse, the increment is counted to the veteran. ()

725. PATIENT LIABILITY FOR PARTICIPANT WITH COMMUNITY SPOUSE.

After income ownership is decided, patient liability is determined using steps in Table 725. For a participant with a community spouse, patient liability is computed as described in Subsection 723.03 of these rules with the addition of the following steps for Community Spouse Allowance (CSA):

TABLE 725—INCOME DEDUCTIONS FOR PARTICIPANT IN FACILITY		
Step	Procedure	
01.	AABD Income Exclusions	Subtract income excluded in determining eligibility for AABD cash.
02.	Aid and Attendance and UME Allowances	Subtract a VA Aid and Attendance allowance and Unusual Medical Expense (UME) allowance for a veteran or surviving spouse, unless the veteran lives in a state-operated veterans' home.
03.	SSI Payment Two-(2) Months	Subtract the SSI payment for a participant entitled to receive SSI at his at-home rate for up to two (2) months, while temporarily in a long-term care facility.
04.	AABD Cash	Subtract the AABD cash payment and income used to compute AABD cash, for a participant eligible to have his AABD cash continued up to three (3) months, while he is in long-term care.
05.	VA Pension	Subtract the first ninety (90\$) of the VA pension for a veteran.
06.	Personal Needs	Subtract forty dollars (\$40) for the participant's personal needs. Do not allow this deduction for a veteran.
07.	Employed and Sheltered Workshop Activity Needs	For an employed participant or participant engaged in sheltered workshop or work activity center activities subtract the lower of two hundred dollars (\$200) or his earned income.
08.	Community Spouse Allowance: Step a.	<p>Compute the Community Spouse Allowance (CSA) using Step a. through Step c.</p> <p>Compute the Shelter Adjustment.</p> <p>Add the current Food Stamp Program Standard Utility Allowance to the community spouse's shelter costs.</p> <p>Shelter costs include rent, mortgage principal and interest, homeowner's taxes, insurance, and condominium or cooperative maintenance charges. The Standard Utility Allowance must be reduced by the value of any utilities included in maintenance charges for a condominium or cooperative.</p> <p>Subtract the Shelter Standard from the shelter and utilities. The Shelter Standard is thirty percent (30%) of one hundred fifty percent (150%) of one twelfth (1/12) of the income official poverty line defined by the Federal Office of Management and Budget (OMB) for a family of two (2) persons.</p> <p>The Shelter Adjustment is the positive balance remaining.</p>

TABLE 725—INCOME DEDUCTIONS FOR PARTICIPANT IN FACILITY		
Step	Procedure	
09.	Community Spouse Allowance: Step b.	<p>Compute the Community Spouse Need Standard (CSNS). Add the Shelter Adjustment to the minimum CSNS. The minimum CSNS equals one hundred fifty percent (150%) of one twelfth (1/12) of the income official poverty line defined by the OMB for a family unit of two (2) members. The minimum CSNS is revised annually in July. The total CSNS may not exceed the maximum CSNS. The maximum CSNS is computed by multiplying one thousand five hundred dollars (\$1,500) by the percentage increase in the consumer price index for all urban Consumers (all items; U.S. city average) between September 1988 and the September before the current calendar year. The maximum CSNS is revised annually in January.</p>
10.	Community Spouse Allowance: Step c.	<p>Compute the Community Spouse Allowance. Subtract the community spouse's gross income from the CSNS. The community spouse's income includes income produced by his resources. Round any remaining cents to the next higher dollar. Any positive balance remaining is the CSA. The CSA is subtracted as actually paid to the community spouse, up to the computed maximum.</p> <p>A larger spouse support amount must be used as the CSA, if court-ordered. The CSA ordered by a court is not subject to the CSA limit.</p>
11.	Family Member Allowance (FMA)	<p>Compute the family member's gross income. Subtract the family member's gross income from the minimum CSNS. Divide the difference by three (3). Round cents to the next higher dollar.</p> <p>Any remainder is the FMA for that family member. The FMA is allowed, whether or not it is actually paid by the participant.</p> <p>A family member is, or could be claimed, as a dependent on the Federal income tax return of either spouse. The family member must be a minor or dependent child, dependent parent or dependent sibling of either spouse. The family member must live in the community spouse's home.</p>
12.	Medicare and Health Insurance Premiums	<p>Subtract expenses for Medicare and other health insurance premiums, and deductibles or coinsurance charges, not subject to payment by a third party. Deduction of Medicare Part B premiums is limited to the first two (2) months of Medicaid eligibility. Do not subtract the Medicare Part B premiums if the participant got SSI or AABD cash the month prior to the month for which patient liability is being computed.</p>
13.	Mandatory Income Taxes	<p>Subtract taxes mandatorily withheld from unearned income for income tax purposes. To qualify for deduction of mandatory taxes, the tax must be withheld from income before the participant receives the income.</p>
14.	Guardian Fees	<p>Subtract court-ordered guardianship fees of the lesser of ten percent (10%) of the monthly benefit handled by the guardian, or twenty five dollars (\$25). Where the guardian and trustee are the same person, the total deduction for guardian and trust fees must not exceed twenty five dollars (\$25) monthly.</p>
15.	Trust Fees	<p>Subtract up to twenty five dollars (\$25) monthly paid to the trustee for administering the participant's trust.</p>

TABLE 725—INCOME DEDUCTIONS FOR PARTICIPANT IN FACILITY	
Step	Procedure
46. Impairment-Related-Work Expenses	Subtract impairment-related work expenses for an employed participant who is blind or disabled under AABD criteria. Impairment-related work expenses are purchased or rented items and services, purchased or rented to perform work. The items must be needed because of the participant's impairment. The actual monthly expense of the impairment-related items is subtracted. Expenses must not be averaged.
47. Income Garnisheed for Child Support	Subtract income garnisheed for child support to the extent the expense is not already accounted for in computing the Family Member Allowance.
48. Incurred Medical-Expenses	Subtract amounts for certain limited medical or remedial care expenses that have current balances owed and are deemed medically necessary as defined in IDAPA 16.03.09, "Medicaid Basic Plan Benefits." Current medical expenses that are not covered by the Idaho Medicaid Plan, or by a third party, may be deducted from the base participation amount.
49. Pre-existing Medical-Expenses	Subtract amounts for medical and remedial care expenses incurred within the three (3) months prior to the month of application. The deductions for medical and remedial care expenses are limited to those medically necessary expenses incurred by the participant for the participant's care. The deduction for medical and remedial care expenses is limited to the amount of liability owed by the participant, and if applicable, after any third-party insurance has been applied. The deduction for medical and remedial care expenses that were incurred as the result of imposition of a transfer of assets penalty period is limited to zero.

(3-17-22)()

01. Shelter Adjustment. The Department will add the current Food Stamp Program Standard Utility Allowance to the community spouse's shelter costs. Shelter costs include rent, mortgage principal and interest, homeowner's taxes, insurance, and condominium or cooperative maintenance charges. The Standard Utility Allowance must be reduced by the value of any utilities included in maintenance charges for a condominium or cooperative. The Department will subtract the Shelter Standard from the shelter and utilities. The Shelter Standard is thirty percent (30%) of one hundred fifty percent (150%) of one-twelfth (1/12) of the income official poverty line defined by the federal Office of Management and Budget (OMB) for a family of two (2) persons. The Shelter Adjustment is the positive balance remaining. ()

02. Community Spouse Need Standard (CSNS). The Department will add the Shelter Adjustment to the minimum CSNS. The minimum CSNS equals one hundred fifty percent (150%) of one-twelfth (1/12) of the income official poverty line defined by the OMB for a family unit of two (2) members. The minimum CSNS is revised annually in July. The total CSNS may not exceed the maximum CSNS. The maximum CSNS is computed by multiplying one thousand five hundred dollars (\$1,500) by the percentage increase in the consumer price index for all urban consumers (all items, US city average) between September 1988 and the September before the current calendar year. The maximum CSNS is revised annually in January. ()

03. Community Spouse Allowance (CSA). The Department will subtract the community spouse's gross income from the CSNS. The community spouse's income includes income produced by their resources. The Department will round any remaining cents to the next higher dollar. Any positive balance remaining is the CSA. The CSA is subtracted as actually paid to the community spouse, up to the computed maximum. A larger spouse support amount must be used as the CSA, if court-ordered. The CSA ordered by a court is not subject to the CSA limit. ()

726. PERSONAL NEEDS SUPPLEMENT (PNS).

A nursing home participant may receive a PNS to bring ~~his~~ their gross income up to forty dollars (\$40). Gross income is income after exclusions and before disregards. ~~Gross income, and~~ includes money withheld to recover an AABD overpayment. The PNS is the difference between the participant's gross income and forty dollars (\$40). If not in an even dollar amount, the PNS is rounded up to the next dollar. The participant's income including the PNS must not exceed forty dollars (\$40). (3-17-22)()

727. FAIR HEARING ON CSA DECISION.

Either spouse may ask for a fair hearing to show the community spouse needs a higher CSA. The hearing officer must consider if, due to unusual conditions, using the computed CSA causes significant financial hardship for the community spouse. If the fair hearing decision finds the community spouse needs more income than the CSA, the CSA must include the additional income. ()

728. -- 730. (RESERVED)

731. MEDICAID ELIGIBILITY OF MARRIED PERSONS.

There are three (3) methods for Medicaid eligibility of an aged, blind, or disabled married person: (1) the SSI method, (2) the Community Property (CP) method, and (3) the Federal Spousal Impoverishment (FSI) method. The FSI method takes precedence. If the participant is not subject to the FSI method, the CP or SSI methods can be used. (3-17-22)()

732. CHOOSING FSI, SSI, OR CP RESOURCE COUNTING METHOD.

Table 732 is used to determine the resource counting method for a married person. If an HCBS participant with a spouse at home is not eligible using the FSI method, resources are computed using the SSI/CP method.

TABLE 732 - CHOOSING FSI, SSI, OR CP RESOURCE COUNTING METHOD					
	SPOUSE ONE (1) IN NURSING HOME BEFORE 9/30/89	SPOUSE ONE (1) IN NURSING HOME ON OR AFTER 9/30/89	SPOUSE ONE (1) AT HOME NO HCBS	SPOUSE ONE (1) AT HOME WITH HCBS BEFORE 9/30/89	SPOUSE ONE (1) AT HOME WITH HCBS ON OR AFTER 9/30/89
SPOUSE TWO (2) IN NURSING HOME BEFORE 9/30/89	SSI/CP	SSI/CP	SSI/CP	SSI/CP	SSI/CP
SPOUSE TWO (2) IN NURSING HOME ON OR AFTER 9/30/89	SSI/CP	SSI/CP	FSI	SSI/CP	SSI/CP
SPOUSE TWO (2) AT HOME NO HCBS	SSI/CP	FSI	SSI/CP	SSI/CP	FSI
SPOUSE TWO (2) AT HOME WITH HCBS BEFORE 9/30/89	SSI/CP	SSI/CP	SSI/CP	SSI/CP	SSI/CP

TABLE 732 - CHOOSING FSI, SSI, OR CP RESOURCE COUNTING METHOD					
SPOUSE TWO (2) AT HOME WITH HCBS ON OR AFTER 9/30/89	SSI/CP	SSI/CP	FSI	SSI/CP	SSI/CP

()

733. CHOOSING FSI, SSI, OR CP INCOME COUNTING METHOD.

Table 733 is used to determine the income counting method for a married person. If a participant subject to the FSI method is not eligible using FSI, income is computed using the SSI/CP method.

TABLE 733 - CHOOSING FSI, SSI, OR CP INCOME COUNTING METHOD					
	SPOUSE ONE (1) IN NURSING HOME BEFORE 9/30/89	SPOUSE ONE (1) IN NURSING HOME ON OR AFTER 9/30/89	SPOUSE ONE (1) AT HOME NO HCBS	SPOUSE ONE (1) AT HOME WITH HCBS BEFORE 9/30/89	SPOUSE ONE (1) AT HOME WITH HCBS ON OR AFTER 9/30/89
SPOUSE TWO (2) IN NURSING HOME BEFORE 9/30/89	SSI/CP	SSI/CP	FSI	SSI/CP	SSI/CP
SPOUSE TWO (2) IN NURSING HOME ON OR AFTER 9/30/89	SSI/CP	SSI/CP	FSI	SSI/CP	SSI/CP
SPOUSE TWO (2) AT HOME NO HCBS	FSI	FSI	SSI/CP	FSI	FSI
SPOUSE TWO (2) AT HOME WITH HCBS BEFORE 9/30/89	SSI/CP	SSI/CP	FSI	SSI/CP	SSI/CP
SPOUSE TWO (2) AT HOME WITH HCBS ON OR AFTER 9/30/89	SSI/CP	SSI/CP	FSI	SSI/CP	SSI/CP

()

734. CHOOSING FSI, SSI, OR CP PATIENT LIABILITY OR ~~CLIENT~~ PARTICIPATION METHOD.

Table 734 is used to determine the patient liability or ~~e-client~~ participant participation method for a married participant in long-term care or receiving HCBS.

TABLE 734 - PATIENT LIABILITY OR CLIENT PARTICIPATION METHOD					
	SPOUSE ONE IN NURSING HOME BEFORE 9/30/89	SPOUSE ONE IN NURSING HOME ON OR AFTER 9/30/89	SPOUSE ONE AT HOME NO HCBS	SPOUSE ONE AT HOME WITH HCBS BEFORE 9/30/89	SPOUSE ONE AT HOME WITH HCBS ON OR AFTER 9/30/89
SPOUSE TWO IN NURSING HOME BEFORE 9/30/89	SSI/CP	SSI/CP	FSI	SSI/CP	SSI/CP
SPOUSE TWO IN NURSING HOME ON OR AFTER 9/30/89	SSI/CP	SSI/CP	FSI	SSI/CP	SSI/CP
SPOUSE TWO AT HOME NO HCBS	FSI	FSI	N/A	FSI	FSI
SPOUSE TWO AT HOME WITH HCBS BEFORE 9/30/89	SSI/CP	SSI/CP	FSI	SSI/CP	SSI/CP
SPOUSE TWO AT HOME WITH HCBS ON OR AFTER 9/30/89	SSI/CP	SSI/CP	FSI	SSI/CP	SSI/CP

(3-17-22)()

735. FEDERAL SPOUSAL IMPOVERISHMENT (FSI) METHOD OF COUNTING INCOME AND RESOURCES OF A COUPLE.

The FSI method must be used to compute income and resources of a married participant, who requires long-term care as defined in Section 010 of these rules, and who has a community spouse. The participant must have entered long-term care on or after September 30, 1989. Terms used in the FSI method are listed in Subsections 735.01 through 735.05 of this rule below.

(3-17-22)()

01. Long-Term Care Spouse. ~~The long-term care spouse must~~ **Must** be in a medical institution or nursing facility, or be an HCBS participant, for thirty (30) consecutive days, or appear likely to meet the thirty (30) days requirement.

(3-17-22)()

02. Community Spouse. ~~The community spouse is the~~ **The husband or wife spouse** of the long-term care participant. A community spouse is not in long-term care and is not an HCBS participant.

(3-17-22)()

03. Continuous Period of Long-Term Care. ~~A continuous period of long-term care is a~~ **is a** period of residence either in a medical institution with nursing facility services, or at home with HCBS. A continuous period of long-term care is also a combination of institution and personal care services likely to last at least thirty (30) consecutive days. Absence from the institution, or a lapse in HCBS eligibility, of thirty (30) consecutive days breaks continuity. The thirty (30) consecutive days of long-term care must not begin on a day the participant is hospitalized. If the participant is hospitalized after the first day of the thirty (30) consecutive days, the hospital stay does not

interrupt the thirty (30) consecutive days.

(3-17-22)()

04. Start of Continuous Period of Long-Term Care. ~~The start of a continuous period of long-term care is the~~ first month of long-term care or HCBS. (3-17-22)()

05. Nursing Facility Services. ~~Nursing facility services are s~~Services at the nursing facility level or the ~~intermediate care for persons with intellectual disabilities~~ ICF/IID level provided in a medical institution. (3-17-22)()

736. ASSESSMENT DATE AND COUNTING FSI RESOURCES.

The assessment date is the start date of the first continuous period of long-term care. The Department does a one-time assessment to determine the value of the couple's community and separate resources as of the date of the first continuous period of long-term care. The resource assessment is done at the request of either spouse, after one (1) spouse is in long-term care or meets the level of care for HCBS, whether or not the couple has applied for Medicaid. State laws relating to community property or the division of marital property are not applied in determining the FSI total combined resources of the couple. ()

737. TREATMENT OF RESOURCES FOR ASSESSMENT.

The resource rules used in determining eligibility for AABD cash and Medicaid are also used in determining the couple's total combined resources for the FSI resource assessment with the following exceptions: ()

01. Resources for Sale. Excess resources offered for sale, are not excluded from the couple's total combined resources for the FSI resource assessment. ()

02. Jointly Owned Real Property. Jointly owned real property that is not the principal residence of the participant is not excluded if the community spouse is the joint owner. ()

03. Long-term Care Partnership Policy. Resources excluded because of a participant's qualified long-term care policy are not excluded for the FSI resource assessment. ()

04. Excluded Home. As defined in 42 USC 1396r-5(c)(5), an excluded home placed in trust retains its exclusion for purposes of the resource assessment. ()

738. ONE-HALF SPOUSAL SHARE.

The spousal share is one-half (1/2) of the couple's total combined resources on the assessment date. The spousal share does not change, even if the participant leaves long-term care and then enters long-term care again. The Department must inform the couple of the resources counted in the assessment and the value assigned. The couple must sign the assessment form under penalty of perjury. The signature requirement may be waived for the long-term care spouse if they or their representative says they are unable to sign the resources assessment. A copy of the assessment form must be provided to each spouse when eligibility is determined or when either spouse requests an assessment prior to application. ()

739. -- 741. (RESERVED)

742. COMMUNITY SPOUSE RESOURCE ALLOWANCE.

The CSRA protects resources for the community spouse. The CSRA is determined by subtracting the greater of the minimum resource allowance or the spousal share from the couple's total combined resources as of the first day of the application month. The deduction must not be more than the maximum resource allowance at the time eligibility is determined. ()

743. RESOURCE ALLOWANCE LIMITS.

The maximum resource allowance is computed by multiplying sixty thousand dollars (\$60,000) by the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1988 and the September before the current calendar year. The minimum resource allowance is computed by multiplying twelve thousand dollars (\$12,000) by the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1988 and the September before the current calendar year. If the result is not an even one hundred dollar (\$100) amount, the Department will round up to the next one hundred dollars (\$100).

The couple's resources exceeding the CSRA are counted for the long-term care spouse. (3-17-22)()

744. INCOME COUNTED FIRST FOR CSRA REVISION.

Income is determined prior to determining resources. If the couple's income is more than the minimum CSNS, the CSRA cannot be increased. If the community spouse has less income than the minimum CSNS, the CSRA may be increased as provided in Section 745 of these rules. Couple income is the community spouse's gross income plus the long-term care spouse's income. The long-term care spouse's income is ~~his~~ ~~their~~ gross income less the AABD cash income exclusions and ~~his~~ ~~their~~ patient liability income deductions, but not the CSA deduction. (3-17-22)()

745. UPWARD REVISION OF CSRA.

If the community spouse's income, including income from ~~his~~ ~~their~~ CSA and income-producing resources in ~~his~~ ~~their~~ CSRA, is less than the minimum CSNS, the CSRA may be increased. The CSRA is increased by enough resources, transferred from the long-term care spouse, to raise the community spouse's income to the minimum CSNS. Resources included in the transfer are presumed to produce income at the treasury rate, whether or not the resources produce income. If the community spouse shows ~~they is~~ ~~are~~ making reasonable use of ~~his~~ ~~their~~ income and resources, to generate income, the Department may waive the treasury rate requirement. Actual income produced by the resources transferred to the community spouse is used to compute the CSA. A higher CSA can be requested under Section 727 of these rules. If the transferred resources produce more than the treasury rate, the actual income produced is used to determine the additional resources that can be transferred to the community spouse in the CSRA. The long-term care spouse must transfer the resources to the community spouse, or the CSRA is not revised. (3-17-22)()

746. RESOURCE TRANSFER ALLOWANCE (RTA).

The ~~resource transfer allowance~~ (RTA) is computed by subtracting the community spouse's resources, at the time of application, from the CSRA. The community spouse must own less than the CSRA to get an RTA. The long-term care spouse may transfer the RTA to the community spouse without an asset transfer penalty. If the institutional spouse transfers more than the RTA, the amount of the couple's resources over the CSRA counts as the institutional spouse's resources. After the month, a long-term care spouse is determined Medicaid-eligible under FSI, resources of the community spouse are not considered available to the ~~m-him~~ while ~~they~~ remains in long-term care. (3-17-22)()

747. PROTECTED PERIOD FOR RTA TRANSFER.

The long-term care spouse has sixty (60) days, from the date ~~his~~ ~~their~~ application is approved, to transfer ~~his~~ ~~their~~ ownership of the RTA resources to the community spouse. The long-term care spouse must state, in writing, ~~his~~ ~~their~~ intent to transfer the RTA resources to the community spouse, within the protected period, before ~~they~~ can be Medicaid-eligible. Resources not transferred within the sixty (60) day protected period are available to the long-term care spouse, effective the day ~~they~~ entered the facility. (3-17-22)()

748. EXTENSION FOR RTA TRANSFER.

The protected period can be extended beyond sixty (60) days, if necessary, because of the participant's circumstances. ()

749. RESOURCE ELIGIBILITY FOR COMMUNITY SPOUSE.

When the community spouse is a Medicaid participant, the spouse's resources are counted using Medicaid rules. The FSI rules apply only to the long-term care spouse. For the month the couple stopped living together, resources of the community spouse available for their Medicaid eligibility are the resources owned by the couple. ()

750. INCOME ELIGIBILITY FOR COMMUNITY SPOUSE.

When the community spouse is a Medicaid participant, the spouse's income is counted using Medicaid rules. The FSI rules apply only to the long-term care spouse. The community spouse may choose between the SSI and CP methods for determining income for Medicaid eligibility. ()

751. CHANGE IN CIRCUMSTANCES.

The FSI method of calculating income and resources stops the first full calendar month after a change in circumstances resulting in a couple no longer having a community spouse and a long-term care spouse. ()

752. NOTICE AND HEARING.

The Department must tell the participant about the CSA, the family member allowance, the CSRA and how it was computed, and the RTA. Any hearing requested about the CSRA or the RTA must be held within thirty (30) days of the date of the request for hearing. (3-17-22)()

753. -- 760. (RESERVED)

761. CHOICE OF SSI OR CP METHODS.

A married participant, not using FSI, must be furnished a written explanation of SSI and CP income and resource counting methods. The couple chooses the most useful method, based on their circumstances. The same method must be used for both spouses. ()

762. SSI METHOD OF COUNTING INCOME AND RESOURCES OF A COUPLE.

The SSI method is the same method used to count income and resources for AABD cash. Income and resources of the participant and spouse are counted as mutually available. This method must be used for months either spouse gets SSI or AABD cash, or an SSI and/or AABD application is filed and approved. This method must be used for Medicaid eligibility, and liability for the cost of long-term care, whether or not one (1) or both spouses apply for Medicaid. For long-term care, the couple's income and resources are mutually available when one (1) or both spouses apply during the month they separated, because one (1) or both left their mutual home to enter a long-term care facility. (3-17-22)()

763. COMMUNITY PROPERTY (CP) METHOD OF COUNTING INCOME AND RESOURCES OF A COUPLE.

A married participant in long-term care, whose spouse is not in the community, can use the CP method. A married participant using the FSI method, but not income-eligible using FSI, may choose the CP method for income eligibility. The CP method must not be used for the FSI participant's resource eligibility or patient liability. ()

764. CP METHOD.

The CP method gives each spouse has an equal one-half (1/2) share of the couple's community income and resources. Each spouse also has his or her their own separate income and resources. Whether the spouses live together or, if not living together, the length of time they have lived apart, does not change the way income and resources are counted. A spouse's property includes income, personal property, and real property. The income and resources of a married couple acquired during the marriage are presumed to be community property of the couple. The couple can give evidence to rebut the presumption that property acquired during the marriage is community property. (3-17-22)()

765. TRANSFER OF RIGHTS TO FUTURE INCOME NOT VALID.

An agreement between spouses, transferring or assigning rights to future income from one (1) spouse to the other, is not valid for eligibility for Medicaid. ()

766. CP METHOD NEED STANDARD.

The participant is budgeted as a single person if his their spouse is not a Medicaid applicant, is not living with them, or was not living with them on the first day of the month. The participant and spouse are budgeted as a couple if they both apply, and live together, or if they were living together on the first day of the month. (3-17-22)()

767. CP METHOD RESOURCE LIMIT.

The participant's resource limit is two thousand dollars (\$2,000) if his their spouse is not a Medicaid applicant, is not living with them, or was not living with them on the first day of the month. The participant and spouse have a resource limit of three thousand dollars (\$3,000) if they both apply, and live together, or if they were living together on the first day of the month. (3-17-22)()

768. CP METHOD INCOME DISREGARDS.

The participant gets the twenty dollar (\$20) standard disregard if his their spouse is not a Medicaid applicant, is not living with them, or was not living with them on the first day of the month. If the participant has earned income, they gets the sixty-five dollar plus one-half ($\$65 + 1/2$) of the remainder earned income disregard. The participant and spouse get the standard disregard on their combined unearned income if they both apply, and live together, or if they were living together on the first day of the month. If either spouse has earned income, they get the earned income disregard from their combined earned income. (3-17-22)()

769. -- ~~775~~. (RESERVED)

~~776. 1972 RSDI RECIPIENT.~~

~~A participant remains eligible if he meets any of the conditions in Subsections 776.01 through 776.03 and all other Medicaid eligibility requirements. (3-17-22)~~

~~01. Money Payment in August 1972. In August 1972, the participant was eligible for, or received, a state money payment of OAA, AB, APTD or Aid to Families with Dependent Children (AFDC). (3-17-22)~~

~~02. Eligible If Not in Institution. The participant would have been eligible for OAA, AB, APTD or Aid to Families with Dependent Children (AFDC) if he were not in a medical institution or intermediate care facility in August 1972. (3-17-22)~~

~~03. Getting RSDI in August 1972. The participant received RSDI benefits in August 1972, and became ineligible for a state money payment due to the RSDI benefit increase effective in September 1972. (3-17-22)~~

777. ELIGIBLE SSI RECIPIENT.

An SSI recipient, or an individual who would be SSI eligible if they applied, is eligible for Medicaid if they meets any of the conditions ~~in Subsections 777.01 through 777.03~~ below. (3-17-22)()

01. Receives SSI. Gets SSI payments, even if eligibility is based on presumptive disability or presumptive blindness. ()

02. Conditionally Eligible for SSI. ~~Is conditionally eligible for SSI, b~~Based on an agreement to dispose of excess resources. ()

03. Eligible Spouse. Has ~~his~~ their SSI payments combined with ~~his~~ their spouse's SSI payments. (3-17-22)()

778. INELIGIBLE SSI RECIPIENT.

An SSI recipient is not eligible for Medicaid if they meets any of the conditions ~~in Subsections 778.01 through 778.04~~ below. (3-17-22)()

01. Medicaid Qualifying Trust. Has excess income from a Medicaid Qualifying Trust, created and funded before August 11, 1993. ()

02. Noncooperation. Fails to cooperate in establishing paternity or securing support. ()

03. Is in an Ineligible Institution. ~~Is in an ineligible institution.~~ (3-17-22)()

04. Trust. Has a trust that makes them ineligible for Medicaid. (3-17-22)()

779. PSYCHIATRIC FACILITY RESIDENT.

A resident of a long-term care psychiatric medical facility, is eligible for Medicaid if they ~~is~~ are age sixty-five (65) or older. ~~He~~ They must meet all the requirements of a long-term-care resident. (3-17-22)()

780. GRANDFATHERED SSI RECIPIENT (RESERVED)

~~A grandfathered SSI recipient is eligible for Medicaid. A grandfathered SSI recipient received, or was eligible to receive, APTD, APTD MA, AB or AB MA or APTD MA in long term care on December 31, 1973, or had an application for this assistance on file December 31, 1973. (3-17-22)~~

~~01. Disability and Blindness Criteria. The grandfathered SSI recipient must have been eligible under the disability criteria for APTD or the blindness criteria for AB in effect on December 31, 1973. For each consecutive month after December 1973, the grandfathered SSI recipient must continue to meet the criteria for disability or blindness. (3-17-22)~~

~~02. Eligibility Requirements. The grandfathered SSI recipient must meet all current Medicaid rules, except the criteria for blindness or disability. A long term care participant must also remain in long term care, and continue to need long term care. (3-17-22)~~

781. RSDI RECIPIENT ENTITLED TO COLA DISREGARD.

A participant receiving RSDI is eligible for Medicaid if ~~they~~ became and remains ineligible for SSI payments as of April 2011, or for AABD cash or SSI payments from May 1977 through March 2011. The participant must still be entitled to AABD cash or SSI, except for a ~~cost of living adjustment (COLA)~~ in RSDI benefits. All RSDI COLAs received by the participant, and any person whose income and resources are counted in determining the participant's eligibility, are disregarded for Medicaid. (3-17-22)()

782. MEDICAID BENEFITS UNDER SECTION 1619(B) OF THE SOCIAL SECURITY ACT.

A participant may be eligible for Medicaid under Section 1619(b) of the Social Security Act either under federal or state criteria, depending on ~~his~~ their circumstances. (3-17-22)()

01. Federally Qualified Under SSA Section 1619(b). An SSI recipient with a disability, previously eligible for SSI cash, who, because of earnings from employment, no longer meets the financial eligibility requirements for SSI cash, is eligible for Medicaid. SSA determines the qualification for eligibility under Section 1619(b). ()

02. State-Only Qualified Under SSA Section 1619(b). An AABD cash participant with a disability, who, because of earnings from employment, no longer meets the financial eligibility requirements for AABD cash, may be eligible for Medicaid. The Department determines eligibility for State-only Section 1619(b) Medicaid. State-only Section 1619(b) Medicaid is authorized under Section 1905(q) of the Social Security Act. ()

a. Eligibility Requirements. A participant must meet all ~~of~~ the following requirements to be eligible for State-only 1619(b) Medicaid. The participant: (3-17-22)()

i. ~~The participant r~~Received AABD cash in the month prior to the first month of his their eligibility under this ~~Section of~~ rule. (3-17-22)()

ii. ~~The participant i~~s under age sixty-five (65). (3-17-22)()

iii. ~~The participant e~~Continues to have a disability. (3-17-22)()

iv. ~~The participant m~~ust depend on Medicaid coverage to continue working. An individual depends on Medicaid coverage if they: (3-17-22)()

(1) Used Medicaid coverage within the past twelve (12) months; ~~or~~ (3-17-22)()

(2) Expects to use Medicaid coverage in the next twelve (12) months; or (3-17-22)()

(3) Would be unable to pay unexpected medical bills in the next twelve (12) months without Medicaid coverage. ()

v. ~~The participant i~~s not able to afford medical insurance equivalent to Medicaid, including attendant care. The participant meets this requirement if ~~his~~ their earnings are under the limit referred to in Subsection 782.02.a.vii. of this rule. (3-17-22)()

vi. ~~The participant e~~Continues to meet all ~~of~~ the non-disability eligibility requirements in these rules. (3-17-22)()

vii. ~~The participant's~~ Has annual gross earned income ~~is~~ less than the current calendar year's charted threshold for Idaho as developed by SSA for federal qualification for Section 1619(b) Medicaid. The charted threshold for Idaho is ~~online at http://policy.ssa.gov/poms.nsf/lnx/0502302200~~ SI 02302.200 Charted Threshold Amounts, incorporated by reference in Subsection 002.04. (3-17-22)()

- b. ~~Ending State-Only 1619(b) Medicaid.~~ State-only Section 1619(b) Medicaid ends when the participant meets one (1) of the following criteria. ~~The participant:~~ (3-17-22)()
- i. ~~The participant is~~ no longer eligible for AABD cash for a reason other than excess earned income; (3-17-22)()
 - ii. ~~The participant's~~ Has gross earned income ~~is~~ equal to or more than the current calendar year's annual earnings threshold for Idaho developed by the ~~Social Security Administration~~ for Federal Section 1619(b) Medicaid; (3-17-22)()
 - iii. ~~The participant is~~ age sixty-five (65) or older; or (3-17-22)()
 - iv. ~~The participant r~~egains eligibility for AABD cash. (3-17-22)()

783. APPEAL OF SSA DECISION - APPLICANT DETERMINED SSI ELIGIBLE AFTER APPEAL.

An applicant denied Medicaid, because ~~they~~ does not meet SSI eligibility or RSDI disability requirements, can appeal the SSA denial with SSA. ~~He~~ They can get Medicaid, if found eligible for SSI or Social Security disability ~~as a result because~~ of ~~his~~ their appeal. The effective date for Medicaid is the first day of the month ~~of that~~ the Medicaid application ~~that~~ was denied, ~~because of the by~~ SSA ~~denial~~. The participant's eligibility for backdated Medicaid coverage must be determined. (3-17-22)()

784. APPEAL OF SSA DECISION AND CONTINUED MEDICAID.

A Medicaid participant, denied RSDI or SSI because ~~they is are~~ not disabled, can continue to get Medicaid if ~~they~~ appeals the SSA decision. The appeal must be filed within sixty (60) days of the SSA decision. If the final administrative decision rules against the participant's appeal, Medicaid benefits must end. Medicaid benefits paid during the appeal are not an overpayment. (3-17-22)()

785. CERTAIN DISABLED CHILDREN.

A disabled child, not eligible for Medicaid outside a medical institution, is eligible for Medicaid if ~~they~~ meets the conditions ~~in Subsections 785.01 through 785.08 of these rules~~ below. (3-17-22)()

- 01. **Age.** Is under nineteen (19) years old. ()
- 02. **AABD Criteria.** Meets the AABD blindness or disability criteria. ()
- 03. **AABD Resource Limit.** Meets the AABD single person resource limit. ()
- 04. **Income Limit.** Has monthly income not exceeding three (3) times the federal SSI benefit payable monthly to a single person. ()
- 05. **Eligible for Long-Term Care.** Meets the medical conditions for long-term care in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." ()
- 06. **Appropriate Care.** Is appropriately cared for outside a medical institution, under a physician's plan of care. ()
- 07. **Cost of Care.** Can be cared for cost effectively outside a medical institution. The estimated cost of caring for the child must not exceed the cost of the child's care in a hospital, nursing facility, or ICF/IID. ()
- 08. **Share of Cost.** The financially responsible adult of a certain disabled child, who has family income above one hundred fifty percent (150%) of the federal poverty guidelines, is required to share in the cost of the child's Medicaid benefits under ~~the provisions in~~ IDAPA 16.03.18, "Medicaid Cost-Sharing." (3-17-22)()

786. ~~EXTENDED (POSTPARTUM) MEDICAID FOR PREGNANT WOMEN (RESERVED)~~

~~A woman receiving Medicaid while pregnant continues to be eligible through the last day of the month in which the sixty (60) day post partum period ends.~~ (3-17-22)

787. HOME AND COMMUNITY BASED SERVICES (HCBS).

An aged, blind, or disabled participant, who is not income eligible for SSI or AABD cash, in ~~his~~their own home or community setting, is eligible for Medicaid if they meets the conditions ~~in Subsections 787.01 through 787.07 of these rules, below~~ and meets all requirements in one (1) of the waiver Sections 788 through 789 of these rules. (3-17-22)()

01. Resource Limit. Meets the AABD single person resource limit. ()

02. Income Limit. Income of the participant must not exceed three (3) times the ~~F~~federal SSI monthly benefit for a single person. A married participant living at home with ~~his~~ their spouse who is not an HCBS participant, may choose between the SSI, CP, and FSI methods. If ~~his~~ their spouse is also an HCBS participant or lives in a nursing home, the couple may choose between the SSI and CP methods. (3-17-22)()

03. Maintained in the Community. The applicant must be able to be maintained safely and effectively in ~~his~~ their own home or in the community with the waiver services. (3-17-22)()

04. Cost of Care. The cost of the participant's care must be ~~determined to be~~ cost effective as provided in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-17-22)()

05. Waiver Services Needed. The participant must need and receive, or be likely to need and receive, waiver services for thirty (30) consecutive days. The participant is ineligible when there is a break in need for, or receipt of, waiver services for thirty (30) consecutive days. ()

06. Effective Date. Waiver services are effective the first day the participant is likely to need and receive waiver services. Medicaid begins the first day of the month in which the first day of approved waiver services are received. ()

07. Annual Limit. The Department limits the number of participants approved for waiver services each year. A participant who applies for waiver services after the annual limit is reached, must be denied waiver services. ()

788. AGED AND DISABLED (A&D) WAIVER.

~~In order t~~Io be eligible for the Aged and Disabled (A&D) Waiver, the participant must: (3-17-22)()

01. Age Eighteen Through Sixty-Four. Be eighteen (18) through sixty-four (64) years old and meet ~~both~~ the disability criteria, as provided in Section 156 of these rules, and need nursing facility level of care ~~as provided in under~~ IDAPA 16.03.10 "Medicaid Enhanced Plan Benefits"; or (3-17-22)()

02. Age Sixty-Five or Older. Be age sixty-five (65) or older and need nursing facility level of care ~~as provided in under~~ IDAPA 16.03.10 "Medicaid Enhanced Plan Benefits." (3-17-22)()

789. DEVELOPMENTALLY DISABLED (DD) WAIVER.

To be eligible, the participant must be at least eighteen (18) years of age and need the level of care provided by an ~~intermediate care facility for persons with intellectual disabilities (ICF/IID)~~ under IDAPA 16.03.10 "Medicaid Enhanced Plan Benefits." (3-17-22)()

790. -- 798. (RESERVED)

799. MEDICAID FOR WORKERS WITH DISABILITIES.

An individual is eligible to participate in the Medicaid for Workers with Disabilities coverage group if the individual meets the requirements ~~in Subsections 799.01 through 799.07 of this rule below.~~ (3-17-22)()

01. Non-Financial Requirements. An individual must: ()

a. Be at least sixteen (16) but less than sixty-five (65) years of age; ()

b. Meet the Medicaid residency requirement ~~as described in under~~ Section 100 of these rules;

(3-17-22)()

c. Meet the citizenship requirements ~~as described in Sections 105 and 106 of these rules~~ under 42 CFR 435.406, Citizenship and Non-citizen Eligibility; (3-17-22)()

d. Meet the SSN requirements ~~as described in~~ under Section 104 3 of these rules; and (3-17-22)()

e. Meet the child support cooperation requirements ~~as described in~~ under Sections 703 through 706 of these rules. (3-17-22)()

02. Disability. An individual must meet the medical definition for having a disability or blindness used by the ~~Social Security Administration~~ for Social Security Disability Insurance (SSDI) and ~~Supplemental Security Income (SSI)~~ benefits. (3-17-22)()

03. Employment. An individual must be employed which may include self-employment. Proof of employment must be provided to the Department. Hourly wage or hours worked will not be used to determine employment. ()

04. Countable Resources. ~~Countable resources e~~ Cannot exceed ten thousand dollars (\$10,000) for an individual or fifteen thousand dollars (\$15,000) for a couple. When calculating resources, the following items will be excluded: (3-17-22)()

a. Any resources excluded under Section 210 and Sections 222 through 299 of these rules; ()

b. A second vehicle as described in Section 222 of these rules; ()

c. Life insurance policies; ()

d. Retirement accounts; and ()

e. Exempt trusts as described in Section 872 of these rules. ()

05. Countable Income. ~~Countable income i~~s calculated using exclusions and disregards as described in Sections 300 through 547 of these rules. The countable income for: (3-17-22)()

a. An individual's ~~countable income~~ cannot exceed five hundred percent (500%) of the current federal poverty guideline for a household of one (1). (3-17-22)()

b. A couple's ~~countable income~~ cannot exceed five hundred percent (500%) of the current federal poverty guideline for a household of two (2). (3-17-22)()

06. Earned Income Test. Gross income is the total of earned and unearned income before exclusions or disregards. Each individual's gross earned income must be at least fifteen percent (15%) of ~~his~~ their total gross income to qualify. (3-17-22)()

07. Cost-Sharing. A participant in the Medicaid for Workers with Disabilities coverage group may be required to cost-share. ~~If a participant is required to cost share for Medicaid;~~ the costs are determined under the provisions in IDAPA 16.03.18, "Medicaid Cost-Sharing." (3-17-22)()

800. – 801. NEWBORN CHILD OF MEDICAID MOTHER. (RESERVED)

~~A child is deemed eligible for Medicaid without an application if born to a woman receiving Medicaid on the date of the child's birth, including during a period of retroactive eligibility for the mother. The child remains eligible for Medicaid for up to one (1) year without an application. An application for Medicaid must be filed on behalf of the child no later than his first birthday. He must qualify for Medicaid in his own right after the month of his first birthday.~~ (3-17-22)

801. INELIGIBLE NON-CITIZEN WITH EMERGENCY MEDICAL CONDITION.

~~A non-citizen, who is otherwise ineligible only because of his status as a non-citizen, is eligible only for medical services necessary to treat an emergency medical condition. (3-17-22)~~

~~**01. Emergency Medical Condition.** An emergency medical condition can reasonably be expected to seriously harm the patient's health, cause serious impairment to bodily functions, or cause serious dysfunction of any bodily organ or part, without immediate medical attention. The Division of Medicaid determines if the condition is an emergency and the services necessary to treat it. (3-17-22)~~

~~**02. Effective Date of Eligibility.** Medicaid eligibility begins no earlier than the date the participant experienced the medical emergency and ends the date the emergency condition stops. The Division of Medicaid determines the beginning and ending dates. (3-17-22)~~

802. WOMAN DIAGNOSED WITH BREAST OR CERVICAL CANCER.

A woman not otherwise eligible for Medicaid and meeting the conditions in Subsections 802.01 through 802.06 of this rule is eligible for Medicaid for the duration of her cancer treatment. Medicaid income and resource limits do not apply to this coverage group. ()

01. Diagnosis. The participant is diagnosed with breast or cervical cancer through the ~~Centers for Disease Control and Prevention's~~ National Breast and Cervical Cancer Early ~~e~~Detection Program. ~~(3-17-22)()~~

02. Age. The participant is under age sixty-five (65). ()

03. Creditable Health Insurance. The participant is uninsured or, if insured, the plan does not cover her type of cancer. ()

04. Non-Financial Eligibility. The participant meets the Medicaid non-financial eligibility requirements in Sections 100 through 108 and Sections 166 and 167 of these rules. ()

05. Medical Support Cooperation. The participant meets the medical support cooperation requirement in Sections 702 through 706 of these rules. ()

06. Group Health Plan Enrollment. The participant meets the requirement to enroll in available cost-effective employer group health insurance. ()

07. Presumptive Eligibility. The Department can presume the participant is eligible for Medicaid, before a formal Medicaid eligibility determination is made. A clinic authorized to screen for breast or cervical cancer by the National Breast and Cervical Cancer Early Detection Program makes the presumptive eligibility determination. The clinic tells the participant how to complete the formal Medicaid determination process. The Medicaid notice and hearing rights do not apply to presumptive eligibility. No overpayment occurs if the formal Medicaid determination finds the participant is not eligible. ()

08. End of Treatment. The ~~Division of Medicaid~~ Department determines the end of treatment date ~~according to~~ under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." ~~(3-17-22)()~~

803. -- 805. (RESERVED)

806. DISABLED ADULT CHILD.

A participant age eighteen (18) or older is eligible for Medicaid if they received SSI or AABD cash based on blindness or a disability which began before they reached age twenty-two (22), and becomes ineligible for and remains ineligible for AABD cash or SSI because ~~his~~ their disabled child RSDI benefit started or increased July 1, 1987, or later. ~~(3-17-22)()~~

01. RSDI Benefits Disregarded for Disabled Adult Child. If the participant became ineligible because they began receiving a disabled child benefit on or after July 1, 1987, the benefit amount and any later increases are disregarded. ~~(3-17-22)()~~

02. RSDI Increase Disregarded for Disabled Adult Child. If the participant became ineligible

because ~~his~~ ~~their~~ disabled child benefit increased on or after July 1, 1987, the increase and any later increases are disregarded. (3-17-22)()

807. (RESERVED)

808. EARLY WIDOWS AND WIDOWERS BEGINNING JANUARY 1, 1991.

A participant who meets the conditions ~~in Subsections 808.01 through 808.06 below~~ is considered an SSI recipient for Medicaid. ()

01. Age. The participant, age fifty (50) to age sixty four and one-half (64-1/2), began receiving early widows or widowers Social Security benefits. ()

02. Lost SSI or AABD. The participant lost SSI or AABD cash because ~~they~~ began receiving early widows or widowers Social Security benefits. (3-17-22)()

03. Received SSI or AABD. The participant received SSI or AABD cash in the month, before the month, ~~they~~ became ineligible because ~~they~~ began receiving early widows or widowers Social Security benefits. (3-17-22)()

04. Widows or Widowers Benefits. The participant would still be eligible for SSI or AABD cash if ~~his~~ ~~their~~ Social Security early widows or widowers benefits were not counted as income. (3-17-22)()

05. No "Part A" Insurance. The participant is not entitled to Medicare Part A hospital insurance. ()

06. Applied On or After January 1, 1991. The participant's Medicaid application was filed, or pending, on or after January 1, 1991. ()

809. ~~CERTAIN DISABLED WIDOWS AND WIDOWERS THROUGH JUNE 30, 1988.~~ (RESERVED)

~~A participant who meets the conditions in Subsections 809.01 through 809.04 is considered an SSI recipient for Medicaid.~~ (3-17-22)

~~**01. Age.** The participant was under age sixty (60) when his disabled widows and widowers benefits began.~~ (3-17-22)

~~**02. Lost SSI.** The participant is ineligible for SSI because of an increase in SSA disability benefits starting January, 1984.~~ (3-17-22)

~~**03. Continuously Entitled.** The participant is continuously entitled to Social Security benefits for disabled widows and widowers starting January, 1984 or earlier.~~ (3-17-22)

~~**04. Applied Before July 1, 1988.** The participant applied for Medicaid before July 1, 1988.~~ (3-17-22)

810. QUALIFIED MEDICARE BENEFICIARY (QMB).

A person meeting all requirements ~~in Subsections 810.01 through 810.07 below~~ is eligible for QMB. ~~QMB Medicaid, which~~ pays Medicare premiums, coinsurance, and deductibles. (3-17-22)()

01. Medicare Part A. The participant must be entitled to hospital insurance under Part A of Medicare at the time of ~~his~~ ~~their~~ application. (3-17-22)()

02. Nonfinancial Requirements. The participant must meet the Medicaid residence, citizenship, support cooperation, and SSN requirements. ()

03. Income. Monthly income must not exceed one hundred percent (100%) of the Federal Poverty Guidelines (FPG). The single person income limit is the poverty line for a family of one (1) person. The couple income limit is the poverty line for a family of two (2) persons. The annual Social Security cost of living increase is disregarded from income, until the month after the month the annual FPG revision is published. AABD cash is not

counted as income. The income exclusions and disregards used for AABD are used for QMB. ()

04. Dependent Income. Income of the dependent child, parent, or sibling is not counted. ()

05. QMB Dependent Family Member Disregard. A dependent family member is a minor child, adult child meeting SSA disability criteria, parent or sibling of the participant or spouse living with the participant. The family member is or could be claimed on the federal tax return of the participant or spouse. A participant with a dependent family member has an income disregard based on family size. The spouse is included in family size, whether or not the spouse is also participant. The disregard is based on the official poverty line income as defined by the OMB. The disregard is the difference between the poverty line for one (1) person, or two (2) persons if the participant has a spouse, and the poverty line for the family size including the participant, spouse, and dependent. ()

06. Resource Limit. The resource limit is equal to the amount defined under 42 USC 1396d(p)(1)(C). The resource exclusions used for AABD are used for QMB. ()

07. Effective Dates. The effective date of QMB coverage is no earlier than the first day of the month after the approval month. A QMB participant is not entitled to backdated Medicaid. ()

811. SPECIFIED LOW INCOME MEDICARE BENEFICIARY (SLMB).

A person meeting all requirements ~~in Subsections 811.01 through 811.06 below~~ is eligible for SLMB. Medicaid pays the Medicare Part B premiums for a SLMB. The income and resource exclusions and disregards used for AABD are used for SLMB. (3-17-22)()

01. Other Medicaid. The SLMB may be eligible for other Medicaid. ()

02. Medicare Part A. The SLMB must be entitled to hospital insurance under Part A of Medicare at the time of ~~his~~ their application. (3-17-22)()

03. Nonfinancial Requirements. The SLMB must meet the Medicaid eligibility requirements of residence, citizenship, support cooperation, and SSN. ()

04. Income. The annual Social Security cost of living increase is disregarded from income, until the month after the month the annual FPG revision is published. The single person limit is based on a family of one (1). The couple limit is based on a family of two (2). The monthly income limit is up to one hundred twenty percent (120%) of the FPG. ()

05. Resource Limit. The resource limit is equal to the amount defined under 42 USC 1396d(p)(1)(C). The resource exclusions used for AABD are used for SLMB. ()

06. Effective Dates. SLMB coverage begins on the first day of the application month. ~~SLMB coverage, which~~ may be backdated up to three (3) calendar months before the application month. (3-17-22)()

812. QUALIFIED INDIVIDUAL (QI).

A person meeting all requirements ~~in Subsections 812.01 through 812.07 below~~ is eligible for QI. Medicaid pays the Medicare Part B premiums for a QI. The income and resource exclusions and disregards used for AABD are used for QI. (3-17-22)()

01. Other Medicaid. The QI cannot be eligible for any other type of Medicaid. ()

02. Medicare Part A. The QI must be entitled to hospital insurance under Part A of Medicare at the time of ~~his~~ their application. (3-17-22)()

03. Nonfinancial Requirements. The QI must meet the Medicaid eligibility requirements of residence, citizenship, support cooperation, and SSN. ()

04. Income. The annual Social Security cost of living increase is disregarded from income, until the

month after the month the annual FPG revision is published. The single person limit is based on a family of one (1). The couple limit is based on a family of two (2). The monthly income limit is up to one hundred thirty-five percent (135%) of the FPG. ()

05. Resource Limit. The resource limit is equal to the amount defined under 42 USC 1396d(p)(1)(C). The resource exclusions used for AABD are used for SLMB. ()

06. Coverage Limits. There is an annual limit on participants served based on availability of federal funds. New applications are denied when the annual limit is reached. ()

07. Effective Dates. QI coverage begins on the first day of the application month. ~~QI coverage, which~~ may be backdated up to three (3) calendar months before the application month. (3-17-22)()

813. QUALIFIED DISABLED AND WORKING INDIVIDUAL (QDWI).

A person meeting all requirements ~~in Subsections 812.01 through 812.05 of these rules below~~ is eligible for QDWI. The person must not be eligible for any other type of Medicaid. A QDWI is eligible only for Medicaid payment of ~~his~~ their Medicare Part A premium. (3-17-22)()

01. Age and Disability. The participant must be a disabled worker under age sixty-five (65). ()

02. Nonfinancial Requirements. The participant must meet the Medicaid eligibility requirements of residence, citizenship, support cooperation and SSN. ()

03. Section 1818A Medicare. SSA determined the participant meets the conditions of Section 1818A of the Social Security Act. ()

04. Income. Monthly income must not exceed two hundred percent (200%) of the one (1) person official poverty line defined by the OMB. ()

05. Resource Limit. The resource limit is equal to the amount defined under 42 USC 1396d(s). The resource exclusions used for AABD are used for QDWI. ()

814. SPONSORED LEGAL NON-CITIZEN.

All income and resources of a legal non-citizen's sponsor are deemed for Medicaid eligibility if the sponsor has signed an I-864 affidavit of support. ()

815. CHILD SUBJECT TO DEEMING.

Income and resources of a child's stepparent are not deemed to the child in determining ~~his~~ their Medicaid eligibility. (3-17-22)()

816. FUGITIVE FELON OR PROBATION OR PAROLE VIOLATOR.

A person denied SSI or AABD cash because of the prohibition against payment to fugitive felons and probation and parole violators is not disqualified from Medicaid. ()

817. -- 830. (RESERVED)

831. ASSET TRANSFER RESULTING IN PENALTY.

Starting August 11, 1993, the participant is subject to a penalty if they transfers ~~his~~ their income or resources for less than fair market value. The asset transfer penalty applies to Medicaid services received October 1, 1993 and later. Excluded resources, other than the home and associated property, are not subject to the asset transfer penalty. Asset transfers subject to penalty under these rules may be voided and set aside by court action as provided in Section 56-218, Idaho Code. The asset transfer penalty applies to a Medicaid participant in long-term care or HCBS. A participant in long-term care is a patient in a nursing facility or a patient in a medical institution, requiring and receiving the level of care provided in a nursing facility. (3-17-22)()

01. Rebuttable Presumption. Unless a transfer meets the requirements of Section 841 of these rules, it is presumed that the transfer was made for the purpose of qualifying for Medicaid. The asset transfer penalty is

applied unless the participant shows that the asset transfer would not have affected ~~his~~ their eligibility for Medicaid, or the transfer was made for another purpose than qualifying for Medicaid. (3-17-22)()

02. Contract for Services Provided by a Relative. A contract for personal services to be furnished to the participant by a relative is presumed to be made for the purpose of qualifying for Medicaid. The asset transfer penalty applies unless the participant shows that: ()

a. A written contract for personal services was signed before services were delivered. The contract must require that payment be made after services are rendered. The contract must be dated, and the signatures notarized. Either party must be able to terminate the contract; and ()

b. The contract must be signed by the participant or a legally authorized representative through a power of attorney, legal guardianship, or conservatorship. A representative who signs the contract must not be the provider of the personal care services under the contract; and ()

c. Compensation for services rendered must be comparable to rates paid in the open market. ()

03. Transfer of Income or Resources. Transfer of income or resources includes reducing or eliminating the participant's ownership or control of the asset. ()

04. Transfer of Income or Resources by a Spouse. A transfer by the participant's spouse of either spouse's income or resources, before eligibility is established, subjects the participant to the asset transfer penalty. After the participant's eligibility is established, a transfer by the spouse of the spouse's own income or resources does not subject the participant to the asset transfer penalty. ()

05. Transfer of Certain Notes and Loans. Funds used to purchase a promissory note, loan, or mortgage are considered a transferred asset which subjects the participant to a period of ineligibility. The amount of the asset transfer of such note, loan, or mortgage is the outstanding balance due on the date of the Medicaid application, unless the note, loan, or mortgage meets the following: ()

a. Has a repayment term that is actuarially sound; ()

b. Provides for payments to be made in equal amounts during the term of the loan with no deferral and no balloon payments; and ()

c. Prohibits the cancellation of the balance upon the death of the lender. ()

832. MEDICAID PENALTY FOR ASSET TRANSFERS. The asset transfer penalty is restricted Medicaid coverage. ()

01. Restricted Coverage. ~~Restricted coverage means Medicaid will not participate in the cost of nursing facility services. Medicaid will not participate or~~ means Medicaid will not participate in the cost of nursing facility services. The penalty for a person receiving PCS or community services under the HCBS waiver is ineligibility. (3-17-22)()

02. Notice and Exemption. The participant must be notified in writing, at least ten (10) days before an asset transfer penalty is imposed. ()

833. ASSET TRANSFER LOOK-BACK PERIOD. The asset transfer penalty applies to any transfer for less than fair market value made during a period preceding or following a request for long-term care services. ~~The look back period is determined as follows:~~ (3-17-22)

~~**01. Transfers Prior to February 8, 2006.** For any asset transferred prior to February 8, 2006, the look back period is thirty six (36) months, unless the transfer is to or from a trust. If the transfer is to or from a trust, the look back period is sixty (60) months. If the person is entitled to Medicaid or HCBS services, the look back period is counted from the month long-term care or HCBS services began, or would have begun, were it not for a~~

~~penalty. If the person is not entitled to Medicaid, the look-back period is counted from the month prior to the month the application was submitted. (3-17-22)~~

~~02. **Transfers On or After February 8, 2006.** Any asset transferred on or after February 8, 2006, regardless of type, is subject to a look-back period of sixty (60) months. The look-back period is counted from the date of the application for long-term care or HCBS services or the date of the transfer, whichever is later in time. (3-17-22)()~~

834. PERIOD OF RESTRICTED COVERAGE FOR ASSET TRANSFERS.

The period of restricted coverage is the number of months computed by dividing the net uncompensated value of the transferred asset by the statewide average cost of nursing facility services to private patients. The cost is computed for the time of the participant’s most recent request for Medicaid. If the spouse becomes eligible for long-term care Medicaid, the rest of the period of restricted coverage is divided between the participant and spouse. ()

835. APPLYING THE PENALTY PERIOD OF RESTRICTED COVERAGE.

Restricted coverage continues until the participant or spouse recovers all the assets, receives fair market value at the time of the transfer for all ~~of the~~ assets, or the period of restricted coverage ends. The penalty continues whether or not the participant is in long-term care. ~~The penalty period for asset transfers is applied as follows: (3-17-22)~~

~~01. **Penalty Period for Transfer Prior to February 8, 2006.** For assets transferred prior to February 8, 2006, there is no penalty if the amount transferred is less than the cost of one (1) month’s care. The penalty period begins running the month the transfer took place. The month the transfer took place is counted as one (1) of the penalty months. A penalty period is computed for each transfer. A penalty period must expire before the next begins. Each partial month before the end of consecutive penalty periods is a penalty month. A partial month at the end of consecutive penalty periods is dropped. (3-17-22)~~

~~02. **Penalty Period for Transfers On or After February 8, 2006.** For assets transferred on or after February 8, 2006, the penalty period begins running the first day of the month after the month the transfer took place or was discovered to have taken place, or the date the individual would have been eligible for long-term care services or HCBS, if not for the transfer, whichever date is later in time. The value of all asset transfers made during the look-back period is accumulated for the purpose of calculating the penalty. If an additional transfer is discovered after the penalty has been served, a new penalty period begins the month following timely notice of closure of benefits. When a penalty period ends after the first day of the month, eligibility for long-term care services begins the day after the penalty period ends. (3-17-22)()~~

836. MULTIPLE PENALTY PERIODS APPLIED CONSECUTIVELY.

A penalty period is computed for each transfer. One (1) penalty period must expire before the next begins. ()

837. LIFE ESTATE AS ASSET TRANSFER.

01. Transfer of a Remainder Interest. When a life estate in real property is retained by an individual, and a remainder interest in the property is transferred during the look-back period for less than the fair market value of the remainder interest transferred, the value of the uncompensated remainder is subject to the asset transfer penalty as described in Sections 831 through 835 of these rules. To compute the value of the life estate remainder, multiply the fair market value of the real property at the time of transfer by the remainder factor for the participant’s age at the time of transfer listed in the following table:

TABLE 837.01 - REMAINDER TABLE							
Age	Remainder	Age	Remainder	Age	Remainder	Age	Remainder
0	.02812	28	.03938	56	.20994	84	.63002
1	.01012	29	.04187	57	.22069	85	.64641
2	.00983	30	.04457	58	.23178	86	.66236
3	.00992	31	.04746	59	.24325	87	.67738

TABLE 837.01 - REMAINDER TABLE							
Age	Remainder	Age	Remainder	Age	Remainder	Age	Remainder
4	.01019	32	.05058	60	.25509	88	.69141
5	.01062	33	.05392	61	.26733	89	.70474
6	.01116	34	.05750	62	.27998	90	.71779
7	.01178	35	.06132	63	.29304	91	.73045
8	.01252	36	.06540	64	.30648	92	.74229
9	.01337	37	.06974	65	.32030	93	.75308
10	.01435	38	.07433	66	.33449	94	.76272
11	.01547	39	.07917	67	.34902	95	.77113
12	.01671	40	.08429	68	.36390	96	.77819
13	.01802	41	.08970	69	.37914	97	.78450
14	.01934	42	.09543	70	.39478	98	.79000
15	.02063	43	.10145	71	.41086	99	.79514
16	.02185	44	.10779	72	.42739	100	.80025
17	.02300	45	.11442	73	.44429	101	.80468
18	.02410	46	.12137	74	.46138	102	.80946
19	.02520	47	.12863	75	.47851	103	.81563
20	.02635	48	.13626	76	.49559	104	.82144
21	.02755	49	.14422	77	.51258	105	.83038
22	.02880	50	.15257	78	.52951	106	.84512
23	.03014	51	.16126	79	.54643	107	.86591
24	.03159	52	.17031	80	.56341	108	.89932
25	.03322	53	.17972	81	.58033	109	.95455
26	.03505	54	.18946	82	.59705		
27	.03710	55	.19954	83	.61358		

()

02. Transfer of a Life Estate. When a life estate in real property is transferred by an individual during the look-back period for less than fair market value, the value of the life estate is subject to the asset transfer penalty as described in Sections 831 and 835 of these rules. To compute the value of the life estate, multiply the fair market value of the real property at the time of transfer by the life estate factor for the participant’s age at the time of transfer listed in the following table:

TABLE 837.02 - LIFE ESTATE TABLE							
Age	Life Estate	Age	Life Estate	Age	Life Estate	Age	Life Estate
0	.97188	28	.96062	56	.79006	84	.36998
1	.98988	29	.95813	57	.77391	85	.35359

TABLE 837.02 - LIFE ESTATE TABLE							
Age	Life Estate	Age	Life Estate	Age	Life Estate	Age	Life Estate
2	.99017	30	.95543	58	.76822	86	.33764
3	.99008	31	.95254	59	.75675	87	.32262
4	.98981	32	.94942	60	.74491	88	.30859
5	.98938	33	.94608	61	.73267	89	.29526
6	.98884	34	.94250	62	.72002	90	.28221
7	.98822	35	.93868	63	.70696	91	.26955
8	.98748	36	.93460	64	.69352	92	.25771
9	.98663	37	.93026	65	.67970	93	.24692
10	.98565	38	.92567	66	.66551	94	.23728
11	.98453	39	.92083	67	.65098	95	.22887
12	.98359	40	.91571	68	.63610	96	.22181
13	.98198	41	.91030	69	.62086	97	.21550
14	.98066	42	.90457	70	.60522	98	.21000
15	.97937	43	.89855	71	.58914	99	.20486
16	.97815	44	.89221	72	.57261	100	.19975
17	.97700	45	.88558	73	.55571	101	.19532
18	.97590	46	.87863	74	.53862	102	.19054
19	.97480	47	.87137	75	.52149	103	.18437
20	.97365	48	.86374	76	.50441	104	.17856
21	.97245	49	.85578	77	.48742	105	.16962
22	.97120	50	.83743	78	.47049	106	.15488
23	.96986	51	.83674	79	.45357	107	.13409
24	.96841	52	.82969	80	.43659	108	.10068
25	.96678	53	.82028	81	.41967	109	.04545
26	.96495	54	.81054	82	.40295		
27	.96290	55	.80046	83	.38642		

()

838. ANNUITY AS ASSET TRANSFER.

Except as provided in this rule, when assets are used to purchase an annuity during the look-back period, it is an asset transfer presumed to be made for the purpose of qualifying for Medicaid. To rebut this presumption, the participant must provide proof that clearly establishes the annuity was not purchased to make the participant eligible for Medicaid or avoid recovery from the estate following death. Proof is met if the participant shows the annuity meets the requirements ~~described in~~ Subsections 838.02 through 838.05 of this rule. (3-17-22)()

01. Revocable Annuity. ~~A revocable annuity is~~ an annuity that can be assigned. The surrender amount of a revocable annuity is a countable resource. (3-17-22)()

02. **Irrevocable Annuity.** The purchase price of an irrevocable, non-assignable annuity is treated as an asset transfer, unless the requirements of Subsections 838.03 through 838.05 of this rule are met. ()

03. **Irrevocable Annuity Life Expectancy Test.** The participant’s life expectancy, as shown in the following [Social Security Actuarial - Period Life Table \(2020\)](#), must equal or exceed the term of the annuity. Using the Table, 838.03 compare the face value of the annuity to the participant’s life expectancy at the purchase time. The annuity meets the life expectancy test if the participant’s life expectancy equals or exceeds the term of the annuity. If the exact age is not in the Table, use the next lower age. [See https://www.ssa.gov/oact/STATS/table4c6.html](https://www.ssa.gov/oact/STATS/table4c6.html).

TABLE 838.03—LIFE EXPECTANCY TABLE						
Age	Years of Life Remaining Male	Years of Life Remaining Female		Age	Years of Life Remaining Male	Years of Life Remaining Female
0	73.26	79.26		74	40.12	42.74
10	64.03	69.93		75	9.58	12.09
20	54.41	60.13		76	9.06	11.46
30	45.14	50.43		77	8.56	10.85
40	35.94	40.86		78	8.07	10.25
50	27.13	31.61		79	7.61	9.67
60	19.07	22.99		80	7.16	9.11
61	18.33	22.18		81	6.72	8.57
62	17.60	21.38		82	6.31	8.04
63	16.89	20.60		83	5.92	7.54
64	16.19	19.82		84	5.55	7.05
65	15.52	19.06		85	5.20	6.59
66	14.86	18.31		86	4.86	6.15
67	14.23	17.58		87	4.55	5.74
68	13.61	16.85		88	4.26	5.34
69	13.00	16.14		89	3.98	4.97
70	12.41	15.44		90	3.73	4.63
71	11.82	14.75		95	2.71	3.26
72	11.24	14.06		100	2.05	2.39
73	10.67	13.40		110	1.14	1.22

(3-17-22)()

04. **State Named as Beneficiary.** The purchase of an annuity is treated as an asset transfer unless the State of Idaho, Medicaid Estate Recovery is named as: ()

- a. The remainder beneficiary in the first position for at least the total amount of medical assistance

paid on behalf of the institutionalized individual under this title; or ()

b. The remainder beneficiary in the second position after the community spouse or minor or disabled child and is named in the first position if the community spouse or a representative of the minor or disabled child disposes of any remainder for less than fair market value. ()

05. Equal Payment Test. The annuity must provide for payments in equal amounts during the term of the annuity with no deferral and no balloon payments made. ()

06. Permitted Annuity. The purchase of an annuity is not treated as an asset transfer if the annuity meets any of the descriptions in Sections 408(b), or 408(q), Internal Revenue Code; or is purchased with proceeds from an account or trust described in Sections 408(a), 408(c), or 408(p), Internal Revenue Code, or is a simplified employee pension as described in Section 408(k), Internal Revenue Code, or is a Roth IRA described in Section 408A, Internal Revenue Code. ()

839. TRUSTS AS ASSET TRANSFERS.

A trust established wholly or partly from the participant's assets is an asset transfer. Assets transferred to a trust on or after August 11, 1993 are subject to the asset transfer penalty, regardless of when the trust was established. If the trust includes assets of another person, the asset transfer penalty applies to the participant's share of the trust. ()

840. TRANSFER OF JOINTLY OWNED ASSET.

Transfer of an asset owned jointly by the participant and another person is considered a transfer by the participant. The participant's share of the asset is used to compute the penalty. If the participant and ~~his~~ their spouse are joint owners of the transferred asset, the couple's combined ownership is used to compute the penalty. If the spouse becomes eligible for long-term care Medicaid, the rest of the period of restricted coverage is divided between the participant and spouse. (3-17-22)()

841. PENALTY EXCEPTIONS FOR ASSET TRANSFERS.

A participant is not subject to the asset transfer penalty for taking any action described in Subsections 841.01 through 841.14~~5~~ of this rule. (3-17-22)()

01. Home to Spouse. The asset transferred was a home. Title to the home was transferred to the spouse. ()

02. Home to Minor Child or Disabled Adult Child. The asset transferred was a home. Title to the home was transferred to the child of the participant or spouse. The child must be under age twenty-one (21) or blind or totally disabled under Social Security and SSI rules in 20 CFR Part 416. ()

03. Home to Brother or Sister. The asset transferred was a home. Title to the home was transferred to a ~~brother or sister~~ sibling of the participant or spouse. The ~~brother or sister~~ sibling must have an equity interest in the transferred home. ~~The brother or sister must and~~ reside in that home for at least one (1) year immediately before the month the participant starts long-term care. (3-17-22)()

04. Home to Adult Child. The asset transferred was a home. Title to the home was transferred to a ~~son or daughter~~ child of the participant or spouse, other than a child under the age of twenty-one (21). The ~~son or daughter~~ child must reside in that home for at least two (2) years immediately before the month the participant started long-term care. The adult child must prove they provided nursing facility level medical care to the participant which permitted them to live at home rather than enter long-term care. The ~~son or daughter~~ child must not have received payment from Medicaid for home and community-based services provided to the participant. (3-17-22)()

05. Benefit of Spouse. The assets were transferred to the participant's spouse or to another person for the sole benefit of the spouse. ()

06. Transfer From Spouse. The assets were transferred from the participant's spouse to another person for the sole benefit of the participant's spouse. ()

07. Transfer to Child. The assets were transferred to the participant's child, or to a trust established

solely for the benefit of the participant's child. The child must be blind or totally disabled under Social Security and SSI rules in 20 CFR Part 416. The child may be any age. ()

08. Intent to Get Fair Market Value. The participant or spouse proves ~~they~~ intended to dispose of the assets at fair market value or for other adequate consideration. (3-17-22)()

09. Assets Returned. All assets transferred for less than fair market value have been returned to the participant. ()

10. Medicaid Qualification Not the Intent. The participant or spouse proves the assets were transferred exclusively for a purpose other than to qualify for Medicaid or to avoid recovery. ()

11. Undue Hardship. The participant, ~~his~~ ~~their~~ representative, or the facility in which ~~they~~ resides may request the hardship waiver. The hardship waiver must be requested in writing within ten (10) days of the date of the asset transfer penalty notice. Undue hardship exists if any of the conditions ~~in Subsections 841.11.a. through 841.11.d. of this rule~~ below apply. (3-17-22)()

a. The participant proves ~~they~~ ~~is~~ ~~are~~ not able to pay for ~~his~~ ~~their~~ nursing facility services or ~~his~~ ~~their~~ ~~waiver~~ services by any means. (3-17-22)()

b. The participant proves that ~~they~~ ~~has~~ ~~ve~~ made reasonable efforts, consistent with ~~his~~ ~~their~~ physical and financial ability, to recover the transferred asset. The participant must fully cooperate with the ~~s~~State of Idaho in efforts to recover the transferred asset and, upon request, must assign ~~his~~ ~~their~~ rights to recover the asset to the State of Idaho. (3-17-22)()

c. The participant proves ~~they~~ did not knowingly transfer the asset. (3-17-22)()

d. The participant proves ~~they~~ would be deprived of food, clothing, shelter, or other necessities of life if the asset transfer penalty is imposed and ~~they~~ assigns ~~his~~ ~~their~~ rights to recover the asset to the State of Idaho. (3-17-22)()

12. Exception to Fair Market Value. The amount received is adequate, even if not fair market value. This exception must meet one (1) of the conditions ~~in Subsections 841.12.a. through 841.12.e. of this rule~~ below. (3-17-22)()

a. A forced sale was done under reasonable circumstances. ()

b. Little or no market demand exists for the type of asset transferred and the lack of market demand was not created by a voluntary act of the participant to qualify for assistance or to avoid recovery. ()

c. The asset was transferred to settle a legal debt approximately equal to the fair market value of the transferred asset. ()

13. No Benefit to Participant. The participant received no benefit from the asset. This exception must meet one (1) of the conditions ~~in Subsections 841.13.a. and 841.13.b. of this rule~~ below. (3-17-22)()

a. The participant or spouse held title to the property only as a trustee for another person. ~~The participant or spouse~~ and had no beneficial interest in the property. (3-17-22)()

b. The transfer was done to clear title to property. The participant or spouse had no beneficial interest in the property. The defect in the title was not created ~~in an attempt~~ to transfer assets to qualify for assistance or avoid recovery. (3-17-22)()

14. Fraud Victim. The asset was transferred because the participant or spouse was the victim of fraud, misrepresentation, or coercion. The participant or spouse must take all possible steps to recover the assets or property, or its equivalent in damages and ~~must~~ assign recovery rights to the ~~s~~State of Idaho. (3-17-22)()

15. **Transfer to Trust of Disabled Person.** The assets were transferred to a trust established solely for the benefit of an individual under sixty-five (65) years of age who is disabled. ()

842. -- 870. (RESERVED)

871. TREATMENT OF TRUSTS.

These is trust treatment rules apply ies to all Medicaid participants. These is rules apply ies to trusts established with the participant's assets on August 11, 1993, or later, and to amounts placed in trusts on or after August 11, 1993. Section 871 of these This rules does not apply to an irrevocable trust if the participant meets the undue hardship exemption in Subsection 841.11 of these rules. Assets transferred to a trust are subject to the asset transfer penalty. Section 871 This rule does not apply to a trust created with assets other than those of the individual, including a trust established by a will. (3-17-22)()

01. **Revocable Trust.** ~~Revocable trusts are~~ Is treated as listed ~~in Subsections 871.01.a. through 871.01.d. of these rules~~ below. A revocable burial trust is not a trust for the purposes of Subsection 871.01 of these this rules. (3-17-22)()

- a. The body (corpus) of a revocable trust is a resource. ()
- b. Payments from the trust to or for the participant are income. ()
- c. Any other payments from the trust are an asset transfer, triggering an asset transfer penalty period. ()

d. ~~As defined in~~ Under 42 U.S.C. 1396p(e)(5), the home and adjoining property loses its exclusion for eligibility purposes when transferred to a revocable trust, unless the participant or spouse is the sole beneficiary of the trust. The home is excluded again if removed from the trust. The exclusion restarts the month following the month the home was removed from the trust. (3-17-22)()

02. **Irrevocable Trust.** ~~Irrevocable trusts are~~ Is treated as listed ~~in Subsections 871.02.a. through 871.02.g. of these rules~~ below. (3-17-22)()

- a. The part of the body of an irrevocable trust, from which corpus or income payments could be made to or for the participant, is a resource. ()
- b. Payments made to or for the participant are income. ()
- c. Payments from the trust for any other reason are asset transfers, triggering the asset transfer penalty. ()
- d. Any part of the trust from which payment cannot be made to, or for the benefit of the participant under any circumstances, is an asset transfer. ()

e. The effective date of the transfer is the date the trust was established, or the date payments to the participant were foreclosed. ()

f. The value of the trust, for calculating the transfer penalty, includes any payments made from that portion of the trust after the date the trust was established, or payments were foreclosed. ()

g. An irrevocable burial trust is not subject to treatment under Subsection 871.02 of these this rules, unless funds in the trust can be paid for a purpose other than the participant's funeral and related expenses. The trust can provide that funds not needed for the participant's funeral expenses are available to reimburse Medicaid, or to go to the participant's estate. (3-17-22)()

872. EXEMPT TRUSTS.

A trust, created or funded on or after August 11, 1993, is exempt from trust treatment and not subject to the asset transfer penalty if it meets a condition ~~in Subsections 872.01 through 872.03 of this rule~~ below. (3-17-22)()

01. Trust for Disabled Person. To be exempt, a trust for a disabled person must meet all the conditions ~~in Subsections 872.01.a. through 872.01.f. of this rule~~ below. (3-17-22)()

- a. The trust contains the assets of a person under age sixty-five (65). ()
- b. The person is blind or totally disabled under the Social Security and SSI rules in 20 CFR Part 416. ()
- c. The trust is established for the person's benefit by ~~his~~ their parent, grandparent, legal guardian, or a court. (3-17-22)()
- d. The trust is irrevocable. ()
- e. The trust is exempt until the person reaches age sixty-five (65). After the person reaches age sixty-five (65), additions or augmentations are not exempt from trust treatment. ()
- f. Upon the person's death, the amount not distributed by the trust must first be paid to the State of Idaho, up to the amount Medicaid has paid on the person's behalf. ()

02. Income Trust. To be exempt, an income trust must meet all the conditions ~~in Subsections 872.02.a. through 872.02.c. of this rule~~ below. (3-17-22)()

- a. The trust is established for the sole benefit of a person who would be eligible for Medicaid in long-term care, or eligible for HCBS except for excess income. ()
- b. Any income, placed directly into an income trust in the same calendar month in which received by the recipient, is not considered income to the individual for determining long-term care Medicaid eligibility. Money paid into the trust is income for patient liability or ~~client~~ participant participation. (3-17-22)()
- c. The trust is irrevocable. The trust document may include a clause allowing the trust to be revoked if the participant leaves the nursing facility or HCBS for a reason other than death, and is no longer eligible for Medicaid because of excess income, if Medicaid is reimbursed up to the amount Medicaid has paid on the person's behalf. ()
- d. Income transferred to the trust must be used to pay patient liability or ~~client~~ participant participation. If income is not used to pay allowable expenses, it is subject to the asset transfer penalty, unless one (1) of the following exceptions ~~in Subsections 872.02.d.i. through 872.02.d.iii. of this rule~~ applies. (3-17-22)()
 - i. Benefit of the spouse in Subsection 841.05 of these rules; ()
 - ii. Transfer from the spouse in Subsection 841.06 of these rules; or ()
 - iii. Undue hardship in Subsection 841.11 of these rules. ()
- e. Upon the person's death, the amount not distributed by the trust must first be paid to the State of Idaho, up to the amount Medicaid has paid on the person's behalf. ()

03. Trust Managed by Non-Profit Association for Disabled Person. To be exempt, a trust managed by non-profit association for a disabled person must meet all the conditions ~~in Subsections 872.03.a. through 872.03.e. of this rule~~ below. (3-17-22)()

- a. The trust is established and managed by a nonprofit association. The nonprofit association must not be the participant, ~~his~~ their parent, or ~~his~~ grandparent. (3-17-22)()
- b. The trust contains the assets of a disabled person. The person must be blind or totally disabled under Social Security and SSI rules in 20 CFR Part 416. ()

c. Accounts in the trust are established only for the benefit of disabled persons. An account can be established by the disabled person, ~~his~~ their parent, grandparent, legal guardian, or a court. A separate account must be maintained for each beneficiary of the trust. For purposes of investment and management, the trust may pool the funds in the accounts. (3-17-22)()

d. The trust is irrevocable. ()

e. Upon the person's death, the amount not distributed by the trust must first be paid to the State of Idaho, up to the amount Medicaid has paid on the person's behalf. ()

873. PAYMENTS FROM AN EXEMPT TRUST FOR DISABLED PERSON OR POOLED TRUST.

Cash payments from an exempt trust for a disabled person or a pooled trust must be treated as described ~~in~~ Subsections 873.01 through 873.04 of these rules below. (3-17-22)()

01. Cash Payments from Exempt Trust. ~~Cash payments from an exempt trust for~~ For a disabled person are income in the month received. (3-17-22)()

02. Cash Payments from Pooled Trust. ~~Cash payments from a pooled trust~~ Are made directly to the participant are income in the month received. (3-17-22)()

03. Payments for the Participant's Food or Shelter. ~~Payments for the participant's food or shelter~~ are income in the month paid. The payments for food or shelter are valued at one-third (1/3) of the AABD budgeted needs for the participant's living arrangement. (3-17-22)()

04. Payments Not Made to Participant. Payments from the exempt trust not made to, or on behalf of, the participant are an asset transfer. ()

874. -- 914. (RESERVED)

915. MEDICAID REDETERMINATION.

Medicaid eligibility is redetermined each year. The redetermination for AABD cash is the Medicaid redetermination for participants receiving both programs. ()

916. -- 999. (RESERVED)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.10 – MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-2101

NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 2023.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202(b), 56-264, and 56-1610, Idaho Code.

PUBLIC HEARING SCHEDULE: Two public hearings concerning this rulemaking will be held as follows:

VIRTUAL TELECONFERENCE Via WebEx
Wednesday, October 18, 2023 9:00 a.m. (MT)
<i>Join from the meeting link:</i> https://idhw.webex.com/idhw/j.php?MTID=m22d7402b3e4f05b93a795b6ffd75471a
<i>Join by meeting number:</i> Meeting number (access code): 2761 907 1160 Meeting password: fMMMEpQE333 (36663773 from phones and video systems)
<i>Join by phone:</i> +1-415-527-5035 United States Toll +1-303-498-7536 United States Toll (Denver)

VIRTUAL TELECONFERENCE Via WebEx
Wednesday, October 18, 2023 2:00 p.m. (MT)
<i>Join from the meeting link:</i> https://idhw.webex.com/idhw/j.php?MTID=m24d31b98e8d19db20a8af0d0505f54e6
<i>Join by meeting number:</i> Meeting number (access code): 2760 176 3901 Meeting password: sVaHVstG774 (78248784 from phones and video systems)
<i>Join by phone:</i> +1-415-527-5035 United States Toll +1-303-498-7536 United States Toll (Denver)

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

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

The following changes are made in conjunction with companion Docket No. 16-0313-2101, Consumer-Directed Services.

This rule change will decrease regulatory burdens, make technical corrections, implement operations for the end of the public health emergency, update rules to comply with K.W. Settlement, and align with federal regulations regarding conflicts of interest.

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

The changes in this rulemaking qualify for all the following purposes for a Temporary rulemaking:

- (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.

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

This rulemaking and this chapter of rules do not contain any 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:

There is no anticipated fiscal impact to the General Fund, state funds, or any other known 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 November 3, 2021, Idaho Administrative Bulletin, [Volume 21-11, pages 42-43](#).

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

A document incorporated by reference in these rules is being updated to reflect the current version (January 17, 2023). The title has changed from "Travel Policies and Procedures of the Idaho State Board of Examiners" to "State Travel Policies and Procedures."

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact William Deseron, 208-859-0046.

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 25, 2023.

DATED this 1st day of September, 2023.

Trinette Middlebrook and Frank Powell
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5500 phone; (208) 334-6558 fax
dhwrules@dhw.idaho.gov email

THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 16-0310-2101
(Only Those Sections With Amendments Are Shown.)

004. INCORPORATION BY REFERENCE.

The Department has incorporated by reference the following ~~document~~: ~~(3-17-22)~~(9-1-23)T

01. 42 CFR Part 447. 42 CFR Part 447, "Payment for Services," revised as of October 1, 2001, is available from CMS, 7500 Security Blvd, Baltimore, M.D., 21244-1850 or on the Code of Federal Regulations website at http://www.ecfr.gov/cgi-bin/text-idx?SID=3ec1965dbf5044d8f79b25d4d58c4cd1&mc=true&tpl=/ecfrbrowse/Title42/42cfrv4_02.tpl#0. (3-17-22)

02. Estimated Useful Lives of Depreciable Hospital Assets, 2004 Revised Edition, Guidelines Lives. This document may be obtained from American Hospital Publishing, Inc., 211 E. Chicago Ave., Chicago, IL 60611. (3-17-22)

03. Medicare Region D Durable Medical Equipment Regional Carrier (DMERC) Supplier Manual or Its Successor. The full text of the Medicare Region D DMERC Supplier Manual Chapters IX and X, date April 2001, is available via the Internet at www.cignamedicare.com. A copy is also available at the Idaho State Supreme Court Law Library. (3-17-22)

04. Provider Reimbursement Manual (PRM). The Provider Reimbursement Manual (PRM), Part I and Part II CMS Publication 15-1 and 15-2), is available on the CMS website at <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Paper-Based-Manuals.html>. (3-17-22)

05. Resource Utilization Groups (RUG) Grouper. The RUG III, version 5.12, 34 Grouper, nursing weights only, with index maximization. The RUG Grouper is available from CMS, 7500 Security Blvd., Baltimore, MD, 21244-1850. (3-17-22)

06. ~~State Travel Policies~~ and Procedures ~~of the Idaho State Board of Examiners~~. The text of "~~Idaho State Travel Policies~~ and Procedures ~~of the Idaho State Board of Examiners~~," and Appendices A and B, ~~June 13, 2000~~ January 17, 2023, is available at the Office of the State Controller, 700 W. State St., 5th Fl., Box 83720, Boise, Idaho 83720-0011 or ~~on the Internet at~~ <http://www.sco.idaho.gov>/<https://www.sco.idaho.gov/LivePages/state-travel-policy-and-procedures.aspx>. ~~(3-17-22)~~(9-1-23)T

005. -- 007. (RESERVED)

008. AUDIT, INVESTIGATION AND ENFORCEMENT.

In addition to any actions specified in these rules, the Department may audit, investigate, and take enforcement action under ~~the provisions of~~ IDAPA 16.05.07, "The Investigation and Enforcement of Fraud, Abuse, ~~or~~ and Misconduct." ~~(3-17-22)~~(9-1-23)T

009. ~~CRIMINAL HISTORY AND~~ BACKGROUND CHECK REQUIREMENTS.

01. Compliance With Department ~~Criminal History~~ Background Check. Employees and contractors of Agencies must verify that individuals working in the area listed in under Subsection 009.03 of these this rules whom are employed or whom they contract have complied must comply with the provisions in IDAPA 16.05.06, "Rules Governing Mandatory Criminal History and Background Checks." ~~Except, through the duration of the declared COVID 19 public health emergency, if the individuals working in the area listed in this rule are unable to complete a criminal background check in accordance with the timeframes set forth in IDAPA 16.05.06, then agencies may allow newly hired direct care staff to begin rendering services prior to completion of the criminal background check in accordance with the requirements specified by the Department in a COVID 19 information release posted on the Department's website at~~ <https://healthandwelfare.idaho.gov/providers/idaho-medicaid-providers/information>

~~medicaid providers. (3-17-22)(9-1-23)T~~

~~02. Additional Criminal Convictions. Once an individual has received a criminal history clearance, any additional criminal convictions must be reported by the agency to the Department when the agency learns of the conviction. (3-17-22)~~

~~032. Providers Subject to Criminal History and Background Check Requirements. The following providers are required to have a criminal history and follow background check requirements provided in these rules and any other identified rules: (3-17-22)(9-1-23)T~~

~~a. Adult Day Health Providers. The criminal history and background check requirements applicable to providers of adult day health as provided in Sections 329 and 705 of these rules. (3-17-22)(9-1-23)T~~

~~b. Adult Residential Care Providers. The criminal history and background check requirements applicable to adult residential care providers as provided in Section 329 of these rules. (3-17-22)(9-1-23)T~~

~~c. Attendant Care Providers. The criminal history and background check requirements applicable to attendant care providers as provided in Section 329 of these rules. (3-17-22)(9-1-23)T~~

~~d. Behavior Consultation or Crisis Management Providers. The criminal history and background check requirements applicable to behavior consultation or crisis management providers as provided in Section 705 of these rules. (3-17-22)(9-1-23)T~~

~~e. Certified Family Home Providers and All Adults in the Home. The criminal history and See additional background check requirements applicable to certified family homes are found in Sections 305, 329 and 705 of these rules, and as provided in under IDAPA 16.03.19, "Rules Governing Certified Family Homes." (3-17-22)(9-1-23)T~~

~~f. Chore Services Providers. The criminal history and background check requirements applicable to chore services providers as provided in Sections 329 and 705 of these rules. (3-17-22)(9-1-23)T~~

~~g. Companion Services Providers. The criminal history and background check requirements applicable to companion services providers as provided in Section 329 of these rules. (3-17-22)(9-1-23)T~~

~~h. Day Habilitation Providers. The criminal history and background check requirements applicable to day habilitation providers as provided in Section 329 of these rules. (3-17-22)(9-1-23)T~~

~~i. Developmental Disabilities Agencies (DDA). The criminal history and See additional background check requirements for DDA and staff as provided in under IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA);" Section 009. (3-17-22)(9-1-23)T~~

~~j. Homemaker Services Providers. The criminal history and background check requirements applicable to homemaker services providers as provided in Section 329 of these rules. (3-17-22)(9-1-23)T~~

~~k. Non-Medical Transportation Providers. (9-1-23)T~~

~~kl. Personal Assistance Agencies Acting As Fiscal Intermediaries. The criminal history and background check requirements applicable to the staff of personal assistance agencies acting as fiscal intermediaries as provided in Subsection 329.02 of these rules. (3-17-22)(9-1-23)T~~

~~lm. Personal Care Providers. The criminal history and background check requirements applicable to personal care providers as provided in Subsection 305.06 of these rules. (3-17-22)(9-1-23)T~~

~~mn. Residential Habilitation Providers. The criminal history and See additional background check requirements applicable to residential habilitation providers as provided in Sections 329 and 705 of these rules, and under IDAPA 16.04.17 "Rules Governing Residential Habilitation Agencies;" Sections 202 and 301. (3-17-22)(9-1-23)T~~

~~no.~~ Respite Care Providers. ~~The criminal history and background check requirements applicable to respite care providers as provided in Sections 329, 665, and 705 of these rules.~~ (3-17-22)(9-1-23)T

~~op.~~ Service Coordinators and Paraprofessionals. ~~The criminal history and background check requirements applicable to service coordinators and paraprofessionals working for an agency as provided in Section 729 of these rules.~~ (3-17-22)(9-1-23)T

~~pq.~~ Skilled Nursing Providers. ~~The criminal history and background check requirements applicable to skilled nursing providers as provided in Sections 329 and 705 of these rules.~~ (3-17-22)(9-1-23)T

~~qr.~~ Supported Employment Providers. ~~The criminal history and background check requirements applicable to supported employment providers as provided in Sections 329 and 705 of these rules.~~ (3-17-22)(9-1-23)T

~~rs.~~ Therapeutic Consultant Providers. ~~The criminal history and background check requirements applicable to therapeutic consultation providers as provided in Section 685 of these rules.~~ (3-17-22)(9-1-23)T

010. DEFINITIONS: A THROUGH D.

~~For the purposes of these rules, the following terms are used as defined below:~~ (3-17-22)

01. Accrual Basis. An accounting system based on the principle that revenues are recorded when they are earned; expenses are recorded in the period incurred. (3-17-22)

02. Active Treatment. ~~Active treatment is the e~~Continuous participation, during all waking hours, by an individual in an aggressive, consistently implemented program of specialized and generic training, treatment, health and related services, and provided ~~in accordance with~~ under a treatment plan developed by an interdisciplinary team and monitored by a Qualified Intellectual Disabilities Professional (QIDP) directed toward: (1) the acquisition of the behaviors necessary for the resident to function with as much self-determination and independence as possible; or (2) the prevention or deceleration of regression or loss of current functional status. (3-17-22)(9-1-23)T

03. Activities of Daily Living (ADL). The performance of basic self-care activities in meeting an individual's needs for sustaining them in a daily living environment, including bathing, washing, dressing, toileting, grooming, eating, communication, continence, mobility, and associated tasks. (3-17-22)

04. Allowable Cost. ~~Costs that are r~~Reimbursable; ~~cost and~~ sufficiently documented to meet the requirements of audit. (3-17-22)(9-1-23)T

05. Amortization. The systematic recognition of the declining utility value of certain assets, usually not owned by the organization or intangible in nature. (3-17-22)

06. Appraisal. The method of determining the value of property as determined by an Appraisal Institute appraisal. The appraisal must specifically identify the values of land, buildings, equipment, and goodwill. (3-17-22)

07. Assets. Economic resources of the provider recognized and measured in conformity with generally accepted accounting principles. (3-17-22)

08. Attendant Care. Services provided under a Medicaid Home and Community-Based Services waiver that involve personal and medically-oriented tasks dealing with the functional needs of the participants and accommodating the participant's needs for long-term maintenance, supportive care, or ~~activities of daily living (ADL)~~. These services may include personal assistance and medical tasks that can be done by unlicensed persons or delegated to unlicensed persons by a health care professional or the participant. Services are based on the person's abilities and limitations, regardless of age, medical diagnosis, or other category of disability. This assistance may take the form of hands-on assistance (~~actually~~ performing a task for the person) or cuing to prompt the participant to perform a task. (3-17-22)(9-1-23)T

- 09. Audit.** An examination of provider records ~~on the basis of~~ based on which an opinion is expressed representing the compliance of a provider's financial statements and records with Medicaid law, regulations, and rules. (3-17-22)(9-1-23)T
- 10. Auditor.** The individual or entity designated by the Department to conduct the audit of a provider's records. (3-17-22)
- 11. Audit Reports.** (3-17-22)
- a.** Draft Audit Report. A preliminary report of the audit finding sent to the provider for the provider's review and comments. (3-17-22)
- b.** Final Audit Report. A final written report containing the results, findings, and recommendations, if any, from the audit of the provider, as approved by the Department. (3-17-22)
- 12. Bad Debts.** Amounts due to provider ~~as a result~~ because of services rendered, but ~~that~~ are considered uncollectible. (3-17-22)(9-1-23)T
- 13. Bed-Weighted Median.** A numerical value determined by arraying the average per diem cost per bed of all facilities from high to low and identifying the bed at the point in the array at which half of the beds have equal or higher per diem costs and half have equal or lower per diem costs. The identified bed is the median bed. The per diem cost of the median bed is the bed-weighted median. (3-17-22)
- 14. Budget Adjustment Factor (BAF).** A total budget for nursing facility reimbursement will be established by legislative appropriation and will be effective on July 1 of each year. The budget will be compared to the annual expected Medicaid reimbursement rates for the same rate year. A ~~budget adjustment factor~~ BAF will be established to adjust the expected Medicaid reimbursement rates to meet the approved budget. The BAF may be positive or negative and will apply to all nursing facility rates calculated under the established prospective rate system. The BAF will not be applied to the calculated customary charge for each nursing facility and will not apply to any nursing facility that is retrospectively settled. (3-17-22)(9-1-23)T
- 15. Capitalize.** The practice of accumulating expenditures related to long-lived assets that will benefit later periods. (3-17-22)
- 16. Case Mix Adjustment Factor.** The factor used to adjust a provider's direct care rate component for the difference in the average Medicaid acuity and the average nursing facility-wide acuity. The average Medicaid acuity is from the picture date immediately preceding the rate period. The average nursing facility-wide acuity is the average of the indexes that correspond to the cost reporting period. (3-17-22)
- 17. Case Mix Index (CMI).** A numeric score assigned to each nursing facility resident, based on the resident's physical and mental condition, that projects the amount of relative resources needed to provide care to the resident. (3-17-22)
- a.** Nursing Facility-Wide Case Mix Index. The average of the entire nursing facility's case mix indexes identified at each picture date during the cost reporting period. If case mix indexes are not available for applicable quarters due to lack of data, case mix indexes from available quarters will be used. (3-17-22)
- b.** Medicaid Case Mix Index. The average of the weighting factors assigned to each Medicaid resident in the facility on the picture date, based on their RUG classification. Medicaid or non-Medicaid status is based upon information contained in the MDS databases. To the extent that Medicaid identifiers are found to be incorrect, the Department may adjust the Medicaid case mix index and reestablish the reimbursement rate. (3-17-22)
- c.** State-Wide Average Case Mix Index. The simple average of all nursing facilities "facility-wide" case mix indexes used in establishing the reimbursement limitation July 1st of each year. The state-wide case mix index will be calculated annually during each July 1st rate setting. (3-17-22)
- 18. Certified Family Home (CFH).** ~~A home certified by the Department to provide care to one (1) or~~

~~two (2) adults, who are unable to reside on their own and require help with activities of daily living, protection and security, and need encouragement toward independence~~ A home that meets the requirements under IDAPA 16.03.19, "Certified Family Homes." (3-17-22)(9-1-23)T

19. Chain Organization. A proprietorship, partnership, or corporation that leases, manages, or owns two (2) or more facilities that are separately licensed. (3-17-22)

20. Claim. An itemized bill for services rendered to one (1) participant by a provider and submitted to the Department for payment. (3-17-22)

21. Clinical Nurse Specialist. ~~An licensed registered nurse~~ RN who meets all the applicable requirements to practice as a clinical nurse specialist under Title 54, Chapter 14, Idaho Code, and IDAPA 24.34.01, "Rules of the Idaho Board of Nursing." (3-17-22)(9-1-23)T

22. Common Ownership. An individual(s), ~~individuals,~~ or other entities who have equity or ownership in two (2) or more organizations that conduct business transactions with each other. Common ownership exists if an individual(s) ~~or individuals~~ possesses significant ownership or equity in the provider and the institution or organization serving the provider. (3-17-22)(9-1-23)T

23. Compensation. The total of all remuneration received, including cash, expenses paid, salary advances, etc. (3-17-22)

24. Complaint. The process by which an individual registers dissatisfaction with program operations, quality of services, or other relevant concerns. A complaint is separate from an appeal, and an individual is not required to submit a complaint in order to pursue an appeal under these rules. (9-1-23)T

245. Control. ~~Control~~ EExists where an individual or an organization has the power, directly or indirectly, to significantly influence or direct the actions or policies of an organization or institution. (3-17-22)(9-1-23)T

256. Cost Center. A "collection point" for expenses incurred in the rendering of services, supplies, or materials that are related or so considered for cost-accounting purposes. (3-17-22)

267. Cost Component. The portion of the nursing facility's rate that is determined from a prior cost report, including property rental rate. The cost component of a nursing facility's rate is established annually ~~at~~ July 1st of each year. (3-17-22)(9-1-23)T

278. Cost Reimbursement System. A method of fiscal administration of Title XIX and Title XXI that compensates the provider based on ~~the basis of~~ expenses incurred. (3-17-22)(9-1-23)T

289. Cost Report. A fiscal year report of provider costs required by the Medicare program and any supplemental schedules required by the Department. (3-17-22)

2930. Cost Statements. An itemization of costs and revenues, presented on the accrual basis, that is used to determine cost of care for facility services for a specified period ~~of time~~. These statements are commonly called income statements. (3-17-22)(9-1-23)T

301. Costs Related to Patient Care. All necessary and proper costs that are appropriate and helpful in developing and maintaining the operation of patient care facilities and activities. Necessary and proper costs related to patient care are usually costs that are common and accepted occurrences in the field of the provider's activity. They include costs such as depreciation, interest expenses, nursing costs, maintenance costs, administrative costs, costs of employee pension plans, and normal standby costs. (3-17-22)

342. Costs Not Related to Patient Care. Costs that are not appropriate or necessary and proper in developing and maintaining the operation of patient care facilities and activities. Such costs are nonallowable in computing reimbursable costs. They include, for example, cost of meals sold to visitors or employees; cost of drugs sold to other than patients; cost of operation of a gift shop; and similar items. Travel and entertainment expenses are

nonallowable unless it can be ~~specifically~~ shown that they relate to patient care and for the operation of the nursing facility. (3-17-22)(9-1-23)T

333. Customary Charges. ~~Customary charges are the~~ Rates charged to Medicare participants and to patients liable for such charges, as reflected in the facility's records. Those charges are adjusted downward, when the provider does not impose such charges on most patients liable for payment on a charge basis or; when the provider fails to make reasonable collection efforts. The reasonable effort to collect such charges is the same effort necessary for Medicare reimbursement as is needed for unrecovered costs attributable to certain bad debt under PRM, Chapter 3, Sections 310 and 312. (3-17-22)(9-1-23)T

334. Day Treatment Services. ~~Day treatment services are~~ Developmental services provided regularly during normal working hours on weekdays by, or on behalf of, the ~~Intermediate Care Facility for Persons with Intellectual Disabilities (ICF/IID).~~ However, ~~Day~~ treatment services do not include recreational therapy, speech therapy, physical therapy, occupational therapy, or services paid for, or required to be provided by, a school or other entity. (3-17-22)(9-1-23)T

345. Department. The Idaho Department of Health and Welfare or ~~a person authorized to act on behalf of the Department~~ its designee. (3-17-22)(9-1-23)T

356. Depreciation. The systematic distribution of the cost or other basis of tangible assets, less salvage, over the estimated life of the assets. (3-17-22)

367. Developmental Disability (DD). ~~A developmental disability, as~~ Defined ~~in~~ under Section 66-402, Idaho Code, means a chronic disability of a person that appears before the age of twenty-two (22) years ~~of age~~; and (3-17-22)(9-1-23)T

a. Is attributable to an impairment, such as an intellectual disability, cerebral palsy, epilepsy, autism, or other condition found to be closely related to or similar to one (1) of these impairments, that requires similar treatment or services, or is attributable to dyslexia resulting from such impairments; (3-17-22)

b. 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 (3-17-22)

c. Reflects the need for a combination or sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and individually planned and coordinated. (3-17-22)

378. Direct Care Costs. Costs directly assigned to the nursing facility or allocated to the nursing facility through the Medicare cost-finding principles and consisting of the following: (3-17-22)

a. Direct nursing salaries that include the salaries of ~~licensed registered nurses (RNs),~~ certified nurse's aides, and unit clerks; (3-17-22)(9-1-23)T

b. Routine nursing supplies; (3-17-22)

c. Nursing administration; (3-17-22)

d. Direct portion of Medicaid-related ancillary services; (3-17-22)

e. Social services; (3-17-22)

f. Raw food; (3-17-22)

g. Employee benefits associated with the direct salaries; and (3-17-22)

h. Medical waste disposal, for rates with effective dates beginning July 1, 2005. (3-17-22)

~~389.~~ **Director.** The Director of the Department ~~of Health and Welfare~~ or their designee. (3-17-22)(9-1-23)T

~~3940.~~ **Durable Medical Equipment (DME).** Equipment other than prosthetics or orthotics that can withstand repeated use by one (1) or more individuals, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of an illness or injury, is appropriate for use in the home, and is reasonable and necessary for the treatment of an illness or injury for a Medicaid participant. (3-17-22)

(BREAK IN CONTINUITY OF SECTIONS)

093. ORGAN TRANSPLANTS: COVERAGE AND LIMITATIONS.

~~01.~~ **Coverage Limitations.** ~~No organ transplant will be covered by the Medical Assistance Program unless prior authorized by the Department, or its designee.~~ Coverage is limited to organ transplants performed for the treatment of medical conditions ~~in accordance with~~ under evidence-based standards of care. (3-17-22)(9-1-23)T

~~02.~~ **Living Donor Costs.** The transplant costs for actual or potential living donors are fully covered by Medicaid and include all medically necessary preparatory, operation, and post-operation recovery expenses associated with the donation. Payments for post-operation expenses of a donor will be limited to the period of actual recovery. (3-17-22)

(BREAK IN CONTINUITY OF SECTIONS)

200. PRIVATE DUTY NURSING (PDN) SERVICES.

~~01.~~ **Description of Private Duty Nursing (PDN) Services.** Private Duty Nursing (PDN) services are nursing services provided by ~~an~~ licensed registered nurse RN or ~~licensed practical nurse LPN~~ to a non-institutionalized child under the age of twenty-one (21) requiring care for conditions of such medical severity or complexity that skilled nursing care is necessary. Sections 200 through 209 of these rules cover requirements for ~~private duty nursing PDN~~ services. (3-17-22)(9-1-23)T

~~02.~~ **Temporary Changes to PDN Rules During Declared State of Emergency Related to Novel Coronavirus Disease (COVID-19).** In response to Idaho's declaration on 3/13/20 of a state of emergency related to COVID-19, the Department reserves the right to temporarily alter requirements and processes related to PDN services in order to mitigate spread of disease and to ensure the health and safety of our participants under the guidance and authority of the provisions in a CMS approved 1135 waiver through the duration of the emergency state. Guidance for approved flexibilities is posted on the Medicaid Information Releases website at <https://www.idmedicaid.com/default.aspx>. (3-17-22)

(BREAK IN CONTINUITY OF SECTIONS)

300. PERSONAL CARE SERVICES (PCS).

~~01.~~ **Description of Personal Care Services (PCS).** Under Sections 39-5601 through 39-5607, Idaho Code, it is the intent of the Department to provide ~~personal care services (PCS)~~ to eligible participants in their ~~own homes or~~ personal residences to prevent unnecessary institutional placement, to provide for the greatest degree of independence ~~possible~~, to enhance quality of life, ~~to~~ encourage individual choice, and ~~to~~ maintain community integration. (3-17-22)(9-1-23)T

~~02.~~ **Temporary Changes to PCS Rules During Declared State of Emergency Related to Novel**

~~Coronavirus Disease (COVID-19). In response to Idaho's declaration on 3/13/20 of a state of emergency related to COVID-19, the Department reserves the right to temporarily alter requirements and processes related to PCS services, currently and through the duration of the emergency state, in order to mitigate spread of disease and to ensure the health and safety of our participants under the guidance and authority of the provisions in a CMS approved H35 waiver. Guidance for approved flexibilities is posted on the Medicaid Information Releases website at <https://healthandwelfare.idaho.gov/providers/idaho-medicaid-providers/information-medicaid-providers>. (3-17-22)~~

(BREAK IN CONTINUITY OF SECTIONS)

304. PERSONAL CARE SERVICES: PROCEDURAL REQUIREMENTS.

01. Service Delivery Based on Plan of Care or NSA. All PCS services are provided based on a written plan of care or a negotiated service agreement (NSA). The requirements for the NSA for participants in Residential Assisted Living Facilities are ~~described in~~ under IDAPA 16.03.22, "Residential Assisted Living Facilities." The requirements for the NSA for participants in ~~Certified Family Homes~~ are described in IDAPA 16.03.19, "Certified Family Homes." The Personal Assistance Agency and the participant who lives in their own home are responsible to prepare the plan of care. ~~(3-17-22)~~ (9-1-23)T

a. The plan of care for participants who live in their own homes or in a PCS Family Alternate Care Home is based on: (3-17-22)

i. The physician's or authorized provider's information, if applicable; (3-17-22)

ii. The results of the UAI for adults, the children's PCS assessment and, if applicable, the QIDP's assessment and observations of the participant; and (3-17-22)

iii. Information obtained from the participant. (3-17-22)

b. The plan of care must include all aspects of medical and non-medical care that the provider needs to perform, including the amount, type, and frequency of necessary services. (3-17-22)

c. The plan of care must be ~~revised and~~ updated based upon treatment results or a change(s) in the participant's needs, or both, but at least annually. ~~(3-17-22)~~ (9-1-23)T

d. The plan of care or NSA must meet the person-centered planning requirements ~~described in Sections 316 and 317 of~~ under these rules. ~~(3-17-22)~~ (9-1-23)T

02. Service Supervision. The delivery of PCS is overseen by an ~~licensed registered nurse (RN)~~ or Qualified Intellectual Disabilities Professional (QIDP). The ~~BLTC~~ Department will identify the need for supervision. ~~(3-17-22)~~ (9-1-23)T

a. Oversight must include ~~all of~~ the following: ~~(3-17-22)~~ (9-1-23)T

i. Assistance in the development of the written plan of care; (3-17-22)

ii. Review of the treatment given by the personal assistant through a review of the participant's PCS record as maintained by the provider; (3-17-22)

iii. Re-evaluation of the plan of care as necessary; and (3-17-22)

iv. Immediate notification of the guardian, emergency contact, or family members of any significant changes in the participant's physical condition or response to the services delivered. (3-17-22)

b. All participants who are developmentally disabled, other than those with only a physical disability as determined by the ~~BLTC~~ Department, may receive oversight by a QIDP as defined in 42 CFR 483.430. Oversight

must include:

~~(3-17-22)~~(9-1-23)T

- i. Assistance in the development of the plan of care for those aspects of active treatment that are provided in the participant's personal residence by the personal assistant; (3-17-22)
- ii. Review of the care or training programs given by the personal assistant through a review of the participant's PCS record as maintained by the provider and through on-site interviews with the participant; (3-17-22)
- iii. Re-evaluation of the plan of care as necessary, but at least annually; and (3-17-22)
- iv. An on-site visit to the participant to evaluate any change of condition when requested by the personal assistant, the Personal Assistance Agency, the nurse supervisor, the service coordinator, or the participant. (3-17-22)

03. Prior Authorization Requirements. All PCS services must be prior authorized by the Department. Authorizations will be based on the information from: (3-17-22)

- a. The children's PCS assessment or ~~Uniform Assessment Instrument (UAI)~~ for adults; ~~(3-17-22)~~(9-1-23)T
- b. The individual service plan developed by the Personal Assistance Agency; and (3-17-22)
- c. Any other medical information that supports the medical need. (3-17-22)

04. ~~PCS Record Requirements for a Participant's in Their Own Home.~~ PCS records must be maintained for all participants receiving PCS in their own homes or in a PCS Family Alternate Care Home. ~~(3-17-22)~~(9-1-23)T

~~a. Documentation Requirements.~~ PCS provider must maintain documentation of every visit made to the participant's home and ~~must~~ record the following ~~minimum~~ information: ~~(3-17-22)~~(9-1-23)T

- i. Date and time of visit; (3-17-22)
- ii. Length of visit; (3-17-22)
- iii. Services provided during the visit; and (3-17-22)
- iv. Documentation of any changes noted in the participant's condition or any deviations from the plan of care. (3-17-22)

~~b. Participant's Signature.~~ The participant or legal guardian must verify services were delivered ~~by signing the documentation.~~ ~~(3-17-22)~~(9-1-23)T

~~c. Provider Signature.~~ The Plan of Care must be signed by the provider indicating that they will deliver services according to the authorized service plan and consistent with home and community-based requirements. ~~(3-17-22)~~(9-1-23)T

~~d. Copy Requirement.~~ A copy of the information required in Subsection 304.04 of ~~these~~ this rules must be maintained and available in a format accessible to the participant in their home. Failure to maintain this information may result in recovery of funds paid for undocumented services. ~~(3-17-22)~~(9-1-23)T

~~e.~~ Electronic Visit Verification (EVV) ~~S~~systems. ~~EVV systems~~ as described in Section 041 of these rules will not take the place of documentation requirements of Subsection 304.04 of ~~these~~ this rules but may be used to generate documentation retained in the participant's home. ~~(3-17-22)~~(9-1-23)T

05. PCS Record Requirements for a Participant in a Residential Assisted Living Facility (RALF) or ~~Certified Family Home.~~ The PCS records must be maintained on all participants who receive PCS in a

~~Residential Assisted Living Facility (RALF) or Certified Family Home (CFH).~~ (3-17-22)(9-1-23)T

a. ~~Participant in a RALF. The a~~Additional PCS record requirements for RALF participants ~~in RALF are described in~~ are under IDAPA 16.03.22, "Residential Assisted Living Facilities." (3-17-22)(9-1-23)T

b. ~~Participant in a CFH. The a~~Additional PCS record requirements for CFH participants ~~in CFHs are described in~~ are under IDAPA 16.03.19, "Certified Family Homes." (3-17-22)(9-1-23)T

c. ~~Participant's Signature.~~The participant or legal guardian must sign the NSA agreeing to the delivery of services as specified. (3-17-22)(9-1-23)T

d. ~~Provider Signature.~~The NSA must be signed by the supervisory nurse or agency personnel responsible for developing the NSA with the participant; and must indicate that they will deliver services according to the authorized NSA and consistent with home and community-based requirements. (3-17-22)(9-1-23)T

06. Provider Responsibility for Notification. The Personal Assistance Agency is responsible to notify the ~~BLTC Department~~ and the physician or authorized provider when any significant changes in the participant's condition are noted during service delivery. This notification must be documented in the Personal Assistance Agency record. (3-17-22)(9-1-23)T

~~**07. COVID-19.** The sections of this rule may be subject to amendment by the BLTC for the duration of the COVID-19 state of emergency. Please consult Medicaid Information Release MA20-15 for additional guidance.~~ (3-17-22)

305. PERSONAL CARE SERVICES: PROVIDER QUALIFICATIONS.

01. Provider Qualifications for Personal Assistants. All personal assistants must have at least one (1) of the following qualifications: (3-17-22)

a. ~~Licensed Registered Nurse (RN). A person currently licensed by the Idaho State Board of Nursing as a licensed registered nurse;~~ (3-17-22)(9-1-23)T

b. ~~Licensed Practical Nurse (LPN). A person currently licensed by the Idaho State Board of Nursing as a licensed practical nurse; or~~ (3-17-22)(9-1-23)T

c. Personal Assistant. A person who meets the standards of Section 39-5603, Idaho Code, and receives training to ensure the quality of services. The assistant must be at least age eighteen (18) years of age. The ~~BLTC Department~~ may require a certified nursing assistant (CNA) if, in their professional judgment, the participant's medical condition warrants a CNA. (3-17-22)(9-1-23)T

02. Provider Training Requirements. In the case where care is provided in the participant's own home, and the participant has a developmental disability that is not physical only and requires more than physical assistance, all those who provide care must have: (3-17-22)

a. Completed one (1) of the Department-approved developmental disabilities training courses; or (3-17-22)

b. Experience providing direct services to people with developmental disabilities. (3-17-22)

c. ~~BLTC determines~~Department approval of whether developmental disability training is required. Providers who are qualified as QIDPs are exempted from the Department-approved developmental disabilities training course. (3-17-22)(9-1-23)T

d. ~~In order~~Regional approval. †To serve a participant with a developmental disability, a region may temporarily approve a PCS provider who meets all qualifications except for the required training course or experience, if all the following conditions are met: (3-17-22)(9-1-23)T

- i. The ~~BLTC~~ Department verifies that there are no other qualified providers available; (3-17-22)(9-1-23)T
 - ii. The provider is enrolled in the next available training course with a graduation date no later than six (6) months from the date of the request for temporary provider status; and (3-17-22)
 - iii. The supervising QIDP makes monthly visits until the provider graduates from the training program. (3-17-22)
- 03. Provider Exclusion.** If PCS is paid for by Medicaid, except in extraordinary circumstances as defined by the Department, a PCS service provider cannot be the spouse of any participant or be the parent of a participant if the participant is a minor child. (3-17-22)(9-1-23)T
- 04. Care Delivered in Provider's Home for a Child.** When care for a child is delivered in the provider's home, the provider must be licensed or certified for the appropriate level of child foster care or day care. The provider must be licensed for care of individuals under age eighteen (18), as defined in under Section 39-1213, Idaho Code. Noncompliance with these standards is cause for termination of the ~~provider's~~ provider agreement. (3-17-22)(9-1-23)T
- 05. Care Delivered in Provider's Home for an Adult.** When care for an adult is provided in a home owned or leased by the provider, the provider must be certified as a ~~Certified Family Home~~ under IDAPA 16.03.19, "Certified Family Homes." (3-17-22)(9-1-23)T
- 06. ~~Criminal History Background~~ Check.** All PCS providers, including service coordinators, RN supervisors, QIDP supervisors, and personal assistants, must participate in obtain a criminal history background check as required by Section 39-5604, Idaho Code. The ~~criminal history background~~ check must be conducted in accordance with under IDAPA 16.05.06, "Criminal History and Background Checks." (3-17-22)(9-1-23)T
- 07. Health Screen.** Each Personal Assistance Agency employee who serves as a personal assistant must complete a health questionnaire. Personal Assistance Agencies must retain the health questionnaire in their personnel files. If the personal assistant indicates on the questionnaire that they have a medical problem, they are required to submit a statement from a physician or authorized provider that their medical condition does not prevent them from performing all the duties required of a personal care provider. Misrepresentation of information submitted on the health questionnaire may be cause for termination of employment for the personal assistant and would disqualify the employee to provide services to Medicaid participants. (3-17-22)

(BREAK IN CONTINUITY OF SECTIONS)

308. PERSONAL CARE SERVICES (PCS): QUALITY ASSURANCE.

- 01. Responsibility for Quality.** Personal Assistance Agencies, RALFs, and CFHs furnishing PCS are responsible for assuring that they provideing quality services in compliance with applicable rules. (3-17-22)(9-1-23)T
- 02. Review Results.** Results of quality assurance reviews conducted by the Department must be transmitted to the provider within forty-five (45) days after the review is completed. (3-17-22)
- 03. Quality Improvement Plan.** The provider must respond within forty-five (45) days after the results are received. If problems are identified, the provider must implement a quality improvement plan and report the results to the Department upon request. (3-17-22)
- 04. HCBS Compliance.** Personal Assistance Agencies are responsible for ensuring they meet the setting requirements described in under Section 313 of these rules. RALFs, and CFHs are responsible for ensuring that they meet the setting requirements described in under Sections 313 and 314 of these rules. All providers furnishing PCS are responsible for ensuring they meet the person-centered planning requirements described in under

Sections 316 through 317 of these rules. PCS providers must comply with associated Department quality assurance activities. The Department may take enforcement actions ~~as described in~~ under IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 205, if the provider fails to comply with any term or provision of the provider agreement, or any applicable state or federal regulation. (3-17-22)(9-1-23)T

~~05. COVID-19. The sections of this rule may be subject to amendment by the BLTC for the duration of the COVID-19 state of emergency. Please consult Medicaid Information Release MA20-15 for additional guidance.~~ (3-17-22)

(BREAK IN CONTINUITY OF SECTIONS)

314. RESIDENTIAL PROVIDER-OWNED OR CONTROLLED SETTING QUALITIES.

In addition to the setting requirements ~~described in~~ under Section 313 of these rules, provider-owned or controlled settings, including ~~Residential Assisted Living Facilities~~ and ~~Certified Family Homes~~ that provide services to HCBS participants, must ~~also~~ meet the following conditions: (3-17-22)(9-1-23)T

01. Written Agreement. A lease, residency agreement, admission agreement, or other form of written agreement will be in place for each HCBS participant at the time of occupancy. The lease or residency agreement must provide protections that address eviction processes and appeals comparable to those provided under Idaho landlord tenant law. (3-17-22)

02. Privacy. Participants have the right to privacy within their residence. Each participant must have privacy in their sleeping or living unit to include the following: (3-17-22)

a. The right to entrance doors that are lockable by the individual, with only appropriate staff having keys to doors. (3-17-22)

b. Participants sharing units have a choice of roommates in that setting. (3-17-22)

03. Décor. Participants have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. (3-17-22)

04. Schedules and Activities. Participants have the freedom and support to control their own schedules and activities. (3-17-22)

05. Access To Food. Participants have access to food at any time. (3-17-22)

~~06. Visitors. Participants are able to have visitors of their choosing at any time in accordance with the applicable requirements under IDAPA 16.03.19, "Certified Family Homes," and IDAPA 16.03.22, "Residential Assisted Living Facilities." Except, through the duration of the declared COVID-19 public health emergency, CFH providers may restrict visitation to minimize the spread of the COVID-19 infection.~~ (3-17-22)

07. Accessibility. The setting is physically accessible to the participant. (3-17-22)

(BREAK IN CONTINUITY OF SECTIONS)

317. HOME AND COMMUNITY-BASED PERSON-CENTERED SERVICE PLAN REQUIREMENTS.

All person-centered service plans must reflect the following components: (3-17-22)

01. Services And Supports. Clinical services and supports that are important for the participant's behavioral, functional, and medical needs as identified through an assessment. (3-17-22)

02. Service Delivery Preferences. Indication of what is important to the participant ~~with regard to~~

about the service provider and preferences for the delivery of such services and supports. ~~(3-17-22)~~(9-1-23)T

03. Setting Selection. HCBS settings selected by the participant or the participant’s decision-making authority are chosen from among a variety of setting options, as required in Section 313 of these rules. The person-centered service plan must identify and document the alternative home and community setting options that were considered by the participant, or the participant’s decision-making authority. (3-17-22)

04. Participant Strengths and Preferences. (3-17-22)

05. Individually Identified Goals and Desired Outcomes. (3-17-22)

06. Paid and Unpaid Services and Supports. ~~Paid and unpaid services and supports that will a~~ssist the participant to achieve identified goals, and the providers of those services and supports, including natural supports. ~~(3-17-22)~~(9-1-23)T

07. Risk Factors. Risk factors to the participant as well as people around the participant and measures in place to minimize them, including individualized back-up plans and strategies when needed. (3-17-22)

08. Understandable Language. Be understandable to the participant receiving services and supports, and the individuals important in supporting them. ~~At a minimum, t~~he written plan must be understandable, and written in plain language ~~in a manner~~ that is accessible to participants with disabilities and ~~persons who are have~~ limited English proficiency, consistent with 42 CFR 435.905(b). ~~(3-17-22)~~(9-1-23)T

09. Plan Monitor. Identify the name of the individual or entity responsible for monitoring the plan. (3-17-22)

10. Plan Signatures. Be finalized and agreed to, by the participant, or the participant’s decision-making authority, in writing, indicating informed consent. The plan must also be signed by the plan developer and all individuals and providers responsible for its implementation indicating they will deliver services according to the authorized plan of service and consistent with home and community-based requirements. ~~(3-17-22)~~(9-1-23)T

a. Children’s DD service providers responsible for implementation of the plan include the providers of those services ~~defined in~~ under Section 523 of these rules. ~~(3-17-22)~~(9-1-23)T

b. Adult DD service providers responsible for implementation of the plan include those required to develop a provider implementation plan ~~as defined in~~ under Sections 513 and 654 of these rules. ~~(3-17-22)~~(9-1-23)T

c. Consumer-directed service providers responsible for implementation of the plan include the participant, Support Broker, and Fiscal Employment Agency ~~as identified in~~ under IDAPA 16.03.13, “Consumer-Directed Services.” ~~(3-17-22)~~(9-1-23)T

d. Personal Care and Aged and Disabled Waiver service providers responsible for the implementation of the plan include the providers of those services ~~defined in~~ under Sections 303 and 326 of these rules. Alternate format signatures may be used; refer to Medicaid Information Release MA20-15 for guidance. ~~(3-17-22)~~(9-1-23)T

11. Plan Distribution. Be distributed to the participant and the participant’s decision-making authority, if applicable, and other people involved in the implementation of the plan. ~~At a minimum, t~~he following providers will receive a copy of the plan: ~~(3-17-22)~~(9-1-23)T

a. Children’s DD providers of services ~~defined in~~ under Section 523 of these rules as identified on the plan of service developed by the family-centered planning team. ~~(3-17-22)~~(9-1-23)T

b. Adult DD service providers required to develop a provider implementation plan ~~as defined in~~ under Sections 513 and 654 of these rules. Additionally, the participant will determine during the person-centered planning process whether the service plan, in whole or in part, will be distributed to any other developmental disability service provider. ~~(3-17-22)~~(9-1-23)T

c. Consumer-Directed service providers ~~as defined in under~~ IDAPA 16.03.13, “Consumer-Directed Services,” Section 110. Additionally, the participant, or the participant’s decision-making authority will determine during the person-centered planning process whether the service plan, in whole or in part, will be distributed to any other community support worker or vendors. ~~(3-17-22)(9-1-23)T~~

d. Personal Care and Aged and Disabled Waiver service providers furnishing those services ~~defined in under~~ Sections 303 and 326 of these rules. ~~(3-17-22)(9-1-23)T~~

12. Residential Requirements. For participants living in residential provider-owned or controlled settings ~~as described in under~~ Section 314 of these rules, the following additional requirements apply: ~~(3-17-22)(9-1-23)T~~

a. Options ~~described in under~~ Subsection 317.03 of this rule must include a residential setting option that allows for private units. Selection of residential settings will be based on the participant’s needs, preferences, and resources available for room and board. ~~(3-17-22)(9-1-23)T~~

b. Any exception to residential provider-owned or controlled setting qualities ~~as described in under~~ Section 314 of these rules must be documented in the person-centered plan ~~as described in under~~ Section 315 of these rules. ~~(3-17-22)(9-1-23)T~~

(BREAK IN CONTINUITY OF SECTIONS)

320. AGED AND DISABLED WAIVER SERVICES.

~~01. Description of Aged and Disabled Services.~~ Idaho's elderly and physically disabled citizens should be able to maintain self-sufficiency, individuality, independence, dignity, choice, and privacy in a cost-effective home-like setting. When possible, services should be available in the participant’s own home and community regardless of their age, income, or ability and should encourage the involvement of natural supports, such as family, friends, neighbors, volunteers, church, and others. ~~(3-17-22)(9-1-23)T~~

~~02. Temporary Changes to Aged and Disabled Rules During Declared State of Emergency Related to Novel Coronavirus Disease (COVID-19).~~ In response to Idaho’s declaration on 3/13/20 of a state of emergency related to COVID-19, the Department reserves the right to temporarily alter requirements and processes related to Aged and Disabled waiver services, currently and through the duration of the emergency state, in order to mitigate spread of disease and to ensure the health and safety of our participants under the guidance and authority of the provisions in a CMS approved 1135 waiver or HCBS Attachment K amendment to the existing Aged and Disabled waiver. Guidance for approved flexibilities is posted at <https://healthandwelfare.idaho.gov/providers/idaho-medicaid-providers/information-medicaid-providers>. ~~(3-17-22)~~

(BREAK IN CONTINUITY OF SECTIONS)

326. AGED AND DISABLED WAIVER SERVICES: COVERAGE AND LIMITATIONS.

01. **Adult Day Health.** ~~Adult day health is a~~ supervised, structured service generally furnished four (4) or more hours per day on a regularly scheduled basis, for one (1) or more days per week. It is provided outside the home of the participant in a non-institutional, community-based setting, and it encompasses health services, social services, recreation, supervision for safety, and assistance with ~~activities of daily living ADL~~ needed to ensure the optimal functioning of the participant. Adult day health services provided under this waiver will not include room and board payments. ~~(3-17-22)(9-1-23)T~~

02. **Adult Residential Care Services.** ~~Adult residential care services e~~Consist of a range of services provided in a homelike, non-institutional setting that includes RALFs and CFHs. Payment is not made for the cost of room and board, including the cost of building maintenance, upkeep, and improvement. ~~(3-17-22)(9-1-23)T~~

a. ~~Adult residential care services consist of a range of~~These services are provided in a congregate setting licensed under IDAPA 16.03.22, "Residential Assisted Living Facilities," that include: ~~(3-17-22)~~(9-1-23)T

- i. Medication assistance, to the extent permitted under State law; (3-17-22)
- ii. Assistance with ~~activities of daily living~~ ADL; ~~(3-17-22)~~(9-1-23)T
- iii. Meals, including special diets; (3-17-22)
- iv. Housekeeping; (3-17-22)
- v. Laundry; (3-17-22)
- vi. Transportation; (3-17-22)
- vii. Opportunities for socialization; (3-17-22)
- viii. Recreation; and (3-17-22)
- ix. Assistance with personal finances. (3-17-22)

x. Administrative oversight must be provided for all services provided or available in this setting. (3-17-22)

xi. A documented individual service plan must be negotiated between the participant or their legal representative, and a facility representative. (3-17-22)

b. ~~Adult residential care services also consist of a range of~~These services are provided in a setting licensed under IDAPA 16.03.19, "Certified Family Homes," that include: ~~(3-17-22)~~(9-1-23)T

- i. Medication assistance, to the extent permitted under State law; (3-17-22)
- ii. Assistance with ~~activities of daily living~~ ADL; ~~(3-17-22)~~(9-1-23)T
- iii. Meals, including special diets; (3-17-22)
- iv. Housekeeping; (3-17-22)
- v. Laundry; (3-17-22)
- vi. Transportation; (3-17-22)
- vii. Recreation; and (3-17-22)
- viii. Assistance with personal finances. (3-17-22)

ix. Administrative oversight must be provided for all services provided or available in this setting. (3-17-22)

x. A documented individual service plan must be negotiated between the participant or their legal representative, and a facility representative. (3-17-22)

03. Specialized Medical Equipment and Supplies. (3-17-22)

~~a. Specialized medical equipment and supplies include:~~ ~~(3-17-22)~~

~~ia.~~ Devices, controls, or appliances that enable a participant to increase their abilities to perform ~~activities of daily living~~ **ADL**, or to perceive, control, or communicate with the environment in which they live; and ~~(3-17-22)~~**(9-1-23)T**

~~ib.~~ Items necessary for life support, ancillary supplies and equipment necessary for the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid State Plan. (3-17-22)

~~ic.~~ Items reimbursed with waiver funds are in addition to any medical equipment and supplies furnished under the Medicaid State Plan and exclude those items that are not of direct medical or remedial benefit to the participant. (3-17-22)

04. Non-Medical Transportation. ~~Non-medical transportation e~~Enables a waiver participant to gain access to waiver and other community services and resources. ~~(3-17-22)~~**(9-1-23)T**

a. Non-medical transportation is offered in addition to medical transportation required in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," and will not replace it. (3-17-22)

b. Whenever possible, family, neighbors, friends, or community agencies who can provide this service without charge, or public transit providers will be utilized. (3-17-22)

05. Attendant Care. Services provided under a Medicaid Home and Community-Based Services waiver that involve personal and medically oriented tasks dealing with the functional needs of the participant and accommodating the participant's needs for long-term maintenance, supportive care, or ~~activities of daily living~~ **(ADL)**. These services may include personal assistance and medical tasks that can be done by unlicensed persons, or delegated to an unlicensed person by a licensed health care professional or the participant. Services are based on the participant's abilities and limitations, regardless of age, medical diagnosis, or other category of disability. This assistance may take the form of hands-on assistance (~~actually~~ performing a task for the person) or cueing to prompt the participant to perform a task. ~~(3-17-22)~~**(9-1-23)T**

06. Chore Services. ~~Chore services i~~Include the following ~~services~~ when necessary to maintain the functional use of the home, or to provide a clean, sanitary, and safe environment: ~~(3-17-22)~~**(9-1-23)T**

- a.** Intermittent assistance may include the following: (3-17-22)
 - i. Yard maintenance; (3-17-22)
 - ii. Minor home repair; (3-17-22)
 - iii. Heavy housework; (3-17-22)
 - iv. Sidewalk maintenance; and (3-17-22)
 - v. Trash removal to assist the participant to remain in the home. (3-17-22)
- b.** Chore activities may include the following: (3-17-22)
 - i. Washing windows; (3-17-22)
 - ii. Moving heavy furniture; (3-17-22)
 - iii. Shoveling snow to provide safe access inside and outside the home; (3-17-22)
 - iv. Chopping wood when wood is the participant's primary source of heat; and (3-17-22)
 - v. Tacking down loose rugs and flooring. (3-17-22)

c. These services are only available when neither the participant, nor anyone else in the household, is capable of performing or financially providing for them, and where no other relative, caregiver, landlord, community volunteer, agency, or third-party payer is willing to provide them or is responsible for their provision. (3-17-22)

d. In the case of rental property, the landlord's responsibility under the lease agreement will be examined prior to any authorization of service. Chore services are limited to the services provided in a home rented or owned by the participant. (3-17-22)

07. Companion Services. ~~Companion services~~ include non-medical care, supervision, and socialization provided to a functionally impaired adult. Companion services are in-home services to ensure the safety and well-being of a person who cannot be left alone because of frail health, a tendency to wander, inability to respond to emergency situations, or other conditions that would require a person on-site. The service provider, who may live with the participant, may provide voice cuing and occasional assistance with toileting, personal hygiene, dressing, and other ~~activities of daily living ADL~~. Providers may also perform light housekeeping tasks that are incidental to the care and supervision of the participant. However, the primary responsibility is to provide companionship and be there in case they are needed. ~~(3-17-22)~~(9-1-23)T

08. Consultation. ~~Consultation services are~~ services to a participant or family member. ~~Services that~~ are provided by a Personal Assistance Agency to a participant or family member to increase their skills as an employer or manager of their own care. Such services are directed at achieving the highest level of independence and self-reliance possible for the participant and the participant's family. Services include consulting with the participant and family to gain a better understanding of the special needs of the participant and the role of the caregiver. ~~(3-17-22)~~(9-1-23)T

09. Home-Delivered Meals. ~~Home delivered meals are~~ meals that are delivered to the participant's home to promote adequate participant nutrition. One (1) to two (2) meals per day may be provided to a participant who: ~~(3-17-22)~~(9-1-23)T

- a. Rents or owns a home; (3-17-22)
- b. Is alone for significant parts of the day; (3-17-22)
- c. Has no caregiver for extended periods of time; and (3-17-22)
- d. Is unable to prepare a meal without assistance. (3-17-22)

10. Homemaker Services. ~~Homemaker services~~ consist of performing for the participant, or assisting them with, or both, the following tasks: laundry, essential errands, meal preparation, and other routine housekeeping duties if there is no one else in the household capable of performing these tasks. ~~(3-17-22)~~(9-1-23)T

11. Environmental Accessibility Adaptations. ~~Environmental accessibility adaptations~~ include minor housing adaptations that are necessary to enable the participant to function with greater independence in the home, or without which, the participant would require institutionalization or have a risk to health, welfare, or safety. Such adaptations may include: ~~(3-17-22)~~(9-1-23)T

a. The installation of ramps and lifts, widening of doorways, modification of bathroom facilities, or installation of electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the waiver participant, but must exclude those adaptations or improvements to the home that are not of direct medical or remedial benefit to the participant, such as carpeting, roof repair, or central air conditioning. (3-17-22)

b. Unless otherwise authorized by the Department, permanent environmental modifications are limited to a home that is the participant's principal residence and is owned by the participant or the participant's non-paid family. (3-17-22)

c. Portable or non-stationary modifications may be made when such modifications can follow the participant to their next place of residence or be returned to the Department. (3-17-22)

12. Personal Emergency Response System ~~(PERS). PERS is a~~ An electronic device that enables a waiver participant to secure help in an emergency. The participant may also wear a portable “help” button to allow for mobility. The system is connected to the participant’s phone and programmed to signal a response center once a “help” button is activated. The response center is staffed by trained professionals. This service is limited to participants who: ~~(3-17-22)(9-1-23)T~~

- a. Rent or own a home, or live with unpaid caregivers; (3-17-22)
- b. Are alone for significant parts of the day; (3-17-22)
- c. Have no caregiver for extended periods ~~of time~~; and ~~(3-17-22)(9-1-23)T~~
- d. Would otherwise require extensive, routine supervision. (3-17-22)

13. Respite Care. ~~Respite care i~~ Includes short-term breaks from care giving responsibilities to non-paid caregivers. The caregiver or participant is responsible for selecting, training, and directing the provider. While receiving respite care services, the waiver participant cannot receive other services that are duplicative in nature. Respite care services provided under this waiver do not include room and board payments. Respite care services may be provided in the participant’s residence, a CFH, a ~~developmental disabilities agency DDA~~, a RALF, or an adult day health facility. ~~(3-17-22)(9-1-23)T~~

14. Skilled Nursing. ~~Skilled nursing i~~ Includes intermittent or continuous oversight, training, or skilled care that is within the scope of the Nurse Practice Act. Such care must be provided by an ~~licensed registered nurse RN~~, or ~~licensed practical nurse LPN~~ under the supervision of an ~~licensed registered nurse RN~~, licensed to practice in Idaho. These services are not appropriate if they are less cost-effective than a Home Health visit. ~~(3-17-22)(9-1-23)T~~

15. Habilitation Services. ~~Habilitation services a~~ Assist the participant to reside as independently as possible in the community, or maintain family unity. ~~(3-17-22)(9-1-23)T~~

a. ~~Residential habilitation.~~ Residential habilitation services consist of an integrated array of individually tailored services and supports furnished to eligible participants. These services and supports are designed to assist the participants to reside successfully in their own homes, with their families, or in ~~certified family homes CFHs~~. ~~The number of residents in a setting will be limited by an amount in the Idaho Medicaid Provider Handbook, unless otherwise authorized by the Department.~~ The services and supports that may be furnished consist of the following: ~~(3-17-22)(9-1-23)T~~

i. Self-direction consists of identifying and responding to dangerous or threatening situations, making decisions and choices affecting the individual's life, and initiating changes in living arrangements or life activities; (3-17-22)

ii. Money management consists of training or assistance in handling personal finances, making purchases, and meeting personal financial obligations; (3-17-22)

iii. Daily living skills consist of training in accomplishing routine housekeeping tasks, meal preparation, dressing, personal hygiene, self-administration of medications, and other areas of daily living including proper use of adaptive and assistive devices, ~~and~~ appliances, as well as following home safety, first aid, and emergency procedures; ~~(3-17-22)(9-1-23)T~~

iv. Socialization consists of training or assistance in participation in general community activities and establishing relationships with peers with an emphasis on connecting the participant to their community. Socialization training associated with participation in community activities includes assisting the participant to identify activities of interest, working out arrangements to participate in such activities, and identifying specific training activities necessary to assist the participant to continue to participate in such activities on an on-going basis. Socialization training does not include participation in nontherapeutic activities that are merely diversional or recreational in nature; (3-17-22)

v. Mobility consists of training or assistance aimed at enhancing movement within the person's living arrangement, mastering the use of adaptive aids and equipment, accessing and using public transportation, independent travel, or movement within the community; ~~or~~ (3-17-22)(9-1-23)T

vi. Behavior shaping and management consist of training and assistance in appropriate expressions of emotions or desires, assertiveness, acquisition of socially appropriate behaviors, or extension of therapeutic services that consist of reinforcing physical, occupational, speech, and other therapeutic programs. (3-17-22)

vii. Personal assistance services necessary to assist the individual in daily living activities, household tasks, and such other routine activities as the person or the person's primary caregiver(s) ~~are is~~ unable to accomplish on their own behalf. Personal assistance activities include direct assistance with grooming, bathing, and eating, assistance with medications that are ordinarily self-administered, supervision, communication assistance, reporting changes in the waiver participant's condition and needs, household tasks essential to health care at home to include general cleaning of the home, laundry, meal planning and preparation, shopping, and correspondence. (3-17-22)(9-1-23)T

b. ~~Day habilitation.~~ Day habilitation consists of assistance with acquisition, retention, or improvement in self-help, socialization, and adaptive skills that take place in a non-residential setting, separate from the home or facility in which the participant resides. Services will normally be furnished four (4) or more hours per day on a regularly scheduled basis, for one (1) or more days per week, unless provided as an adjunct to other day activities included in a participant's plan of care. Day habilitation services will focus on enabling the participant to attain or maintain their maximum functional level and will be coordinated with any physical therapy, occupational therapy, or speech-language pathology services listed in the plan of care. In addition, day habilitation services may serve to reinforce skills or lessons taught in school, therapy, or other settings. (3-17-22)(9-1-23)T

16. Supported Employment. ~~Supported employment e~~Consists of competitive work in integrated work settings for individuals with the most severe disabilities for whom competitive employment has not traditionally occurred, or for whom competitive employment has been interrupted or intermittent ~~as a result~~ because of a severe disability. Because of the nature and severity of their disability, these individuals need intensive supported employment services or extended services ~~in order~~ to perform such work. (3-17-22)(9-1-23)T

a. Supported employment services rendered under this waiver are not available under a program funded by either the Rehabilitation Act of 1973, as amended, or the Individuals with Disabilities Education Act (IDEA). Documentation must be maintained in the file of each individual receiving this service verifying that the service is not otherwise available or funded under the Rehabilitation Act of 1973, as amended, or the IDEA. (3-17-22)

b. Federal Financial Participation (FFP) cannot be claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following: (1) incentive payments made to an employer of waiver participants to encourage or subsidize the employer's participation in a supported employment program, (2) payments that are passed through to beneficiaries of a supported employment program, or (3) payments for vocational training that is not directly related to a waiver participant's supported employment program. (3-17-22)(9-1-23)T

17. Transition Services. ~~Transition services i~~Include goods and services that enable a participant residing in a nursing facility, hospital, IMD, or ICF/IID to transition to a community-based setting. A participant is eligible to receive transition services immediately following discharge from a qualified institution after residing within that institution for a minimum of forty-five (45) days. (3-17-22)(9-1-23)T

a. Qualified Institutions include the following: (3-17-22)

i. Skilled, or Intermediate Care Facilities; (3-17-22)

ii. Nursing Facilities; (3-17-22)

iii. ~~Licensed Intermediate Care Facilities for Persons with Intellectual Disabilities (ICF/IID);~~ (3-17-22)(9-1-23)T

- iv. Hospitals; and (3-17-22)
- v. Institutions for Mental Diseases (IMDs). (3-17-22)
- b.** Transition services may include the following goods and services: (3-17-22)
 - i. Security deposits that are required to obtain a lease on an apartment or home; (3-17-22)
 - ii. Cost of essential household furnishings, including furniture, window coverings, food preparation items, and bed/bath linens; (3-17-22)
 - iii. Set-up fees or deposits for utility or service access, including telephone, electricity, heating, and water; (3-17-22)
 - iv. Services necessary for the individual's health and safety such as pest eradication and one-time cleaning prior to occupancy; (3-17-22)
 - v. Moving expenses; and (3-17-22)
 - vi. Activities to assess need, ~~and~~ arrange for and procure transition services. ~~(3-17-22)~~(9-1-23)T
- c.** Excluded goods and services. Transition services do not include ongoing expenses, real property, ongoing utility charges, décor, or diversion/recreational items such as televisions, DVDs, and computers. (3-17-22)
- d.** ~~Service limitations.~~ Transition services are limited to a total cost of two thousand dollars (\$2,000) per participant and can be accessed every two (2) years, contingent upon a qualifying transition from an institutional setting. Transition services are furnished only to the extent that the participant is unable to meet such expense or when the support cannot be obtained from other sources. ~~(3-17-22)~~(9-1-23)T

(BREAK IN CONTINUITY OF SECTIONS)

328. AGED AND DISABLED WAIVER SERVICES: PROCEDURAL REQUIREMENTS.

01. Role of the Department. The Department ~~or its contractor~~ will provide for the administration of the UAI, and the development of the initial individual service plan. ~~This will be done either by Department staff or a contractor.~~ The Department ~~or its contractor~~ will review and approve all individual service plans, and will authorize Medicaid payment by type, scope, and amount. ~~(3-17-22)~~(9-1-23)T

a. Services that are not in the individual service plan approved by the Department ~~or its contractor~~ are not eligible for Medicaid payment. ~~(3-17-22)~~(9-1-23)T

b. Services ~~in excess of~~ more than those in the approved individual service plan are not eligible for Medicaid payment. ~~(3-17-22)~~(9-1-23)T

c. The earliest date that services may be approved by the Department ~~or its contractor~~ for Medicaid payment is the date that the participant's individual service plan is signed by the participant or their designee. ~~(3-17-22)~~(9-1-23)T

02. Pre-Authorization Requirements. All waiver services must be pre-authorized by the Department. Authorization will be based on the information from: (3-17-22)

a. The UAI; (3-17-22)

b. The individual service plan developed by the Department ~~or its contractor~~; and ~~(3-17-22)~~(9-1-23)T

c. Any other medical information that verifies the need for nursing facility services in the absence of the waiver services. (3-17-22)

03. UAI Administration. The UAI will be administered, and the initial individual service plan developed, by the Department ~~or its contractor.~~ (3-17-22)(9-1-23)T

04. Individual Service Plan. All waiver services must be authorized by the Department ~~or its contractor~~ in the Region where the participant will be residing and services provided based on a documented individual service plan. (3-17-22)(9-1-23)T

a. The initial individual service plan is developed by the Department ~~or its contractor,~~ based on the UAI, in conjunction with: (3-17-22)(9-1-23)T

i. The waiver participant, ~~(with efforts made by the Department or its contractor~~ to maximize the participant's involvement in the planning process by providing them with information and education regarding their rights); (3-17-22)(9-1-23)T

ii. The guardian, when appropriate; (3-17-22)

iii. The supervising nurse or case manager, when appropriate; and (3-17-22)

iv. Others identified by the waiver participant. (3-17-22)

b. The individual service plan must include the following: (3-17-22)

i. The specific type, amount, frequency, and duration of Medicaid-reimbursed waiver services to be provided; (3-17-22)

ii. Supports and service needs that are to be met by the participant's family, friends, neighbors, volunteers, church, and other community services; (3-17-22)

iii. The providers of waiver services when known; (3-17-22)

iv. Documentation that the participant has been given a choice between waiver services and institutional placement; and (3-17-22)

v. The signature of the participant or their legal representative, agreeing to the plan. (3-17-22)

c. The individual service plan must be revised and updated at least annually, based upon treatment results or a change in the participant's needs. (3-17-22)

d. All services reimbursed under the Aged and Disabled Waiver must be authorized by the Department ~~or its contractor~~ prior to the payment of services. (3-17-22)(9-1-23)T

e. The individual service plan, which includes all waiver services, is monitored by the Personal Assistance Agency, participant, family, and the Department ~~or its contractor.~~ (3-17-22)(9-1-23)T

05. Service Delivered Following a Documented Plan of Care. All services that are provided must be based on a documented plan of care. (3-17-22)

a. The plan of care is developed by the plan of care team that includes: (3-17-22)

i. The waiver participant with efforts made to maximize their participation on the team by providing them with information and education regarding their rights; (3-17-22)

ii. The guardian when appropriate; (3-17-22)

- iii. Service provider identified by the participant or guardian; and (3-17-22)
 - iv. May include others identified by the waiver participant. (3-17-22)
 - b.** The plan of care must be based on an assessment process approved by the Department. (3-17-22)
 - c.** The plan of care must include the following: (3-17-22)
 - i. The specific types, amounts, frequency, and duration of Medicaid-reimbursed waiver services to be provided; (3-17-22)
 - ii. Supports and service needs that are to be met by the participant's family, friends, and other community services; (3-17-22)
 - iii. The providers of waiver services; (3-17-22)
 - iv. Goals to be addressed within the plan year; (3-17-22)
 - v. Activities to promote progress, maintain functional skills, or delay or prevent regression; ~~and~~ (3-17-22)(9-1-23)T
 - vi. The signature of the participant or their legal representative; ~~and~~ (3-17-22)(9-1-23)T
 - vii. The signature of the agency or provider indicating that they will deliver services according to the authorized service plan and consistent with home and community-based requirements. (3-17-22)
 - d.** The plan must be revised and updated by the plan of care team based upon treatment results or a change in the participant's needs. A new plan must be developed and approved annually. (3-17-22)
 - e.** The Department's Nurse Reviewer monitors the plan of care and all waiver services. (3-17-22)
 - f.** The plan of care may be adjusted during the year with an addendum to the plan. These adjustments must be based on changes in a participant's need or demonstrated outcomes. Additional assessments or information may be clinically necessary. Adjustment of the plan of care is subject to prior authorization by the Department. (3-17-22)
- 06. Individual Service Plan and Plan of Care.** The development and documentation of the individual service plan and plan of care must meet the person-centered planning requirements described in Sections 316 and 317 of these rules. (3-17-22)
- 07. Provider Records.** Records will be maintained on each waiver participant. (3-17-22)
- a.** Each service provider must document each visit made or service provided to the participant, and will record ~~at a minimum~~ the following ~~information~~: (3-17-22)(9-1-23)T
 - i. Date and time of visit; (3-17-22)
 - ii. Services provided during the visit; (3-17-22)
 - iii. Provider observation of the participant's response to the service if appropriate to the service provided, including any changes in the participant's condition; and (3-17-22)
 - iv. Length of visit, including time in and time out; if appropriate to the service provided. Unless the Department ~~or its contractor~~ determines that the participant is unable to do so, the service delivery will be verified by the participant as evidenced by their signature on the service record. (3-17-22)(9-1-23)T
 - b.** The provider is required to keep the original service delivery record. A copy of the service delivery

record will be maintained and available in a format accessible to the participant. Failure to maintain documentation according to these rules will result in the recoupment of funds paid for undocumented services. (3-17-22)

c. The individual service plan initiated by the Department ~~or its contractor~~ must specify which waiver services are required by the participant. The plan will contain all elements required by Subsection 328.04.a. of ~~these~~ this rule and a copy of the most current individual service plan will be maintained in the participant's home and will be available to all service providers and the Department. A copy of the current individual service plan and UAI will be available from the Department ~~or its contractor~~ to each individual service provider with a release of information signed by the participant or legal representative. (3-17-22)(9-1-23)T

d. Record requirements for participants in RALFs are ~~described in~~ under IDAPA 16.03.22, "Residential Assisted Living Facilities." (3-17-22)(9-1-23)T

e. Record requirements for participants in CFHs are ~~described in~~ under IDAPA 16.03.19, "Certified Family Homes." (3-17-22)(9-1-23)T

f. EVV Systems as described in Section 041 of these rules will not take the place of documentation requirements of Subsection 328.07 of this rule, but maybe used to generate documentation retained in the participant's home. (3-17-22)

08. Provider Responsibility for Notification. The service provider is responsible to notify the Department ~~or its contractor~~, physician or authorized provider, or case manager, and family if applicable, when any significant changes in the participant's condition are noted during service delivery. Such notification will be documented in the service record. (3-17-22)(9-1-23)T

09. Records Retention. Personal Assistance Agencies, and other providers are responsible to retain their records for five (5) years following the date of service. (3-17-22)

10. Requirements for an Fiscal Intermediary (FI). Participants of PCS will have one (1) year from the date that services begin in their geographic region to obtain the services of an FI and become an employee in fact or to use the services of an agency. Provider qualifications are ~~in accordance with~~ under Section 329 of these rules. (3-17-22)(9-1-23)T

~~**11. COVID-19.** The sections of this rule may be subject to amendment by the BLTC for the duration of the COVID-19 state of emergency. Please consult Medicaid Information Release MA20-15 for additional guidance. (3-17-22)~~

329. AGED AND DISABLED WAIVER SERVICES: PROVIDER QUALIFICATIONS AND DUTIES. Each provider must have a signed provider agreement with the Department for each of the services it provides. (3-17-22)

01. Employment Status. Unless otherwise specified by the Department, each individual service provider must be an employee of record or fact of an agency. The Department may enter into provider agreements with individuals in situations in which no agency exists, or no fiscal intermediary agency is willing to provide services. Such agreements will be reviewed annually to verify whether coverage by a personal assistance agency or fiscal intermediary agency is still not available. (3-17-22)

02. Fiscal Intermediary Services. An agency that has responsibility for the following: (3-17-22)

a. ~~To d~~irectly assure compliance with legal requirements related to employment of waiver service providers; (3-17-22)(9-1-23)T

b. ~~To o~~ffer supportive services to enable participants or their families to perform the required employer tasks themselves; (3-17-22)(9-1-23)T

c. ~~To b~~ill the Medicaid program for services approved and authorized by the Department; (3-17-22)(9-1-23)T

- d. ~~To e~~Collect any participant participation due; (3-17-22)(9-1-23)T
- e. ~~To p~~Pay personal assistants and other waiver service providers for service; (3-17-22)(9-1-23)T
- f. ~~To p~~Perform all necessary withholding as required by state and federal labor and tax laws, rules, and regulations; (3-17-22)(9-1-23)T
- g. ~~To a~~Assure that personal assistants providing services meet the standards and qualifications under in this rule; (3-17-22)(9-1-23)T
- h. ~~To m~~Maintain liability insurance coverage; (3-17-22)(9-1-23)T
- i. ~~To e~~Conduct, at least annually, participant satisfaction or quality control reviews that are available to the Department and the ~~general~~ public; and (3-17-22)(9-1-23)T
- j. ~~To o~~Obtain such ~~criminal~~ background checks and health screens on new and existing employees of record and fact as required. (3-17-22)(9-1-23)T

03. Provider Qualifications. All providers of homemaker services, respite care, adult day health, transportation, chore services, companion services, attendant care, adult residential care, and home-delivered meals must meet, either by formal training or demonstrated competency, the training requirements contained in the provider training matrix and the standards for direct care staff and allowable tasks or activities in the Department's Aged and Disabled waiver as approved by CMS. (3-17-22)

- a. A waiver provider cannot be a relative of any participant to whom the provider is supplying services except for extraordinary circumstances as defined by the Department. (3-17-22)(9-1-23)T
- b. For the purposes of Section 329 of ~~these~~ this rules, a relative is defined as a spouse or parent of a minor child. (3-17-22)(9-1-23)T
- c. Individuals who provide direct care or services must ~~satisfactorily~~ complete a ~~criminal history and~~ background check ~~in accordance with~~ and receive a clearance under IDAPA 16.05.06, "Criminal History and Background Checks." (3-17-22)(9-1-23)T

04. Quality Assurance. Providers of Aged and Disabled waiver services are responsible for ensuring that they provide quality services in compliance with applicable rules. (3-17-22)

- a. The results of a quality assurance review conducted by the Department must be transmitted to the provider within forty-five (45) days after the review is completed. (3-17-22)
- b. The provider must respond to the quality assurance review within forty-five (45) days after the results are received from the Department. If problems are identified, the provider must implement a quality improvement plan and report the results to the Department upon request. (3-17-22)
- c. The Department may take enforcement actions as described in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 205, if the provider fails to comply with any term or provision of the provider agreement, or any applicable state or federal regulation. (3-17-22)

05. HCBS Setting Compliance. Providers of Aged and Disabled waiver services are responsible for ensuring that they meet the person-centered planning and setting quality requirements ~~described in~~ under Sections 311 through 318 of these rules, as applicable, and must comply with associated Department quality assurance activities. (3-17-22)(9-1-23)T

06. Specialized Medical Equipment and Supplies. Providers of specialized medical equipment and supplies must be enrolled in the Medicaid program as participating medical vendor providers. Providers must ensure all items meet applicable standards of manufacture, design, and installation. Preference will be given to equipment

and supplies that are the most cost-effective option to meet the participant's needs. (3-17-22)

07. Skilled Nursing Service Providers. ~~Skilled nursing service providers m~~Must be licensed in Idaho as a ~~n licensed registered nurse RN or licensed practical nurse LPN~~ in good standing, or must be practicing on a federal reservation and be licensed in another state. Skilled nursing providers who provide direct care and services must ~~satisfactorily~~ complete a ~~criminal history and~~ background check ~~in accordance with~~ and receive a clearance under IDAPA 16.05.06, "Criminal History and Background Checks." ~~(3-17-22)(9-1-23)T~~

08. Consultation Services. ~~Consultation services m~~Must be provided through a Personal Assistance Agency by a person who has demonstrated skills in training participants/family members in hiring, firing, training, and supervising their own care providers. ~~(3-17-22)(9-1-23)T~~

09. Adult Residential Care Providers. ~~Adult residential care providers w~~Will meet all applicable state laws and regulations. In addition, the provider must ensure that adequate staff are provided to meet the needs of the participants accepted for admission. Adult residential care providers who provide direct care or services must ~~satisfactorily~~ complete a ~~criminal history and~~ background check ~~in accordance with~~ and receive a clearance appropriate to the setting under IDAPA 16.03.19, "Certified Family Homes," or IDAPA 16.03.22, "Residential Assisted Living Facilities." ~~(3-17-22)(9-1-23)T~~

10. Providers of Home-Delivered Meals. ~~Providers of home delivered meals m~~Must be a public agency or private business, and must exercise supervision to ensure that: ~~(3-17-22)(9-1-23)T~~

a. Each meal meets one-third (1/3) of the Recommended Daily Allowance, as defined by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences; (3-17-22)

b. Meals are delivered ~~in accordance with~~ under the service plan, in a sanitary manner, and at the correct temperature for the specific type of food; ~~(3-17-22)(9-1-23)T~~

c. Documentation is maintained demonstrating that the meals served are made from the highest USDA grade for each specific food served; (3-17-22)

d. The agency or business is inspected and licensed as a food establishment under IDAPA 16.02.19, "Idaho Food Code"; (3-17-22)

e. A Registered Dietitian documents the review and approval of menus, menu cycles, and any changes or substitutions; and (3-17-22)

f. Either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff ~~in accordance with~~ under Subsection 329.03 of this rule have been met. ~~(3-17-22)(9-1-23)T~~

11. Personal Emergency Response Systems. ~~Personal emergency response system providers m~~Must demonstrate that the devices installed in a waiver participant's home meet Federal Communications Standards, ~~or~~ Underwriter's Laboratory Standards, or equivalent standards. ~~(3-17-22)(9-1-23)T~~

12. Adult Day Health Providers. ~~Providers of adult day health m~~Must meet the following requirements: ~~(3-17-22)(9-1-23)T~~

a. Services provided in a facility must be provided in a facility that meets the building and health standards identified in IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)." (3-17-22)

b. Services provided in a home must be provided in a home that meets the standards of home certification identified in IDAPA 16.03.19, "Certified Family Homes." (3-17-22)

c. Services provided in a RALF must be provided in a facility that meets the standards identified in IDAPA 16.03.22, "Residential Assisted Living Facilities." (3-17-22)

d. Adult day health providers who provide direct care or services must ~~satisfactorily~~ complete a ~~criminal history and background check in accordance with~~ and receive a clearance under IDAPA 16.05.06, "Criminal History and Background Checks." (3-17-22)(9-1-23)T

e. Providers of adult day health must notify the Department on behalf of the participant, if the adult day health is provided in a CFH other than the participant's primary residence. The adult day health provider must provide care and supervision appropriate to the participant's needs as identified on the plan. (3-17-22)

f. Adult day health providers who provide direct care or services must be free from communicable disease. (3-17-22)

g. All providers of adult day health services must meet, either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff ~~in accordance with~~ under Subsection 329.03 of this rule. (3-17-22)(9-1-23)T

13. Non-Medical Transportation Services. Providers of non-medical transportation services must: (3-17-22)

a. Possess a valid driver's license; (3-17-22)

~~b.~~ Complete a background check and receive a clearance under IDAPA 16.05.06, "Criminal History and Background Checks." (9-1-23)T

~~b.c.~~ Possess valid vehicle insurance; and (3-17-22)

~~e.d.~~ Meet, either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff ~~in accordance with~~ under Subsection 329.03 of this rule. (3-17-22)(9-1-23)T

14. Attendant Care Providers. ~~Attendant care providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with and receive a clearance under~~ IDAPA 16.05.06, "Criminal History and Background Checks." All providers of attendant care must meet, either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff ~~in accordance with~~ under Subsection 329.03 of this rule. (3-17-22)(9-1-23)T

15. Homemaker Services Providers. ~~The homemaker must be an employee of record or fact of an agency. Homemaker service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with and receive a clearance under~~ IDAPA 16.05.06, "Criminal History and Background Checks." All ~~providers of~~ homemaker services providers must meet, either by formal training or demonstrated competency, the training requirements contained in the Idaho provider training matrix and the standards for direct care staff ~~in accordance with~~ under Subsection 329.03 of this rule. (3-17-22)(9-1-23)T

16. Environmental Accessibility Adaptations. All services must be provided ~~in accordance with~~ under applicable state or local building codes and meet state or local building, plumbing, and electrical requirements for certification. (3-17-22)(9-1-23)T

17. Residential Habilitation Supported Living. When residential habilitation services are provided by an agency, the agency must be certified by the Department as a residential habilitation agency under IDAPA 16.04.17, "Residential Habilitation Agencies," and supervise the direct services provided. Individuals who provide residential habilitation services in the home of the participant (supported living) must be employed by a residential habilitation agency. Providers of residential habilitation services must meet the following requirements: (3-17-22)

a. ~~Direct service staff who provide direct care or services must meet the following minimum qualifications:~~ (3-17-22)(9-1-23)T

i. Be at least eighteen (18) years of age; (3-17-22)

- ii. Be a high school graduate, or have a GED, or demonstrate the ability to provide services according to a plan of service; (3-17-22)
- iii. Have current CPR and First Aid certifications; (3-17-22)
- iv. Be free from communicable disease; (3-17-22)
- v. Each staff person assisting with participant medications must successfully complete and follow the “Assistance with Medications” course available through the Idaho Professional Technical Education Program approved by the Idaho State Board of Nursing or other Department-approved training. (3-17-22)
- vi. ~~Residential habilitation service providers who provide direct care or services must satisfactorily~~ Complete a ~~criminal history and~~ background check ~~in accordance with~~ and receive a clearance under IDAPA 16.05.06, “Criminal History and Background Checks;” ~~(3-17-22)~~(9-1-23)T
- vii. Have appropriate certification or licensure if required to perform tasks that require certification or licensure. Direct service staff must also have taken a traumatic brain injury training course approved by the Department. (3-17-22)
- b. The provider agency is responsible for providing direct service staff with a traumatic brain injury training course approved by the Department, and training specific to the needs of the participant. (3-17-22)
- c. Prior to delivering services to a participant, agency direct service staff must complete an orientation program. ~~The orientation program must~~ that includes the following subjects: ~~(3-17-22)~~(9-1-23)T
- i. Purpose and philosophy of services; (3-17-22)
- ii. Service rules; (3-17-22)
- iii. Policies and procedures; (3-17-22)
- iv. Proper conduct in relating to waiver participants; (3-17-22)
- v. Handling of confidential and emergency situations that involve the waiver participant; (3-17-22)
- vi. Participant rights; (3-17-22)
- vii. Methods of supervising participants; (3-17-22)
- viii. Working with individuals with traumatic brain injuries; and (3-17-22)
- ix. Training specific to the needs of the participant. (3-17-22)
- d. Additional training requirements must be completed within six (6) months of employment with the residential habilitation agency and include ~~at a minimum:~~ ~~(3-17-22)~~(9-1-23)T
- i. ~~Instructional techniques:~~ Methodologies for training in a systematic and effective manner; ~~(3-17-22)~~(9-1-23)T
- ii. ~~Managing behaviors:~~ Techniques and strategies for teaching adaptive behaviors; ~~(3-17-22)~~(9-1-23)T
- iii. Feeding; (3-17-22)
- iv. Communication; (3-17-22)

- v. Mobility; (3-17-22)
- vi. ~~Activities of daily living~~ADL; (~~3-17-22~~)(9-1-23)T
- vii. Body mechanics and lifting techniques; (3-17-22)
- viii. Housekeeping techniques; and (3-17-22)
- ix. Maintenance of a clean, safe, and healthy environment. (3-17-22)

e. The provider agency will be responsible for providing on-going training specific to the needs of the participant as needed. (3-17-22)

18. Day Habilitation Providers. ~~Providers of day habilitation services m~~Must have a minimum of two (2) years of experience working directly with persons with a traumatic brain injury, ~~must~~ provide documentation of standard licensing specific to their discipline, and ~~must~~ have taken a traumatic brain injury course approved by the Department. Day habilitation providers who provide direct care and services must ~~satisfactorily~~ complete a ~~criminal history and~~ background check ~~in accordance with~~ and receive a clearance under IDAPA 16.05.06, "Criminal History and Background Checks." (~~3-17-22~~)(9-1-23)T

19. Respite Care Providers. ~~Providers of respite care services m~~Must meet the following ~~minimum~~ qualifications: (~~3-17-22~~)(9-1-23)T

- a. Have received care-giving instructions in the needs of the person who will be provided the service; (3-17-22)
- b. Demonstrate the ability to provide services according to a plan of service; (3-17-22)
- c. Be free of communicable disease; and (3-17-22)
- d. Respite care service providers who provide direct care and services must ~~satisfactorily~~ complete a ~~criminal history and~~ background check ~~in accordance with~~ and receive a clearance under IDAPA 16.05.06, "Criminal History and Background Checks." (~~3-17-22~~)(9-1-23)T

20. Supported Employment Services. ~~Supported employment services m~~Must be provided by an agency that supervises the direct service and is accredited by the Commission on Accreditation of Rehabilitation Facilities, other comparable standards, or meet State requirements to be a State-approved provider. Supported employment service providers who provide direct care or services must ~~satisfactorily~~ complete a ~~criminal history and~~ background check ~~in accordance with~~ and receive a clearance under IDAPA 16.05.06, "Criminal History and Background Checks." (~~3-17-22~~)(9-1-23)T

21. Chore Services Providers. ~~Providers of chore services m~~Must meet the following ~~minimum~~ qualifications: (~~3-17-22~~)(9-1-23)T

- a. Be skilled in the type of service to be provided; ~~and~~. (~~3-17-22~~)(9-1-23)T
- b. Demonstrate the ability to provide services according to a plan of service. (3-17-22)
- c. Chore service providers who provide direct care and services must ~~satisfactorily~~ complete a ~~criminal history and~~ background check ~~in accordance with~~ and receive a clearance under IDAPA 16.05.06, "Criminal History and Background Checks." (~~3-17-22~~)(9-1-23)T

d. Meet, either by formal training or demonstrated competency, the training requirements in the Idaho provider training matrix and the standards for direct care staff ~~in accordance with~~ under Subsection 329.03 of this rule. (~~3-17-22~~)(9-1-23)T

22. Transition Services. Transition managers as described in Section 350.01 of these rules are

responsible for administering transition services. (3-17-22)

~~23. COVID-19. The sections of this rule may be subject to amendment by the BLTC for the duration of the COVID-19 state of emergency. Please consult Medicaid Information Release MA20-15 for additional guidance.~~ (3-17-22)

(BREAK IN CONTINUITY OF SECTIONS)

350. TRANSITION MANAGEMENT.

Transition management provides relocation assistance and intensive service coordination activities to assist nursing facility, hospital, IMD, and ICF/IID residents to transition to community settings of their choice. Transition managers provide oversight and coordination activities for participants during a transitional period up to twelve (12) months following a return to the community. This provider type will function as a liaison between the participant, institutional or facility discharge staff, and other individuals as designated by the participant and the Department to support a successful and sustainable transition to the community. A participant is eligible to receive transition management when planning to discharge from a qualifying institution after residing within that institution for a minimum of forty-five (45) days. (3-17-22)

01. Provider Qualifications. Transition managers must: (3-17-22)

a. ~~Satisfactorily e~~Complete a ~~criminal history and~~ background check ~~in accordance with~~ and receive a ~~clearance under~~ IDAPA 16.05.06, "Criminal History and Background Checks"; (3-17-22)(9-1-23)T

b. Have documented successful completion of the Department-approved Transition Manager training prior to providing any transition management and transition services; (3-17-22)

c. Have a Bachelor's Degree in a human services field from a nationally accredited university or college, or three (3) years' supervised work experience with the population being served; and (3-17-22)

d. Be employed with a provider type approved by the Department. (3-17-22)

02. Service Description. Transition management includes the following activities: (3-17-22)

a. A comprehensive assessment of health, social, and housing needs; (3-17-22)

b. Development of housing options with each participant, including assistance with housing choices, applications, waitlist follow-up, roommate selection, and introductory visits; (3-17-22)

c. Assistance with tasks necessary to accomplish a move from the institutional setting; (3-17-22)

d. Securing Transition Services ~~in accordance with~~ under Subsection 326.17 or Subsection 703.15 of these rules ~~in order~~ to make arrangements necessary to move, including: (3-17-22)(9-1-23)T

i. Obtaining durable medical equipment, assistive technology, and medical supplies, if needed; (3-17-22)

ii. Arranging for home modifications, if needed; (3-17-22)

iii. Applying for public assistance, if needed; (3-17-22)

iv. Arranging household preparations including scheduling moving and/or cleaning services, utility set-up, purchasing furniture, and household supplies, if needed. (3-17-22)

e. Coordinating with others involved in plan development for the participant to ensure successful transition and establishment in a community setting; (3-17-22)

f. Providing post-transition support, including assistance with problem solving, dependency and isolation concerns, consumer-directed services and supports, post-secondary educational institutions and proprietary schools when applicable, and community inclusion. (3-17-22)(9-1-23)T

03. **Service Limitations.** Transition management is limited to seventy-two (72) hours per participant per qualifying transition. (3-17-22)

~~04. **Temporary Changes to Transition Management Rules During Declared State of Emergency Related to Novel Coronavirus Disease (COVID-19).** In response to Idaho's declaration on 3/13/20 of a state of emergency related to COVID-19, the Department reserves the right to temporarily alter requirements and processes related to Transition Management services, currently and through the duration of the emergency state, in order to mitigate spread of disease and to ensure the health and safety of our participants under the guidance and authority of the provisions in a CMS approved 1135 waiver. Guidance for approved flexibilities is posted at <https://healthandwelfare.idaho.gov/providers/idaho-medicaid-providers/information-medicaid-providers>. (3-17-22)~~

(BREAK IN CONTINUITY OF SECTIONS)

504. -- 506. (RESERVED)

506. ADULT DEVELOPMENTAL DISABILITY SERVICES: ADMINISTRATIVE APPEALS.

01. **Appealable Decisions.** Applicants to or participants in the Adult DD Services Program may file an administrative appeal if they disagree with a Department decision affecting individual rights, including final decisions made under the following: (9-1-23)T

- a. Program eligibility determinations under these rules; (9-1-23)T
- b. Program assessment results under these rules; (9-1-23)T
- c. Budget assignments under these rules; (9-1-23)T
- d. Exception review decisions under these rules; and (9-1-23)T
- e. Authorization of services, plans of service, or both, under these rules. (9-1-23)T

02. **Appeals Process.** Administrative appeal processes are under IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings." (9-1-23)T

(BREAK IN CONTINUITY OF SECTIONS)

508. ADULT DEVELOPMENTAL DISABILITY SERVICES PRIOR AUTHORIZATION: DEFINITIONS.

~~For the purposes of these rules the following terms are used as defined below:~~ (3-17-22)

- 01. **Adult.** A person ~~who is~~ eighteen (18) years ~~of age~~ old or older. (3-17-22)(9-1-23)T
- 02. **Assessment.** A process ~~that is described in~~ under Section 509 of these rules for program eligibility and ~~in~~ Section 512 of these rules for plan of service. (3-17-22)(9-1-23)T
- 03. **Clinical Review.** A process of professional review that validates the need for continued services. (3-17-22)

- 04. Community Crisis Support.** Intervention for participants who are at risk of losing housing, employment, or income, or who are at risk of incarceration, physical harm, family altercations, or other emergencies. (3-17-22)
- 05. Concurrent Review.** A clinical review to determine the need for continued prior authorization of services. (3-17-22)
- 06. Department-Approved Assessment Tool.** Any standardized assessment tool approved by the Department for use in determining ~~developmental disability~~ DD eligibility, waiver eligibility, skill level to identify the participant's needs for the plan of service, and for determining the participant's budget. ~~(3-17-22)~~(9-1-23)T
- 07. Duplication of Services.** When goals are not separate and unique to each service provided, or when more than one (1) service is provided at the same time, unless otherwise authorized. (9-1-23)T
- 078. Exception Review.** A clinical review of a plan that falls outside the established standards due to a health or safety risk. ~~(3-17-22)~~(9-1-23)T
- 09. Health.** The prevention of deterioration of one's physical or mental health condition, cognitive functioning, or an increase in maladaptive behavior, and is related to the effects of one's disability. (9-1-23)T
- 10. Health Risks.** Must be established through written documentation and current treatment recommendations from a licensed practitioner of the healing arts under these rules, or other professional licensed by the State of Idaho whose recommendation is within the scope of their license. Such documentation must establish: (9-1-23)T
- a.** The current physical or mental condition, or cognitive functioning that will likely deteriorate, or the current maladaptive behavior(s) that will likely increase; and (9-1-23)T
- b.** The specific supports or services being requested, including type and frequency if applicable, that will address the identified need. (9-1-23)T
- c.** To comply with the documentation requirement, the Department may require the participant to obtain additional consultation or assessment, available to the participant and covered by Medicaid, from a professional licensed by the State of Idaho acting within the scope of their license. If the Department requires additional consultation or assessment, the Department will specify the nature of the consultation or assessment and the necessary documentation. (9-1-23)T
- 0811. Interdisciplinary Team.** ~~For purposes of these rules, the interdisciplinary team is a~~ team of professionals, determined by the Department, that reviews requests for reconsideration. ~~(3-17-22)~~(9-1-23)T
- 0912. Level of Support.** An assessment score derived from a Department-approved assessment tool that indicates types and amounts of services and supports necessary to allow the individual to live independently and safely in the community. (3-17-22)
- 1013. Person-Centered Planning Process.** A meeting facilitated by the participant or plan developer, comprised of family and individuals significant to the participant who collaborate with the participant to develop the plan of service. (3-17-22)
- 1114. Person-Centered Planning Team.** The group who develops the plan of service. This group includes, ~~at a minimum,~~ the participant and the service coordinator or plan developer chosen by the participant. The person-centered planning team may include others identified by the participant or agreed upon by the participant and the Department as important to the process. ~~(3-17-22)~~(9-1-23)T
- 1215. Plan Developer.** A paid or non-paid person identified by the participant ~~who is~~ responsible for developing one (1) plan of service and subsequent addenda that cover all services and supports, based on a person-centered planning process. ~~(3-17-22)~~(9-1-23)T

- ~~13~~**16.** **Plan Monitor.** A person who oversees the provision of services on a paid or non-paid basis. (3-17-22)
- ~~14~~**17.** **Plan of Service.** An initial or annual plan that identifies all services and supports based on a person-centered planning process. Plans are authorized ~~annually~~ every three hundred sixty-five (365) days. (~~3-17-22~~)(9-1-23)T
- ~~15~~**18.** **Prior Authorization (PA).** A process for determining a participant's eligibility for services and medical necessity prior to the delivery or payment of services as provided by these rules. (3-17-22)
- ~~16~~**19.** **Provider Status Review.** The written documentation that identifies the participant's progress toward goals defined in the plan of service. (3-17-22)
- ~~17~~**20.** **Right Care.** Accepted treatment for defined diagnosis, functional needs, and abilities to achieve the desired outcome. The right care is consistent with best practice and continuous quality improvement. (3-17-22)
- ~~18~~**21.** **Right Place.** Services delivered in the most integrated setting in which they normally occur, based on the participant's choice to promote independence. (3-17-22)
- ~~19~~**22.** **Right Price.** The most integrated and least expensive services that are sufficiently intensive to address the participant's needs. The amount is based on the individual's needs for services and supports as identified in the assessment. (3-17-22)
- ~~20~~**23.** **Right Outcomes.** Services based on assessed need that ensure the health and safety of the participant and result in progress, maintenance, or delay or prevention of regression for the participant. (3-17-22)
- ~~24.~~ **24.** Safety. Prevention of criminal activity, destruction of property, or injury or harm to self or others. (9-1-23)T
- ~~25.~~ **25.** Safety Risks. Must be documented by the following: (9-1-23)T
- ~~a.~~ **a.** Current incident reports; (9-1-23)T
- ~~b.~~ **b.** Police reports; (9-1-23)T
- ~~c.~~ **c.** Assessments from a licensed practitioner of the healing arts under these rules or a professional licensed in Idaho and whose assessment is within the scope of their license; or (9-1-23)T
- ~~d.~~ **d.** Status reports and implementation plans that reflect the type and frequency of intervention(s) in place to prevent the risk and the participant's progress under such intervention(s). (9-1-23)T
- ~~e.~~ **e.** Such documentation must establish: (9-1-23)T
- ~~i.~~ **i.** An imminent or likely safety risk; and (9-1-23)T
- ~~ii.~~ **ii.** The specific supports or services that are being requested, including the type and frequency if applicable, that are likely to prevent that risk. (9-1-23)T
- ~~21~~**26.** **Service Coordination.** ~~Service coordination is a~~An activity ~~which that~~ assists individuals eligible for Medicaid in gaining and coordinating access to necessary care and services appropriate to the needs of an individual. (~~3-17-22~~)(9-1-23)T
- ~~22~~**27.** **Service Coordinator.** An individual who provides service coordination to a Medicaid-eligible participant, is employed by a service coordination agency, and meets the training, experience, and other requirements under Sections 729 through 732 of these rules. (3-17-22)
- ~~23~~**28.** **Services.** Services paid for by the Department that enable the individual to reside safely and

effectively in the community. (3-17-22)

2429. Supports. Formal or informal services and activities, not paid for by the Department, that enable the individual to reside safely and effectively in the setting of their choice. (3-17-22)

(BREAK IN CONTINUITY OF SECTIONS)

511. ADULT DEVELOPMENTAL DISABILITY SERVICES PRIOR AUTHORIZATION: COVERAGE AND LIMITATIONS.

The ~~is scope of these~~ rules defines prior authorization for the following Medicaid ~~developmental disability~~ DD services for adults: (3-17-22)(9-1-23)T

01. DD Waiver Services. ~~DD Waiver s~~Services ~~as~~ described in Sections 700 through 719 of these rules; ~~and~~. (3-17-22)(9-1-23)T

02. Developmental Therapy. ~~Developmental t~~Therapy ~~as~~ described in Sections 649 through 657 of these rules and IDAPA 16.03.21, “Developmental Disabilities Agencies (DDA).” ~~and~~ (3-17-22)(9-1-23)T

03. Service Coordination. Service ~~Coordination~~ for persons with developmental disabilities as described in Sections 720 through 779 of these rules. (3-17-22)(9-1-23)T

04. Residential Habilitation - Supported Living. The number of residents in a setting is limited by an amount in the Idaho Medicaid Provider Handbook, unless otherwise authorized by the Department. (9-1-23)T

(BREAK IN CONTINUITY OF SECTIONS)

513. ADULT DEVELOPMENTAL DISABILITY SERVICES PRIOR AUTHORIZATION: PLAN OF SERVICE.

In collaboration with the participant, the Department will assure that the participant has one (1) plan of service. ~~This plan of service that~~ is based on the individualized participant budget referred to in Section 514 of these rules and must identify all services and supports. Participants may develop their own plan or designate a paid or non-paid plan developer. In developing the plan of service, the plan developer and the participant must identify services and supports available outside of Medicaid-funded services that can help the participant meet desired goals. Authorized services must be delivered by providers who are selected by the participant. (3-17-22)(9-1-23)T

01. Qualifications of a Paid Plan Developer. Neither a provider of direct service to the participant nor the assessor may be chosen to be the paid plan developer. Family members and all others who wish to be paid for plan development must be employed as a service coordinator as defined in Sections 729 through 732 of these rules. (3-17-22)

02. Plan Development. All participants must direct the development of their service plan through a person-centered planning process. Individuals invited to participate in the person-centered planning process will be identified by the participant and may include family members, guardian, or individuals who are significant to the participant. In developing the plan of service, the plan developer and participant must identify any services and supports available outside of Medicaid-funded services that can help the participant meet desired goals and outcomes. (3-17-22)

a. The plan of service must be submitted within forty-five (45) days prior to the expiration of the existing plan of service unless delayed because of participant unavailability due to extenuating circumstances. If the plan is not submitted within this ~~time~~ period, authorization for provider payments may be terminated. (3-17-22)(9-1-23)T

b. The plan development process must meet the person-centered planning requirements described in

Section 316 of these rules. (3-17-22)

c. The participant may facilitate their own person-centered planning meeting or designate a paid or non-paid plan developer to facilitate the meeting. Individuals responsible for facilitating the person-centered planning meeting cannot be providers of direct services to the participant. (3-17-22)

03. Prior Authorization Outside of These Rules. The plan developer must ensure that all services that require prior authorization outside of these rules are submitted to the appropriate unit of the Department. These services include: (3-17-22)

a. Durable Medical Equipment (DME); (3-17-22)

b. Transportation; and (3-17-22)

c. Physical therapy, occupational therapy, and speech-language pathology services. (3-17-22)

04. No Duplication of Services. The plan developer will ensure that there is no duplication of services. Duplicate services will not be authorized. (3-17-22)

05. Plan Monitoring. The participant, service coordinator, or plan monitor must monitor the plan. The plan developer is the plan monitor unless there is a service coordinator, in which case the service coordinator assumes the roles of both service coordinator and plan monitor. The planning team must identify the frequency of monitoring, which must be at least every ninety (90) days. Plan monitoring must include the following: (3-17-22)

a. Review of the plan of service in a face-to-face contact with the participant to identify the ~~current~~ status of programs and changes if needed. The face-to-face encounter may occur via synchronous interaction ~~telehealth~~ virtual care, as defined in Title 54, Chapter 57, Idaho Code; ~~(3-17-22)~~(9-1-23)T

b. Contact with service providers to identify barriers to service provision; (3-17-22)

c. Discuss with participant satisfaction regarding quality and quantity of services; and (3-17-22)

d. Review of provider status reviews. (3-17-22)

e. The provider will immediately report all allegations or suspicions of mistreatment, abuse, neglect, or exploitation, ~~as well as~~ and injuries of unknown origin to the agency administrator, the Department, the adult protection authority, and any other entity identified under Section 39-5303, Idaho Code, or federal law. ~~(3-17-22)~~(9-1-23)T

06. Provider Status Reviews. Service providers, with exceptions identified in Subsection 513.09 of ~~these~~ this rules, must report the participant's progress toward goals to the plan monitor on the provider status review when the plan has been in effect for six (6) months and at the annual person-centered planning meeting. The semi-annual review is due fifteen (15) days before the end of the six (6) month period. The annual review is due thirty (30) days before plan's end. The semi-annual and annual reviews must include: ~~(3-17-22)~~(9-1-23)T

a. The status of supports and services to identify progress; (3-17-22)

b. Maintenance; or (3-17-22)

c. Delay or prevention of regression. (3-17-22)

07. Content of the Plan of Service. The plan of service must identify the type of service to be delivered, goals to be addressed within the plan year, frequency of supports and services, and identified service providers. The plan of service must include activities to promote progress, maintain functional skills, or delay or prevent regression. (3-17-22)

a. The written plan of service must meet the person-centered planning requirements described in

Section 317 of these rules. (3-17-22)

b. The written plan of service must be finalized and agreed to ~~according to~~ under procedural requirements described in Section 704 of these rules. ~~(3-17-22)~~ (9-1-23)T

c. The Department will distribute a copy of the plan of service to adult DD service providers defined in Section 317 of these rules. Additionally, the plan developer will be responsible to distribute a copy of the plan of service, in whole or part, to any other ~~developmental disability~~ DD service provider identified by the participant during the person-centered planning process. ~~(3-17-22)~~ (9-1-23)T

08. Informed Consent. Unless the participant has a guardian who retains full decision-making authority, the participant must make decisions regarding the type and amount of services required. Prior to plan development, the plan developer must document that they have provided information and support to the participant to maximize their ability to make informed choices regarding the services and supports they receive and from whom. During plan development and amendment, planning team members must each indicate whether they believe the plan meets the needs of the participant and represents the participant's choice. If there is a conflict that cannot be resolved among person-centered planning members or if a member does not believe the plan meets the participant's needs or represents the participant's choice, the plan or amendment may be referred to the Bureau of Developmental Disability Services to negotiate a resolution with members of the planning team. (3-17-22)

09. Provider Implementation Plan. Each provider of Medicaid services must develop an implementation plan that complies with home and community-based setting requirements and identifies specific objectives that relate to goals finalized and agreed to in the participant's authorized plan of service. These objectives must demonstrate how the provider will assist the participant to meet the participant's goals, desired outcomes, and needs identified in the plan of service. (3-17-22)

a. Exceptions. An implementation plan is not required for waiver providers of: (3-17-22)

i. Specialized medical equipment; (3-17-22)

ii. Home-delivered meals; (3-17-22)

iii. Environmental accessibility adaptations; (3-17-22)

iv. Non-medical transportation; (3-17-22)

v. Personal emergency response systems ~~(PERS)~~; ~~(3-17-22)~~ (9-1-23)T

vi. Respite care; ~~and~~ ~~(3-17-22)~~ (9-1-23)T

vii. Chore services; ~~(3-17-22)~~ (9-1-23)T

viii. Community crisis support services; and (9-1-23)T

ix. Adult DD service coordination. (9-1-23)T

b. Time for Completion. Implementation plans must be completed within fourteen (14) days of receipt of the authorized plan of service or the service start date, whichever is later. (3-17-22)

i. If the authorized plan of service is received after the service start date, service providers must support billing by documenting service provision as agreed to by the participant and consistent with Section 704 of these rules. (3-17-22)

ii. Implementation plan revision must be based on changes to the needs of the participant. (3-17-22)

c. Documentation of Changes. Documentation of Implementation Plan changes will be included in the participant's record. ~~This documentation, and~~ must include, ~~at a minimum,~~ the reason for the change,

documentation of coordination with other service providers (where applicable), the date the change was made, and the signature of the person making the change complete with the date and title. ~~(3-17-22)~~(9-1-23)T

10. ~~Home and Community-Based Services~~ Plan of Service Signature. Upon receipt of the authorized plan of service, HCBS providers responsible for the implementation of the plan ~~as identified in~~ under Section 317 of these rules must sign the plan indicating they will deliver services according to the finalized and authorized plan of service, and consistent with home and community-based requirements. Each HCBS provider responsible for the implementation of the plan must maintain their signed plan in the participant's record. Documentation of signature must include the signature of the professional responsible for service provision complete with their title and the date signed. Provider signature ~~will is to~~ be completed each time an initial or annual plan of service is implemented. ~~(3-17-22)~~(9-1-23)T

11. Addendum to the Plan of Service. (3-17-22)

a. A plan of service may be adjusted during the year with an addendum to the plan. These adjustments must be based on a change to a cost, addition or increase of a service ~~or increase to a service~~, or a change of provider, addition of a restrictive intervention, or addition of alone time. Additional assessments or information may be clinically necessary. Adjustment of the plan of service is subject to prior authorization by the Department. ~~(3-17-22)~~(9-1-23)T

b. When a service plan has been adjusted, the Department will distribute a copy of the addendum to HCBS providers responsible for the implementation of the plan of service ~~as identified in~~ under Section 317 of these rules. ~~(3-17-22)~~(9-1-23)T

c. Upon receipt of the addendum, the HCBS provider must sign the addendum indicating they have reviewed the plan adjustment and will deliver services accordingly. Documentation must include the signature of the professional responsible for service provision complete with their title and the date signed, and must be maintained in the participant's record. Provider signature ~~will is to~~ be completed each time an addendum is authorized. ~~(3-17-22)~~(9-1-23)T

12. Annual Reauthorization of Services. A participant's plan of service must be reauthorized annually. The Department will review and authorize the new plan of service prior to the expiration of the current plan. (3-17-22)

a. ~~Plan Developer Responsibilities for Annual Reauthorization.~~ A new plan of service must be provided to the Department by the plan developer at least forty-five (45) days prior to the expiration date of the current plan unless delayed because of participant unavailability due to extenuating circumstances. If the plan is not submitted within the period, authorization for provider payments may be terminated. Prior to ~~this submission~~, the plan developer must: ~~(3-17-22)~~(9-1-23)T

i. Notify the providers who appear on the plan of service of the annual review date. (3-17-22)

ii. Obtain a copy of the current annual provider status review from each provider for use by the person-centered planning team. Each provider status review must meet the requirements in Subsection 513.06 of these rules. ~~(3-17-22)~~(9-1-23)T

iii. Convene the person-centered planning team to develop a new plan of service inviting individuals to participate that have been identified by the participant. (3-17-22)

b. ~~Evaluation and Prior Authorization of the Plan of Service.~~ The plan of service will be evaluated and prior authorized ~~in accordance with~~ under the requirements in Sections 507 and 513 of these rules. ~~(3-17-22)~~(9-1-23)T

c. ~~Adjustments to the Annual Budget and Services.~~ The annual budget and services may be adjusted by the Department based on demonstrated outcomes, progress toward goals and objectives, and benefit of services. ~~(3-17-22)~~(9-1-23)T

d. ~~Annual Status Reviews Requirement.~~ If the provider's annual status reviews are not submitted to the plan developer with the annual plan, services ~~will~~ may not be authorized at the time of the annual reauthorization. These services may be added to the plan of service only by means of an addendum to the plan ~~in accordance with~~ under Subsection 513.10 of these ~~is~~ rules. (3-17-22)(9-1-23)T

e. ~~Reapplication After a Lapse in Service.~~ For participants who are re-applying for service after a lapse in service, the assessor will evaluate whether assessments are current and accurately describe the status of the participant. (3-17-22)(9-1-23)T

f. ~~Annual Assessment Results.~~ An annual assessment will be completed ~~in accordance with~~ under Section 512 of these rules. (3-17-22)(9-1-23)T

13. ~~Complaints and Administrative Appeals~~ Participant Plan of Service Notifications. The Department will notify each participant whether their plan of service was approved in whole, in part, or denied. The notification will include an individualized explanation of the decision and how the participant may appeal the service plan decision. (3-17-22)(9-1-23)T

a. ~~Participant complaints about the assessment process, eligibility determination, plan development, quality of service, and other relevant concerns may be referred to the Division of Medicaid.~~ (3-17-22)

b. ~~A participant who disagrees with a Department decision regarding program eligibility and authorization of services under these rules may file an appeal. Administrative appeals are governed by provisions of IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings."~~ (3-17-22)

514. ADULT DEVELOPMENTAL DISABILITY SERVICES PRIOR AUTHORIZATION: PROVIDER REIMBURSEMENT.

Providers are reimbursed on a fee-for-service basis based on a participant budget. (3-17-22)

01. Individualized Budget Beginning on October 1, 2006. Beginning October 1, 2006, for DD waiver participants, and beginning January 1, 2007, for all other adult DD participants, the Department sets an individualized budget for each participant according to an individualized measurement of the participant's functional abilities, behavioral limitations, and medical needs related to the participant's disability. Using these specific participant factors, the budget-setting methodology will correlate a participant's characteristics with the participant's individualized budget amount, so participants with higher needs will be assigned a higher individualized budget amount. (3-17-22)

a. The Department notifies each participant of their set budget amount as part of the eligibility determination process or annual redetermination process. The notification will include how the participant may appeal the set budget amount. (3-17-22)

b. Individualized budgets will be re-evaluated annually. At the request of the participant, the Department will also re-evaluate the set budget amount when there are documented changes in the participant's condition resulting in a need for services that meet medical necessity criteria, and this is not reflected on the current inventory of individual needs. (3-17-22)

02. Residential Habilitation - Supported Living Acuity-Based Levels of Support. Reimbursement for residential habilitation - supported living is based on the participant's assessed level of support need. All plans of service that include supported living must include community integration goals that provide for maintained or enhanced independence, quality of life, and self-determination. The number of residents in a setting will be limited by an amount in the Idaho Medicaid Provider Handbook, unless otherwise authorized by the Department. As a participant's independence increases and they are less dependent on supports, they must transition to less intense supports. (3-17-22)(9-1-23)T

a. High support is for those participants who require twenty-four (24) hour per day supports and supervision as determined by a Department-approved assessment tool. High support allows for a blend of one-to-one and group staffing. Participants authorized at the high support daily rate will not be authorized to receive developmental therapy services, adult day care, or non-medical transportation. These services are included in the high

support daily rate. (3-17-22)

b. Intense support is for those exceptional participants who require intense, twenty-four (24) hour per day supports and supervision. This support level typically requires one-on-one staffing, but requests for a blend of one-on-one and group staffing will be reviewed on a case-by-case basis. Participants authorized at the intense support daily rate will not be authorized to receive developmental therapy services, adult day care, or non-medical transportation. These services are included in the intense support daily rate. To qualify for this level of support, participants must be evaluated to meet one (1) or more of the following criteria: (3-17-22)

i. Recent felony convictions or charges for offenses related to the serious injury or harm of another person. These participants must have been placed in a supported living setting directly from incarceration or directly after being diverted from incarceration. (3-17-22)

ii. History of predatory sexual offenses and are at high risk to re-offend based on a sexual offender risk assessment completed by an appropriate professional. (3-17-22)

iii. Documented, sustained history of serious aggressive behavior showing a pattern of causing harm to themselves or others. The serious aggressive behavior must be such that the threat or use of force on another person makes that person reasonably fear bodily harm. The participant must also have the capability to carry out such a threat. The frequency and intensity of this type of aggressive behavior must require continuous monitoring to prevent injury to themselves or others. (3-17-22)

iv. Chronic or acute medical conditions that are so complex or unstable that one-to-one staffing is required to provide frequent interventions and constant monitoring. Without this intervention and monitoring the participant would require placement in a nursing facility, hospital, or ICF/IID with twenty-four (24) hour on-site nursing. Verification of the complex medical condition and the need for this level of service requires medical documentation. (3-17-22)

c. Hourly support is for those individuals ~~that~~ who do not meet criteria for either high or intense supports or those individuals who qualify for a daily rate but whose needs can be met with less than twenty-four (24) hour per day support. The combination of hourly supported living, developmental therapy, community--supported employment, and adult day care will not be authorized to exceed the maximum set daily amount established by the Department, except when all of the following ~~conditions~~ are met: (3-17-22)(9-1-23)T

i. The participant is eligible to receive the high support daily rate; (3-17-22)

ii. Community-supported employment is included in the plan and is causing the combination to exceed the daily limit; (3-17-22)

iii. There is documentation that the Person-Centered Planning team has explored other options including using lower-cost services and natural supports; and (3-17-22)

iv. The participant's health and safety needs will be met using hourly services despite having been assessed to qualify for twenty-four (24) hour care. (3-17-22)

515. ADULT DEVELOPMENTAL DISABILITY SERVICES: QUALITY ASSURANCE AND IMPROVEMENT.

01. Quality Assurance. ~~Quality Assurance e~~Consists of audits and reviews to assure compliance with the Department's rules and regulations. If problems are identified during the review or audit, the provider must implement a corrective action plan within forty-five (45) days after the results are received. ~~The Department may take enforcement actions as described in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 205, if the provider fails to comply with the corrective action plan, any term or provision of the provider agreement, or any applicable state or federal regulation.~~ (3-17-22)(9-1-23)T

02. Quality Improvement. The Department may gather and utilize information from providers to evaluate customer satisfaction, participant satisfaction, participant experience related to home and community-based

setting qualities, outcomes monitoring, care management, quality assurance, quality improvement activities, and health and safety. These findings may lead to quality improvement activities to improve provider processes and outcomes for participants. (3-17-22)

03. Exception Review. The Department will complete an exception review of plans or addendums requesting services that exceed the assigned budget authorized by the assessor. Requests for these services will be authorized when one (1) of the following ~~conditions are~~ is met: (3-17-22)(9-1-23)T

a. Services are needed to assure the health or safety of participants and the services requested on the plan or addendum are ~~required based on medical necessity as defined in Section 012 of these rules~~ needed to mitigate a documented health risk or safety risk. (3-17-22)(9-1-23)T

b. Supported employment services as defined in Section 703 of these rules are needed for the participant to obtain or maintain employment. The request must be submitted on the Department-approved Exception Review Form and is reviewed and approved based on the following: (3-17-22)

i. A supported employment service recommendation must be submitted that includes: recommended amount of service, level of support needed, employment goals, and a transition plan. When the participant is transitioned from the Idaho Division of Vocational Rehabilitation (IDVR) services, the recommendation must be completed by IDVR. When a participant is in an established job, the recommendation must be completed by the supported employment agency identified on the plan of service or addendum; (3-17-22)

ii. The participant's plan of service was developed by the participant and their person-centered planning team and includes a goal for supported employment services. Prior to the submission of an exception review with an addendum, a comprehensive review of all services on the participant's plan must occur. The participant's combination of services must support the increase or addition of supported employment services; and (3-17-22)

iii. An acknowledgment signed by the participant and their legal guardian, if one exists, that additional budget dollars approved to purchase supported employment services must not be reallocated to purchase any other Medicaid service. (3-17-22)

04. Concurrent Review. The Department will obtain the necessary information to determine that participants continue to meet eligibility criteria, participant rights are maintained, services continue to be clinically necessary, services continue to be the choice of the participant, services support participant integration, and services constitute appropriate care to warrant continued authorization or need for the service. (3-17-22)

05. Participant Complaints. Participant complaints about program operations, quality of services, or other relevant concerns may be referred to the Division of Medicaid and will be tracked and routed for follow-up as warranted. (9-1-23)T

056. Abuse, Fraud, or Substandard Care. Reviewers finding suspected abuse, fraud, or substandard care must refer their findings for investigation to the Department and other regulatory or law enforcement agencies for investigation. (3-17-22)

(BREAK IN CONTINUITY OF SECTIONS)

645. HOME AND COMMUNITY-BASED SERVICES (HCBS) STATE PLAN OPTION. ~~Home and community-based services~~ HCBS are provided through the HCBS State Plan option as allowed in Section 1915(i) of the Social Security Act for adults with ~~developmental disabilities~~ DD who do not meet the ICF/IID level of care. HCBS ~~s~~State ~~p~~Plan option services must comply with Sections 310 through 319, and Sections 645 through 657 of these rules. ~~Through the duration of the COVID-19 public health emergency, the Department reserves the right to temporarily alter requirements and processes related to the Adult Developmental Disabilities HCBS State Plan Option program to mitigate spread of disease and to ensure the health and safety of our participants under the guidance and authority of the provisions in a CMS approved 1135 waiver or a state plan amendment to the existing Adult Developmental Disabilities HCBS State Plan Option benefit. In the event additional changes are required in the~~

~~future, guidance will be posted on the Medicaid Information Releases webpage.~~

~~(3-17-22)(9-1-23)T~~

(BREAK IN CONTINUITY OF SECTIONS)

648. COMMUNITY CRISIS SUPPORTS COVERAGE AND LIMITATIONS.

Community crisis support may be authorized the following business day after the intervention if there is a documented need for immediate intervention, no other means of support are available, and the services are appropriate to rectify the crisis. Community crisis support is limited to a maximum of twenty (20) hours during any consecutive five (5) day period. (3-17-22)

01. Emergency Room. Crisis services may be provided in an emergency room during the ER evaluation process if the goal is to prevent hospitalization and return the participant to the community. (3-17-22)

02. Before Plan Development. Community crisis support may be provided before or after the completion of the assessment and plan of service. If community crisis support is provided before the completion of the assessment and plan of service, the plan of service must include an identification of the factors contributing to the crisis and a strategy for addressing those factors in the future. (3-17-22)

03. Crisis Resolution Plan. After community crisis support has been provided, the provider of the community crisis support service must complete a crisis resolution plan and submit it to the Department for approval within ~~seventy two (72) hours~~ **five (5) business days** of providing the service. ~~(3-17-22)(9-1-23)T~~

(BREAK IN CONTINUITY OF SECTIONS)

651. DEVELOPMENTAL THERAPY: COVERAGE REQUIREMENTS AND LIMITATIONS.

Developmental therapy must be recommended by a physician or other practitioner of the healing arts. (3-17-22)

01. Requirements to Deliver Developmental Therapy. Developmental therapy may be delivered in a ~~developmental disabilities agency~~ **DDA** center-based program, the community, or the home of the participant. Developmental therapy includes individual developmental therapy and group developmental therapy. Developmental therapy must be delivered by Developmental Specialists or paraprofessionals qualified ~~in accordance with~~ **under** these rules, based on an assessment completed prior to the delivery of developmental therapy. ~~(3-17-22)(9-1-23)T~~

a. Areas of Service. ~~These services must be directed toward the rehabilitation or habilitation of physical or developmental disabilities in the areas of self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency.~~ ~~(3-17-22)(9-1-23)T~~

b. Age Appropriate. ~~Developmental therapy includes instruction in daily living skills the participant has not gained at the normal developmental stages in their life; or is not likely to develop without training or therapy. Developmental therapy must be age-appropriate.~~ ~~(3-17-22)(9-1-23)T~~

c. Tutorial Activities and Educational Tasks are Excluded. ~~Developmental therapy does not include tutorial activities or assistance with educational tasks associated with educational needs that result from the participant's disability.~~ ~~(3-17-22)(9-1-23)T~~

d. Settings for Developmental Therapy. ~~Developmental Therapy may be provided in home and community-based settings as described in Section 312 of these rules. Developmental therapy, in both individual and group formats, must be available in both community-based and home-based settings, and be based on participant needs, interests, or choices.~~ ~~(3-17-22)(9-1-23)T~~

e. Staff to Participant Ratio. ~~When group developmental therapy is center-based, there must be a minimum of one (1) qualified staff, who may be a paraprofessional or a Developmental Specialist, providing direct services for every twelve (12) participants. The community-based services must occur in integrated, inclusive settings~~

and with no more than three (3) participants per qualified staff at each session. Additional staff must be added, as necessary, to meet the needs of each individual served. ~~(3-17-22)~~(9-1-23)T

- 02. Excluded Services.** The following services are excluded for Medicaid payments: (3-17-22)
- a. Vocational services; (3-17-22)
 - b. Educational services; and (3-17-22)
 - c. Recreational services. (3-17-22)

03. Limitations on Developmental Therapy. Developmental therapy may not exceed the limitations as follows ~~specified below: only one (1) type of therapy will be reimbursed during a single time period by the Medicaid program. Developmental therapy will not be reimbursed during periods when the participant is being transported to and from the agency.~~ ~~(3-17-22)~~(9-1-23)T

- a. Developmental therapy must not exceed twenty-two (22) hours per week. (9-1-23)T
- b. Developmental therapy provided in combination with supported employment services under these rules must not exceed forty (40) hours per week. (9-1-23)T
- c. When a participant receives adult day health as provided in these rules, the combination of adult day health and developmental therapy must not exceed thirty (30) hours per week. (9-1-23)T
- d. Only one (1) type of therapy will be reimbursed during a single period by the Medicaid program. Developmental therapy will not be reimbursed during periods when the participant is being transported to and from the agency. (9-1-23)T

(BREAK IN CONTINUITY OF SECTIONS)

655. DEVELOPMENTAL THERAPY: PROVIDER QUALIFICATIONS AND DUTIES.

01. Developmental Specialist for Adults. To be qualified as a Developmental Specialist for adults, a person must have a minimum of two hundred forty (240) hours of professionally supervised experience with individuals who have developmental disabilities and either: (3-17-22)

- a. Possess a bachelor's or master's degree in special education, early childhood special education, speech and language pathology, applied behavioral analysis, psychology, physical therapy, occupational therapy, social work, or therapeutic recreation; or (3-17-22)
- b. Possess a bachelor's or master's degree in an area not listed ~~above~~ in Subsection 6575.051.a. of this rule and have: ~~(3-17-22)~~(9-1-23)T
 - i. Completed a competency course jointly approved by the Department and the Idaho Association of Developmental Disabilities Agencies that relates to the job requirements of a Developmental Specialist; and (3-17-22)
 - ii. Passed a competency examination approved by the Department. (3-17-22)
- c. Any person employed as a Developmental Specialist in Idaho prior to May 30, 1997, unless previously disallowed by the Department, will be allowed to continue providing services as a Developmental Specialist as long as there is not a gap of more than three (3) years of employment as a Developmental Specialist. (3-17-22)
- ~~d. Through the duration of the COVID-19 public health emergency, Development Specialists for~~

~~adults may begin rendering services prior to completing the training requirements provided that they complete the training requirements within thirty (30) days of first rendering services, advise the participant or legal guardian that the individual has not yet completed the applicable trainings, and comply with any other requirements specified by the Department in a COVID-19 information release posted on the Department's website at <https://healthandwelfare.idaho.gov/Providers/Providers-Medicaid/InformationReleases/tabid/264/Default.aspx>. (3-17-22)~~

02. Developmental Therapy Paraprofessionals. Paraprofessionals, such as aides or therapy technicians, may be used by an agency to provide developmental therapy if they are under the supervision of a Developmental Specialist. A developmental therapy paraprofessional must be at least seventeen (17) years of age old. ~~(3-17-22)~~(9-1-23)T

03. Requirements for Collaboration with Other Providers. When participants are receiving rehabilitative or habilitative services from other providers, each DDA must coordinate each participant's DDA program with these providers to maximize skill acquisition and generalization of skills across environments, and to avoid duplication of services. The DDA must maintain documentation of this collaboration. ~~This documentation that includes other plans of services such as the Individual Education Plan (IEP), Personal Care Services (PCS) plan, Residential Habilitation plan, and the outpatient behavioral health service plan. The participant's file must also reflect how these plans have been integrated into the DDA's plan of service for each participant. (3-17-22)~~(9-1-23)T

(BREAK IN CONTINUITY OF SECTIONS)

~~**658. COVID-19 PUBLIC HEALTH EMERGENCY RESIDENTIAL HABILITATION.**~~

~~Through the duration of the COVID-19 public health emergency, the Department will pay for residential habilitation services, as described in Subsection 703.01 of these rules, provided by facilities that have entered into a provider agreement with the Department and are certified as developmental disabilities agencies by the Department. Prior to receiving residential habilitation services from a DDA, an individual must be determined by the Department, or its contractor, to have a developmental disability under Sections 500 through 506 of these rules and Section 66-402, Idaho Code, be eighteen (18) years of age or older, and live in the community. DDA's providing residential habilitation services must comply with any additional requirements specified by the Department in a COVID-19 information release posted on the Department's website at <https://healthandwelfare.idaho.gov/Providers/Providers-Medicaid/InformationReleases/tabid/264/Default.aspx>. (3-17-22)~~

~~**659**~~. -- 699. (RESERVED)

ADULTS WITH DEVELOPMENTAL DISABILITIES WAIVER SERVICES
(Sections 700-719)

700. ADULTS WITH ~~DEVELOPMENTAL DISABILITIES~~ WAIVER SERVICES.

Under 42 CFR Section 440.180, it is the intention of the Department to provide waiver services to eligible adult participants to prevent unnecessary institutional placement, provide for the greatest degree of independence possible, enhance the quality of life, encourage individual choice, and achieve and maintain community integration. For an adult participant to be eligible, the Department must find that the participant requires services due to a developmental disability that impairs their mental or physical function or independence, is capable of being maintained safely and effectively in a non-institutional setting, and would, in the absence of such services, need to reside in an ICF/IID. ~~Through the duration of the COVID-19 public health emergency, the Department reserves the right to temporarily alter requirements and processes related to the Adult DD waiver program to mitigate spread of disease and to ensure the health and safety of our participants under the guidance and authority of the provisions in a CMS approved 1135 waiver or HCBS Attachment K amendment to the existing Adult Developmental Disability waiver. In the event additional changes are required in the future, guidance will be posted on the Medicaid Information Releases webpage. (3-17-22)~~(9-1-23)T

701. (RESERVED)

702. ADULT DD WAIVER SERVICES: ELIGIBILITY.

Waiver eligibility will be determined by the Department as described in Section 509 of these rules. The participant

must be financially eligible for Medical Assistance ~~as described in~~ under IDAPA 16.03.05, "Eligibility for Aid for the Aged, Blind, and Disabled (AABD)," Section 787. The cited chapter implements ~~and is in accordance with~~ the Financial Eligibility Section of the Idaho State Plan. In addition, waiver participants must meet the following requirements: ~~(3-17-22)(9-1-23)T~~

- 01. Age of Participants.** DD waiver participants must be eighteen (18) years ~~of age~~ old or older. ~~(3-17-22)(9-1-23)T~~
- 02. Eligibility Determinations.** The Department must determine that: (3-17-22)
 - a.** The participant would qualify for ICF/IID level of care ~~as set forth in~~ under Section 584 of these rules, if the waiver services listed in Section 703 of these rules were not made available; and ~~(3-17-22)(9-1-23)T~~
 - b.** The participant could be safely and effectively maintained in the requested or chosen community residence with appropriate waiver services. This determination must: (1) be made by a team of individuals with input from the person-centered planning team; and (2) prior to any denial of services on this basis, be determined by the plan developer that services to correct the concerns of the team are not available. ~~(3-17-22)(9-1-23)T~~
 - c.** The average annual cost of waiver services and other medical services to the participant would not exceed the average annual cost to Medicaid ~~of for~~ ICF/IID care and other medical costs. ~~(3-17-22)(9-1-23)T~~
- 03. ~~Home and Community-Based Services Waiver~~ Eligible Participants.** A participant who is determined by the Department to be eligible for services under the ~~Home and Community-Based Services W~~ waivers for DD may elect not to utilize waiver services but may choose admission to an ICF/IID. ~~(3-17-22)(9-1-23)T~~
- 04. Processing Applications.** The participant's self-reliance staff will process the application ~~in accordance with~~ under IDAPA 16.03.05, "Eligibility for Aid to the Aged, Blind, and Disabled (AABD)," as if the application was for admission to an ICF/IID, except that the self-reliance staff will forward potentially eligible applications immediately to the Department for review. The Medicaid application process cited above conforms to all statutory and regulatory requirements relating to the Medicaid application process. ~~(3-17-22)(9-1-23)T~~
- 05. Transmitted Decisions to Self-Reliance Staff.** The decisions of the Department regarding the acceptance of the participants into the waiver program will be transmitted to the self-reliance staff. (3-17-22)
- 06. Case Redetermination.** (3-17-22)
 - a.** Financial redetermination will be conducted ~~pursuant to~~ under IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children," and IDAPA 16.03.05, "Eligibility for Aid to the Aged, Blind, and Disabled (AABD)." Medical redetermination will be made at least annually or sooner by the Department, ~~or sooner~~ at the request of the participant, the self-reliance staff, provider agency, or physician. The ~~sections chapters~~ cited implement ~~and are in accordance with~~ Idaho's approved State Plan ~~with the exception of~~ except for deeming of income provisions. ~~(3-17-22)(9-1-23)T~~
 - b.** The redetermination process will assess the following factors: (3-17-22)
 - i.** The participant's continued need and eligibility for waiver services; and (3-17-22)
 - ii.** Discharge from the waiver services program. (3-17-22)
- 07. Participant Eligibility Notifications.** The Department will notify each participant of their eligibility decision as part of the initial eligibility determination, annual redetermination, or other reassessment process. The notification includes an individualized explanation of the decision and how the participant may appeal the eligibility decision. ~~(9-1-23)T~~
- 07. ~~Home and Community-Based~~ Waiver Participant Limitations.** The number of Medicaid participants to receive waiver services under the ~~home and community based~~ HCBS waiver for ~~developmentally disabled~~ DD participants will be limited to the projected number of users contained in the Department's approved

waiver. Individuals who apply for waiver services after the waiver maximum has been reached will be placed on a waiting list and will have their applications processed after September 30th for the DD waiver of each new waiver year. ~~(3-17-22)~~(9-1-23)T

(BREAK IN CONTINUITY OF SECTIONS)

704. ADULT DD WAIVER SERVICES: PROCEDURAL REQUIREMENTS.

01. Authorization of Services on a Written Plan. All waiver services must be identified on the plan of service and authorized by the process ~~described in~~ under Sections 507 through 520 of these rules. The plan of service must be reviewed by a plan monitor or targeted service coordinator at a frequency determined by the person-centered planning team, but at least every ninety (90) days. ~~(3-17-22)~~(9-1-23)T

02. Provider Records. ~~Three (3) types of record~~ The following information will be maintained on all participants receiving waiver services: ~~(3-17-22)~~(9-1-23)T

a. Direct ~~S~~service ~~P~~provider ~~I~~information that includes written documentation of each visit made or service provided to the participant, and will record ~~at a minimum~~ the following information: ~~(3-17-22)~~(9-1-23)T

i. Date and time of visit; ~~and~~ ~~(3-17-22)~~(9-1-23)T

ii. Services provided during the visit; ~~and~~ ~~(3-17-22)~~(9-1-23)T

iii. A statement of the participant's response to the service, if appropriate to the service provided, including any changes in the participant's condition; and (3-17-22)

iv. Length of visit, including time in and time out, if appropriate to the service provided. Unless the participant is determined by the Service Coordinator to be unable to do so, the delivery will be verified by the participant as evidenced by their signature on the service record. (3-17-22)

v. A copy of the above information will be maintained in the participant's home unless authorized to be kept elsewhere by the Department. Failure to maintain such documentation will result in the recoupment of funds paid for undocumented services. (3-17-22)

b. The plan of service developed by the plan developer and the person-centered planning team must specify which services are required by the participant. The plan of service must contain all elements required by Subsection 704.01 of this rule and a copy of the most current plan of service must be maintained in the participant's home and must be available to all service providers and the Department. (3-17-22)

c. The provider implementation plan if required by these rules. (9-1-23)T

d. In addition to the plan of service, all providers, ~~with the exception of chore, non-medical transportation, and enrolled Medicaid vendors,~~ that are required to develop an implementation plan must submit a provider status review six (6) months after the start date of the plan of service and annually to the plan monitor as described in Sections 507 through 520 of these rules. ~~(3-17-22)~~(9-1-23)T

03. Provider Responsibility for Notification. ~~It is the responsibility of~~ The service provider ~~is~~ responsible to notify the service coordinator or plan developer when any significant changes in the participant's condition are noted during service delivery. Such notification will be documented in the service record. ~~(3-17-22)~~(9-1-23)T

04. Records Maintenance. ~~In order to~~ To provide continuity of services, when a participant changes service providers, plan developers, or service coordinators, all of the foregoing participant records will be delivered to and held by the Department until a replacement service provider, plan developer, or service coordinator is selected by the participant. When a participant leaves the waiver services program, the records will be retained by the

Department as part of the participant's closed case record. Provider agencies will be responsible to retain their participant's records for five (5) years following the date of service. ~~(3-17-22)~~(9-1-23)T

705. ADULT DD WAIVER SERVICES: PROVIDER QUALIFICATIONS AND DUTIES.

All providers of waiver services must have a valid provider agreement with the Department. Performance under this agreement will be monitored by the Department. (3-17-22)

01. Residential Habilitation -- Supported Living. When residential habilitation services are provided by an agency, the agency must be certified by the Department as a Residential Habilitation Agency under IDAPA 16.04.17, "Residential Habilitation Agencies," and must supervise the direct services provided. Individuals who provide residential habilitation services in the home of the participant (supported living) must be employed by a Residential Habilitation Agency. Providers of residential habilitation services must meet the following requirements: (3-17-22)

- a. Direct service staff must meet the following ~~minimum qualifications:~~ ~~(3-17-22)~~(9-1-23)T
 - i. Be at least eighteen (18) years ~~of age old;~~ ~~(3-17-22)~~(9-1-23)T
 - ii. Be a high school graduate, ~~or~~ have a GED, or demonstrate the ability to provide services according to a plan of service; ~~(3-17-22)~~(9-1-23)T
 - iii. Have current CPR and First Aid certifications; (3-17-22)
 - iv. Be free from communicable disease; (3-17-22)
 - v. ~~If transporting participants, have a valid driver's license and vehicle insurance;~~ (9-1-23)T
 - vi. Each staff person assisting with participant medications has ~~successfully completed~~ passed the "Assistance with Medications" course available through the Idaho ~~Professional~~ Division of Career-Technical Education ~~Program approved by the Idaho State Board of Nursing~~ or other Department-approved training. ~~(3-17-22)~~(9-1-23)T
 - vii. Residential habilitation service providers who provide direct care or services ~~satisfactorily completed a criminal background check in accordance with~~ and receive a clearance under Section 009 of these rules and IDAPA 16.05.06, "Criminal History and Background Checks." ~~(3-17-22)~~(9-1-23)T
 - viii. Have appropriate certification or licensure if required to perform tasks that require certification or licensure. (3-17-22)
- b. All skill training for agency direct service staff must be provided by a Qualified Intellectual Disabilities Professional (QIDP) who has demonstrated experience in writing skill training programs. (3-17-22)
- c. Prior to delivering services to a participant, agency direct service staff must complete an orientation program. ~~The orientation program must that~~ includes ~~the following subjects:~~ ~~(3-17-22)~~(9-1-23)T
 - i. Purpose and philosophy of services; (3-17-22)
 - ii. Service rules; (3-17-22)
 - iii. Policies and procedures; (3-17-22)
 - iv. Proper conduct in relating to waiver participants; (3-17-22)
 - v. Handling of confidential and emergency situations that involve the waiver participant; (3-17-22)
 - vi. Participant rights; (3-17-22)

- vii. Methods of supervising participants; (3-17-22)
- viii. Working with individuals with developmental disabilities; and (3-17-22)
- ix. Training specific to the needs of the participant. (3-17-22)
- d.** Additional training requirements must be completed within six (6) months of employment with the residential habilitation agency and include ~~at a minimum:~~ (3-17-22)(9-1-23)T
 - i. ~~Instructional techniques:~~ Methodologies for training in a systematic and effective manner; (3-17-22)(9-1-23)T
 - ii. ~~Managing behaviors:~~ Techniques and strategies for teaching adaptive behaviors; (3-17-22)(9-1-23)T
 - iii. Feeding; (3-17-22)
 - iv. Communication; (3-17-22)
 - v. Mobility; (3-17-22)
 - vi. Activities of daily living; (3-17-22)
 - vii. Body mechanics and lifting techniques; (3-17-22)
 - viii. Housekeeping techniques; and (3-17-22)
 - ix. Maintenance of a clean, safe, and healthy environment. (3-17-22)
- e.** The provider agency will be responsible for providing ongoing training specific to the needs of the participant as needed. (3-17-22)
- f.** ~~Through the duration of the COVID-19 public health emergency, agency direct service staff may begin rendering services prior to completing the training requirements, provided that they complete the training requirements within thirty (30) days of first rendering services, advise the participant or legal guardian that the individual has not yet completed the applicable trainings, and comply with any other requirements specified by the Department in a COVID-19 information release posted on the Department's website at <https://healthandwelfare.idaho.gov/Providers/Providers-Medicaid/InformationReleases/tabid/264/Default.aspx>. (3-17-22)~~

02. Residential Habilitation -- ~~Certified Family Home (CFH).~~ (3-17-22)(9-1-23)T

- a.** An individual who provides direct residential habilitation services in their own home must be certified ~~by the Department~~ to operate a ~~certified family home~~ **CFH** under IDAPA 16.03.19, "Certified Family Homes," and ~~must~~ receive residential habilitation program coordination services provided through the Department, ~~or its contractor,~~ for the residential habilitation services they provide. (3-17-22)(9-1-23)T
- b.** CFH providers providing residential habilitation services as a DD Waiver provider must meet the following ~~minimum qualifications:~~ (3-17-22)(9-1-23)T
 - i. Be at least eighteen (18) years ~~of age old;~~ (3-17-22)(9-1-23)T
 - ii. Be a high school graduate, have a GED, or demonstrate the ability to provide services according to a plan of service; (3-17-22)
 - iii. Have current CPR and First Aid certifications; (3-17-22)
 - iv. Be free from communicable disease; (3-17-22)

- v. ~~If transporting participants, have a valid driver's license and vehicle insurance;~~ (9-1-23)T
- vi. Each CFH provider of residential habilitation services assisting with participant medications has ~~successfully completed the "Assistance with Medications" course available through the Idaho Professional Technical Education Program approved by the Idaho State Board of Nursing, or other Department approved training met the requirements of IDAPA 16.03.19, "Certified Family Homes.~~ (3-17-22)(9-1-23)T
- vii. CFH providers of residential habilitation services who provide direct care and services ~~have satisfactorily~~ **must** completed a ~~criminal history background~~ check ~~in accordance with~~ **and receive a clearance under** Section 009 of these rules and IDAPA 16.05.06, "Criminal History and Background Checks;" and (3-17-22)(9-1-23)T
- viii. Have appropriate certification or licensure if required to perform tasks that require certification or licensure. (3-17-22)
- c. All skill training for CFH providers who are providing residential habilitation services must be provided through the Department ~~or its contractor~~ by qualified intellectual disabilities professional (QIDP) who has demonstrated experience in writing skill training programs. (3-17-22)(9-1-23)T
- d. Prior to delivering residential habilitation services to a participant, the CFH provider must complete an orientation training in the following areas as provided by ~~either the Department, or its contractor or both, and include the following areas:~~ (3-17-22)(9-1-23)T
- i. Purpose and philosophy of services; (3-17-22)
 - ii. Service rules; (3-17-22)
 - iii. Policies and procedures; (3-17-22)
 - iv. Proper conduct in relating to waiver participants; (3-17-22)
 - v. Handling of confidential and emergency situation that involve the waiver participant; (3-17-22)
 - vi. Participant rights; (3-17-22)
 - vii. Methods of supervising participants; (3-17-22)
 - viii. Working with individuals with developmental disabilities; and (3-17-22)
 - ix. Training specific to the needs of the participant. (3-17-22)
- e. Additional training requirements for CFH providers providing residential habilitation waiver services must be completed by the CFH provider within six (6) months of certification date and include ~~a minimum of~~ the following: (3-17-22)(9-1-23)T
- i. ~~Instructional Techniques:~~ Methodologies for training in a systematic and effective manner; (3-17-22)(9-1-23)T
 - ii. ~~Managing behaviors:~~ Techniques and strategies for teaching adaptive behaviors; (3-17-22)(9-1-23)T
 - iii. Feeding; (3-17-22)
 - iv. Communication; (3-17-22)
 - v. Mobility; (3-17-22)

- vi. Activities of daily living; (3-17-22)
 - vii. Body mechanics and lifting techniques; (3-17-22)
 - viii. Housekeeping techniques; and (3-17-22)
 - ix. Maintenance of a clean, safe, and healthy environment. (3-17-22)
- f. The Department ~~or its contractor~~ will be responsible for providing on-going training to the CFH provider of residential habilitation specific to the needs of the participant as needed. (3-17-22)(9-1-23)T

~~g. Through the duration of the COVID-19 public health emergency, CFH providers may begin rendering services prior to completing the training requirements, provided that they complete the training requirements within thirty (30) days of first rendering services, advise the participant or legal guardian that the individual has not yet completed the applicable trainings, and comply with any other requirements specified by the Department in a COVID-19 information release posted on the Department's website at <https://healthandwelfare.idaho.gov/Providers/Providers-Medicaid/InformationReleases/tabid/264/Default.aspx>. (3-17-22)~~

03. Chore Services: Providers. ~~of chore services m~~Must meet the following ~~minimum~~ qualifications: (3-17-22)(9-1-23)T

- a. Be skilled in the type of service to be provided; and (3-17-22)
- b. Demonstrate the ability to provide services according to a plan of service. (3-17-22)
- c. Chore service providers who provide direct care and services ~~have satisfactorily~~ must completed a ~~criminal history and~~ background check ~~in accordance with~~ and receive a clearance under Section 009 of these rules and IDAPA 16.05.06, "Criminal History and Background Checks." (3-17-22)(9-1-23)T

04. Respite Care: Providers. ~~of respite care services m~~Must meet the following ~~minimum~~ qualifications: (3-17-22)(9-1-23)T

- a. Have received care giving instructions in the needs of the person who will ~~be provided~~ receive the service; (3-17-22)(9-1-23)T
- b. Demonstrate the ability to provide services according to a plan of service; (3-17-22)
- c. Be free of communicable disease; and (3-17-22)
- d. Respite care service providers who provide direct care and services ~~have satisfactorily~~ must completed a ~~criminal history and~~ background check ~~in accordance with~~ and receive a clearance under Section 009 of these rules and IDAPA 16.05.06, "Criminal History and Background Checks." (3-17-22)(9-1-23)T

05. Supported Employment: Supported employment sServices. ~~m~~Must be provided by an agency that supervises the direct service and is accredited by the Commission on Accreditation of Rehabilitation Facilities or other comparable standards, or meets State requirements to be a State-approved provider. Supported employment service providers who provide direct care or services ~~must satisfactorily~~ complete a ~~criminal history and~~ background check ~~in accordance with~~ and receive a clearance under Section 009 of these rules and IDAPA 16.05.06, "Criminal History and Background Checks." (3-17-22)(9-1-23)T

06. Non-Medical Transportation: Providers. ~~of non-medical transportation services m~~Must: (3-17-22)(9-1-23)T

- a. Possess a valid driver's license; and vehicle insurance. (3-17-22)(9-1-23)T
- ~~b. Possess valid vehicle insurance.~~ (3-17-22)

b. ~~Complete a background check and receive a clearance under Section 009 of these rules and IDAPA 16.05.06, "Criminal History and Background Checks."~~ Complete a background check and receive a clearance under Section 009 of these rules and IDAPA 16.05.06, "Criminal History and Background Checks." (9-1-23)T

07. Environmental Accessibility Adaptations. All services must be provided ~~in accordance with~~ under applicable state or local building codes and meet state or local building, plumbing, and electrical requirements for certification. (3-17-22)(9-1-23)T

08. Specialized Medical Equipment and Supplies- Providers. ~~of specialized medical equipment and supplies- m~~ Providers. ~~Must be enrolled in the Medicaid program as participating medical vendor providers. Providers must ensure all items meet applicable standards of manufacture, design, and installation. Preference will be given to equipment and supplies that are the most cost-effective option to meet the participant's needs.~~ (3-17-22)(9-1-23)T

09. Personal Emergency Response System- Providers. ~~Personal emergency response system- p~~ Providers. ~~Must demonstrate that the devices installed in a waiver participant's home meet Federal Communications Standards, or Underwriter's Laboratory standards, or equivalent standards.~~ (3-17-22)(9-1-23)T

10. Home-Delivered Meals- Providers. ~~of home delivered meals- m~~ Providers. ~~Must be a public agency or private business; and must exercise supervision to ensure that:~~ (3-17-22)(9-1-23)T

a. Each meal meets one-third (1/3) of the Recommended Daily Allowance, as defined by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences; (3-17-22)

b. Meals are delivered ~~in accordance with~~ under the service plan, in a sanitary manner, and at the correct temperature for the specific type of food; (3-17-22)(9-1-23)T

c. A Registered Dietitian documents the review and approval of menus, menu cycles, and any changes or substitutions; and (3-17-22)

d. The agency or business is inspected and licensed as a food establishment under IDAPA 16.02.19, "Idaho Food Code." (3-17-22)

11. Skilled Nursing- Providers. ~~Skilled nursing service- p~~ Providers. ~~m~~ Must be licensed in Idaho as an licensed registered nurse RN or licensed practical nurse LPN in good standing; or must be practicing on a federal reservation and be licensed in another state. Skilled nursing providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with and receive a clearance under Section 009 of these rules and IDAPA 16.05.06, "Criminal History and Background Checks." (3-17-22)(9-1-23)T

12. Behavior Consultation or Crisis Management- Providers. ~~Behavior Consultation or Crisis Management~~ Providers. ~~m~~ Must meet the following: (3-17-22)(9-1-23)T

a. Work under the direct supervision of a licensed psychologist or Ph-D; in Special Education; with training and experience in treating severe behavior problems and ~~training and experience~~ in applied behavior analysis; and (3-17-22)(9-1-23)T

b. Have a Master's Degree in a behavioral science such as social work, psychology, psychosocial rehabilitation counseling, psychiatric nursing, special education, or a closely related course of study; or (3-17-22)

c. Be a licensed pharmacist; or (3-17-22)

d. Be a Qualified Intellectual Disabilities Professional (QIDP). (3-17-22)

e. Emergency back-up providers must meet the ~~minimum~~ residential habilitation provider qualifications ~~described~~ under IDAPA 16.04.17, "Residential Habilitation Agencies." (3-17-22)(9-1-23)T

f. Behavior consultation or crisis management providers who provide direct care or services must satisfactorily complete a ~~criminal history and~~ background check ~~in accordance with~~ and receive a clearance under

Section 009 of these rules and IDAPA 16.05.06, "Criminal History and Background Checks." ~~(3-17-22)~~(9-1-23)T

- 13. Adult Day Health Providers.** ~~of adult day health m~~Must meet the following requirements: ~~(3-17-22)~~(9-1-23)T
- a.** Services provided in a facility must be provided in a facility that meets the building and health standards ~~identified in under~~ IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)"; ~~(3-17-22)~~(9-1-23)T
 - b.** Services provided in a home must be provided in a home that meets the standards ~~of home certification identified in under~~ IDAPA 16.03.19, "Certified Family Homes"; ~~(3-17-22)~~(9-1-23)T
 - c.** Adult day health providers who provide direct care or services must ~~satisfactorily~~ complete a ~~criminal history background~~ check ~~in accordance with and receive a clearance under~~ Section 009 of these rules and IDAPA 16.05.06, "Criminal History and Background Checks"; ~~(3-17-22)~~(9-1-23)T
 - d.** ~~Providers of a~~Adult day health ~~providers~~ must notify the Department on behalf of the participant, if the adult day health is provided in a ~~certified family home~~ CFH other than the participant's primary residence. The adult day health provider must provide care and supervision appropriate to the participant's needs as identified on the plan. ~~(3-17-22)~~(9-1-23)T
 - e.** Adult day health providers who provide direct care or services must be free from communicable disease. (3-17-22)
- 14. Service Supervision.** The plan of service that includes all waiver services is monitored by the plan monitor or targeted service coordinator. (3-17-22)
- 15. Transition Services.** Transition managers as described in Subsection 350.01 of these rules are responsible for administering transition services. ~~(3-17-22)~~(9-1-23)T

(BREAK IN CONTINUITY OF SECTIONS)

727. SERVICE COORDINATION: COVERAGE AND LIMITATIONS.

Service coordination consists of services provided to assist individuals in gaining access to needed services. ~~Service coordination, and~~ includes the following ~~activities described in Subsections 727.01 through 727.10 of this rule.~~ ~~(3-17-22)~~(9-1-23)T

- 01. Plan Assessment and Periodic Reassessment.** Activities that are required to determine the participant's needs by development of a plan assessment and periodic reassessment as described in Section 730 of these rules. These activities include: (3-17-22)
- a.** Taking a participant's history; (3-17-22)
 - b.** Identifying the participant's needs and completing related documentation; and (3-17-22)
 - c.** Gathering information from other sources such as family members, medical providers, social workers, and educators to form a complete assessment of the participant. (3-17-22)
- 02. Development of the Plan.** Development and revision of a specific plan, described in Section 731 of these rules that includes information collected through the assessment and specifies goals and actions needed by the participant. The plan must be updated at least annually ~~(or extended through the duration of the declared COVID-19 public health emergency)~~ and as needed to meet the needs of the participant. ~~(3-17-22)~~(9-1-23)T
- 03. Referral and Related Activities.** Activities that help link the participant with service providers ~~that are capable of providing needed~~ able to provide services to address identified needs and achieve goals specified in the service coordination plan. ~~(3-17-22)~~(9-1-23)T

04. Monitoring and Follow-Up Activities. Monitoring and follow-up contacts that are necessary to ensure the plan is implemented and adequately addresses the participant's needs. These activities may be with the participant, family members, providers, or other entities or individuals and conducted as frequently as necessary. These activities must include at least one (1) face-to-face contact with the participant at least every ninety (90) days. ~~(The face-to-face encounter may occur via synchronous interaction telehealth virtual, as defined in Title 54, Chapter 57, Idaho Code),~~ to determine whether the following conditions are met: ~~(3-17-22)(9-1-23)T~~

- a. Services are being provided according to the participant's plan; (3-17-22)
- b. Services in the plan are adequate; and (3-17-22)
- c. Whether there are changes in the needs or status of the participant, and if so, making necessary adjustments in the plan and service arrangements with providers. (3-17-22)

05. Crisis Assistance. Crisis ~~assistance is~~ service coordination used to assist a participant to access community resources ~~in order~~ to resolve a crisis. ~~Crisis service coordination; it~~ does not include crisis counseling, transportation to emergency service providers, or direct skill-building services. The need for all crisis assistance hours must meet the definition of "crisis" in Section 721 of these rules. ~~(3-17-22)(9-1-23)T~~

a. Crisis Assistance for Children's Service Coordination. Crisis hours are ~~not~~ unavailable until ~~four and a half (4.5)~~ all available hours of service coordination have already been provided in the month. Crisis hours for children's service coordination must be authorized by the Department. ~~(3-17-22)(9-1-23)T~~

b. Crisis Assistance for Adults With a Developmental Disability. Crisis hours are ~~not~~ unavailable until ~~four and a half (4.5)~~ all available hours of service coordination have already been provided in the month. Crisis assistance for adults with a developmental disability must be authorized by the Department and is based on community crisis supports ~~as found in~~ under Section 646 through 648 of these rules. ~~(3-17-22)(9-1-23)T~~

c. Authorization for crisis assistance hours may be requested retroactively ~~as a result~~ because of a crisis, ~~defined in~~ under Section 721 of these rules; when a participant's service coordination benefits have been exhausted and no other means of support is available to the participant. In retroactive authorizations, the service coordinator must complete a crisis resolution plan and submit a request for crisis services to the Department within ~~seventy-two (72) hours~~ five (5) business days of the last day of providing the service. ~~(3-17-22)(9-1-23)T~~

06. Contacts for Assistance. Service coordination may include contacts with non-eligible individuals only when the contact is directly related to identifying the needs and supports to help the participant access services. (3-17-22)

07. Exclusions. Service coordination does not include activities that are: (3-17-22)

- a. An integral component of another covered Medicaid service; (3-17-22)
- b. Integral to the administration of foster care programs; (3-17-22)
- c. Integral to the administration of another non-medical program for which a participant may be eligible. This exclusion does not apply to case management provided as part of the individualized education program or individualized family service plan required by the Individuals with Disabilities Education Act. (3-17-22)

08. Limitations on the Provision of Direct Services. Providers of service coordination services may only provide both service coordination and direct services to the same Medicaid participant when the participant is receiving children's service coordination. The service coordination provider must document that the participant has made a free choice of service coordinators and direct service providers. (3-17-22)

09. Limitations on Service Coordination. Service coordination is limited to four and a half (4.5) hours per month, except when utilizing unused hours in the individual's current plan of service from previous months. ~~(3-17-22)(9-1-23)T~~

10. Limitations on Service Coordination Plan Assessment and Plan Development. Reimbursement for the annual assessment and plan development cannot exceed ~~six~~ twelve (~~6~~12) hours per year. ~~(3-17-22)~~(9-1-23)T

728. SERVICE COORDINATION: PROCEDURAL REQUIREMENTS.

01. Prior Authorization for Service Coordination Services. Services must be prior authorized by the Department ~~according to the direction~~ as provided in the Medicaid Provider Handbook available at www.idmedicaid.com. ~~(3-17-22)~~(9-1-23)T

02. Service Coordination Plan Development. (3-17-22)

a. A written plan, ~~described in~~ under Section 731 of these rules, must be developed and implemented within sixty (60) days after the participant chooses a service coordinator. ~~(3-17-22)~~(9-1-23)T

b. The plan must be updated at least annually ~~(or extended through the duration of the declared COVID-19 public health emergency)~~ and amended as necessary. ~~(3-17-22)~~(9-1-23)T

c. The plan must address the service coordination needs of the participant as identified in the assessment ~~described in~~ under Section 730 of these rules. ~~(3-17-22)~~(9-1-23)T

d. The plan must be developed prior to ongoing service coordination being provided. (3-17-22)

03. Documentation of Service Coordination. Agencies must maintain records that contain documentation describing the services provided, review of the continued need for service coordination, and progress toward each service coordination goal. Documentation must be completed as ~~required~~ described in Section 56-209(h), Idaho Code. All active records must be immediately available. Documentation must include ~~all of~~ the following: ~~(3-17-22)~~(9-1-23)T

a. The name of the eligible participant. (3-17-22)

b. The name of the provider agency and the person providing the services. (3-17-22)

c. The date, time, duration, and place the service was provided. (3-17-22)

d. The nature, content, units of the service coordination received, and whether goals specified in the plan have been achieved. (3-17-22)

e. Whether the participant declined any services in the plan. (3-17-22)

f. The need for and occurrences of coordination with any non-Medicaid case managers. (3-17-22)

g. The timeline for obtaining needed services. (3-17-22)

h. The timeline for re-evaluation of the plan. (3-17-22)

i. A copy of the assessment or prior authorization from the Department that documents eligibility for service coordination services, and a dated and signed plan. (3-17-22)

j. Agency records must contain documentation describing details of the service provided, signed by the person who delivered the service. (3-17-22)

k. Documented review of participant's continued need for service coordination and progress toward each service coordination goal. A review must be completed at least every one hundred eighty (180) days after the plan development or update. Progress reviews must include the date of the review, and the signature of the service coordinator completing the review. (3-17-22)

- l.** Documentation of the participant's, family's, or legal guardian's satisfaction with service. (3-17-22)
- m.** A copy of the informed consent form signed by the participant, parent, or legal guardian that documents that the participant has been informed of the purposes of service coordination, their rights to refuse service coordination, and their right to choose their service coordinator and other service providers. (3-17-22)
- n.** A plan that is signed by the participant, parent, or legal guardian, and the service coordinator. The plan must reflect person-centered planning principles and document the participant's inclusion in the development of the plan. The service coordinator must also document that a copy of the plan was given to the participant or their legal representative. The plan must be updated and authorized when required, but at least annually. Children's service coordination plans cannot be effective before the date that the child's parent or legal guardian has signed the plan. (3-17-22)
- 04. Documentation Completed by a Paraprofessional.** Each entry completed by a paraprofessional must be reviewed by the participant's service coordinator and include the date of review and the service coordinator's signature on the documentation. (3-17-22)
- 05. Participant Freedom of Choice.** A participant must have freedom of choice when selecting from the service coordinators available to them. The service coordinator cannot restrict the participant's choice of other health care or HCBS providers. (3-17-22)(9-1-23)T
- 06. Service Coordinator Contact and Availability.** The frequency of contact, mode of contact, and person or entity to be contacted must be identified in the plan and ~~must~~ meet the needs of the participant. The contacts must verify the participant's well being and whether services are being provided according to the written plan. At least every ninety (90) days, service coordinators must have face-to-face contact with each participant. The face-to-face encounter may occur via synchronous interaction telehealth virtual care, as defined in Title 54, Chapter 57, Idaho Code. (3-17-22)(9-1-23)T
- a.** When it is necessary for the children's service coordinator to conduct a face-to-face contact with a child participant without the parent or legal guardian present, the service coordinator must notify the parent or legal guardian prior to the face-to-face contact with the participant. Notification must be documented in the participant's file. (3-17-22)
- b.** Service coordinators do not have to be available on a twenty-four (24) hour basis, but must include an individualized objective on the plan describing what the participant, families, and providers should do in an emergency situation. The individualized objective must include how the service coordinator will coordinate needed services after an emergency situation. (3-17-22)
- 07. ~~Service Coordinator Responsibility Related to Conflict of Interest.~~** ~~Service coordinators have a primary responsibility to the participant whom they serve, to respect and promote the right of the participant to self-determination, and preserve the participant's freedom to choose services and providers. In order to assure that participant rights are being addressed, service coordinators must~~ Individuals and agency employees or contractors who develop a participant's plan of service under these rules cannot: (3-17-22)(9-1-23)T
- a.** ~~Be alert to and avoid conflicts of interest that interfere with the exercise of professional discretion and impartial judgment.~~ Be related by blood or marriage to the participant or to any paid caregiver or the participant; (3-17-22)(9-1-23)T
- b.** ~~Inform the participant parent, or legal guardian when a real or potential conflict of interest arises and take reasonable steps to resolve the issue in a manner that makes the participant's interests primary and protects the participant's interests to the greatest extent possible.~~ Be financially responsible for the participant; (3-17-22)(9-1-23)T
- c.** Be empowered to make financial or health-related decisions on behalf of the participant; (9-1-23)T
- d.** Hold financial interests in any entity that is paid to provide care for the participant; or (9-1-23)T

e. Be a provider of the State Plan HCBS or waiver services for the participant or have an interest in or are employed by a provider of State Plan HCBS or waiver services. (9-1-23)T

08. Service Coordinator Responsibilities Related to Conflict of Interest. The service coordinator will: (9-1-23)T

a. Be alert to, and avoid, conflicts of interest that interfere with the exercise of professional discretion and impartial judgment. (9-1-23)T

b. Inform the participant, parent, or legal guardian when a real or potential conflict of interest arises and take reasonable steps to resolve the issue in a manner that makes the participant's interests primary and protects their interests to the greatest extent possible. (9-1-23)T

089. Agency Responsibilities Related to Conflict of Interest. ~~To assure that participants are protected from restrictions to their self-determination rights because of conflict of interest, the agency must guard against conflict of interest, and inform all participants and guardians of the risk. Each agency must have a document in each participant's file that contains the following information:~~ The agency must guard against conflicts of interest and inform all participants and guardians of any risks. The agency must: (3-17-22)(9-1-23)T

a. Ensure its employees and contractors meet the conflict of interest standards as defined in these rules; and (9-1-23)T

b. Have a document in each participant's file that contains: (9-1-23)T

i. The definition of "conflict of interest" as defined in Section 721 of these rules; (3-17-22)(9-1-23)T

ii. A signed statement by the agency representative verifying that the concept of conflict of interest was reviewed and explained to the participant's parent, or legal guardian; and (3-17-22)(9-1-23)T

iii. The participant's, parent's, or legal guardian's signature on the document. (3-17-22)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.13 – CONSUMER-DIRECTED SERVICES

DOCKET NO. 16-0313-2101

NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 2023.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202(b), 56-203, 56-253, and 56-264, Idaho Code.

PUBLIC HEARING SCHEDULE: Two public hearings concerning this rulemaking will be held as follows:

VIRTUAL TELECONFERENCE Via WebEx
Wednesday, October 18, 2023 9:00 a.m. (MT)
<p><i>Join from the meeting link:</i> https://idhw.webex.com/idhw/j.php?MTID=m22d7402b3e4f05b93a795b6ffd75471a</p> <p><i>Join by meeting number:</i> Meeting number (access code): 2761 907 1160 Meeting password: fMMMEpQE333 (36663773 from phones and video systems)</p> <p><i>Join by phone:</i> +1-415-527-5035 United States Toll +1-303-498-7536 United States Toll (Denver)</p>

VIRTUAL TELECONFERENCE Via WebEx
Wednesday, October 18, 2023 2:00 p.m. (MT)
<p><i>Join from the meeting link:</i> https://idhw.webex.com/idhw/j.php?MTID=m24d31b98e8d19db20a8af0d0505f54e6</p> <p><i>Join by meeting number:</i> Meeting number (access code): 2760 176 3901 Meeting password: sVaHVstG774 (78248784 from phones and video systems)</p> <p><i>Join by phone:</i> +1-415-527-5035 United States Toll +1-303-498-7536 United States Toll (Denver)</p>

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

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

The following changes are made in conjunction with companion Docket No. 16-0310-2101, Medicaid Enhanced Plan Benefits.

This rule change will decrease regulatory burdens, make technical corrections, implement operations for the end of the public health emergency, update rules to comply with K.W. Settlement, and align with federal regulations regarding conflicts of interest.

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

The changes in this rulemaking qualify for all the following purposes for a Temporary rulemaking:

- (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.

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

This rulemaking and this chapter of rules do not contain any 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:

There is no anticipated fiscal impact to the General Fund, state funds, or any other known 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 November 3, 2021, Idaho Administrative Bulletin, [Volume 21-11, pages 44-45](#).

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

The documents incorporated by reference in these rules are not being changed in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact William Deseron at 208-859-0046.

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 25, 2023.

DATED this 1st day of September, 2023.

Trinette Middlebrook and Frank Powell
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5500 phone; (208) 334-6558 fax
dhwrules@dhw.idaho.gov email

THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 16-0313-2101
(Only Those Sections With Amendments Are Shown.)

009. ~~CRIMINAL HISTORY AND~~ BACKGROUND CHECK REQUIREMENTS.

01. **Compliance With Department ~~Criminal History~~ Background Check.** The fiscal employer agent must verify that each support broker and community support worker, whose ~~criminal history background~~ check has not been waived by the participant, has complied with IDAPA 16.05.06, "Criminal History and Background Checks." When a participant chooses to waive the ~~criminal history background~~ check requirement for a community support worker, the waiver must be completed in accordance with Section 150 of these rules. ~~Except, through the duration of the declared COVID-19 public health emergency, if each support broker and community support worker, whose criminal history check has not been waived by the participant is unable to complete a criminal background check in accordance with the timeframes set forth in IDAPA 16.05.06, then provider may allow newly hired direct care staff to begin rendering services prior to completion of the criminal background check in accordance with the requirements specified by the Department in a COVID-19 information release posted on the Department's website at <https://healthandwelfare.idaho.gov/Providers/Providers-Medicaid/InformationReleases/tabid/264/Default.aspx>.~~ (3-17-22)(9-1-23)T

02. **Availability to Work or Provide Service.** Participants, ~~at their discretion~~, may review the completed application and allow the community support worker to provide services on a provisional basis if no disqualifying offenses ~~listed in~~ under IDAPA 16.05.06, "Criminal History and Background Checks," are disclosed. (3-17-22)(9-1-23)T

03. **Additional Criminal Convictions.** Once ~~criminal history~~ clearances have been received, any additional criminal convictions must be immediately reported by the worker to the participant and by the participant to the Department. (3-17-22)(9-1-23)T

04. **Notice of Pending Investigations or Charges.** Once ~~criminal history~~ clearances have been received, any charges or investigations for abuse, neglect or exploitation of any vulnerable adult or child, criminal charges, or substantiated adult protection or child protection complaints, must be immediately reported by the worker to the participant and by the participant to the Department. (3-17-22)(9-1-23)T

05. **Providers Subject to ~~Criminal History~~ Background Check Requirements.** A community support worker, who has not had the requirement waived by the participant, and a support broker as defined in Section 010 of these rules. (3-17-22)(9-1-23)T

(BREAK IN CONTINUITY OF SECTIONS)

135. SUPPORT BROKER REQUIREMENTS AND LIMITATIONS.

01. **Initial Application to Become a Support Broker.** Individuals interested in becoming a support broker must complete the Department-approved application to document that they: (3-17-22)

- a. ~~Is~~Are eighteen (18) years of age or older; (3-17-22)(9-1-23)T
- b. ~~Has~~Have skills and knowledge typically gained by completing college courses or community classes or workshops that count toward a degree in the human services field; and (3-17-22)(9-1-23)T
- c. ~~Has~~Have at least two (2) years verifiable experience with the target population and knowledge of services and resources in the developmental disabilities field. (3-17-22)(9-1-23)T

02. Application Exam. Applicants that meet the minimum requirements ~~outlined in under~~ this ~~section rule~~ will receive training materials and resources to prepare for the application exam. Under Family-Directed Community Supports (FDCS), children's support brokers must attend the initial training. Applicants must earn a score of seventy percent (70%) or higher to pass. Applicants may take the exam up to three (3) times. After the third time, the applicant will not be allowed to retest for twelve (12) months from the date of the last exam. Applicants who pass the exam, and meet all other requirements ~~outlined in under~~ these rules, will be eligible to enter into a provider agreement with the Department. ~~Through the duration of the COVID-19 public health emergency, support brokers may begin rendering services prior to completing the training requirements, provided that they complete the training requirements within thirty (30) days of first rendering services, advise the participant or legal guardian that the individual has not yet completed the applicable trainings, and comply with any other requirements specified by the Department in a COVID 19 information release posted on the Department's website at <https://healthandwelfare.idaho.gov/Providers/Providers-Medicaid/InformationReleases/tabid/264/Default.aspx>.~~ (3-17-22)(9-1-23)T

03. Required Ongoing Training. All support brokers must document a minimum of twelve (12) hours per year of ongoing, relevant training in the provision of support broker services. Up to six (6) hours of the required twelve (12) hours may be obtained through independent self-study. The remaining hours must consist of classroom training. (3-17-22)

04. Termination. The Department may terminate the provider agreement when the support broker: (3-17-22)

a. Is no longer able to pass a ~~criminal history~~ background check ~~as outlined in under~~ Section 009 of these rules. (3-17-22)(9-1-23)T

b. Puts the health or safety of the participant at risk by failing to perform job duties ~~as outlined in under~~ the employment agreement. (3-17-22)(9-1-23)T

c. Does not receive and document the required ongoing training. (3-17-22)

05. Limitations. The support broker must ~~not~~: (3-17-22)(9-1-23)T

a. ~~Not provide~~, or be employed by an agency that provides paid community supports under Section 150 of these rules to the same participant; and (3-17-22)(9-1-23)T

b. For Self-Directed Community Supports (SDCS), ~~be the guardian, parent, spouse, payee, or conservator of the participant, or have direct control over the participant's choices. Additionally, the support broker must not be in a position to both influence a participant's decision making and receive undue financial benefit from the participant's decisions~~ meet the conflict of interest standards under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-17-22)(9-1-23)T

(BREAK IN CONTINUITY OF SECTIONS)

190. INDIVIDUALIZED BUDGET.

The Department ~~sets an individualized budget for each participant according to an individualized measurement of the participant's functional abilities, behavioral limitations, medical needs, and other individual factors related to the participant's assessed needs. Using these specific participant factors, the budget setting methodology will correlate a participant's characteristics with the participant's individualized budget amount, so participants with higher needs will be assigned a higher individualized budget amount. The participant must work within the identified budget and acknowledge that they understand the budget figure is a fixed amount.~~ will assign budgets based on the criteria under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-17-22)(9-1-23)T

01. Budget Amount Notification. The Department notifies each participant of their set budget amount as part of the eligibility determination or annual redetermination process. The notification will include how the participant may appeal the set budget amount. (3-17-22)

02. Annual Re-Evaluation of Adult Individualized Budgets. Individualized budgets will be re-evaluated annually. At the request of the participant, the Department will also re-evaluate the set budget amount when there are documented changes in the participant's condition that results in a need for services that meet medical necessity criteria, and that is not reflected on the current inventory of individual needs. (3-17-22)

03. Annual Re-Evaluation of Children's Individualized Budgets. Individualized budgets will be re-evaluated annually. At the request of the participant, the Department will also re-evaluate the set budget amount when there are documented changes that may support placement in a different budget category ~~as identified in~~ under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 527. ~~(3-17-22)~~ (9-1-23)T

(BREAK IN CONTINUITY OF SECTIONS)

302. FISCAL EMPLOYER AGENT DUTIES AND RESPONSIBILITIES: CUSTOMER SERVICE.

01. Customer Service System. The provider must provide a customer service system to respond to all inquiries from participants, employees, agencies, and vendors. The provider must: (3-17-22)

a. Provide staff with customer service training with an emphasis on consumer-direction. (3-17-22)

b. Ensure staff are trained and have the skills to assist participants with enrollment and to help them understand their account statements. (3-17-22)

c. Ensure that fiscal employer agent personnel are available during regular business hours, ~~8 a.m. to 5 p.m. Mountain Time, Monday through Friday, excluding state holidays.~~ (3-17-22) (9-1-23)T

d. Provide translation and interpreter services (i.e., American Sign Language and services for persons with limited English proficiency). (3-17-22)

e. Provide prompt and consistent response to verbal and written communication. Specifically: (3-17-22)

i. All calls and voice mails ~~messages~~ must be responded to within one (1) business day; and (3-17-22) (9-1-23)T

ii. All written and electronic correspondence must be responded to within five (5) business days. (3-17-22)

f. Maintain a toll-free phone line where callers speak to a live person during business hours and are provided the option to leave voice mail at any time, all day, every day. (3-17-22)

g. Maintain a toll-free fax line that is available all day, every day, exclusively for participants and their employees. (3-17-22)

02. Complaint Resolution and Tracking System. The provider is responsible for receiving, responding to, and tracking all complaints from any source under this agreement. A complaint is defined as a verbal or written expression of dissatisfaction about fiscal employer agent services. The provider must: (3-17-22)

a. Respond to all written and electronic correspondence within five business (5) days. (3-17-22) (9-1-23)T

b. Respond to ~~verbal complaints~~ all calls and voicemails within one (1) business day. (3-17-22) (9-1-23)T

c. Maintain an electronic tracking system and log of complaints and resolutions. The electronic log of

complaints and resolutions must be accessible for Department review through the SFTP site. (3-17-22)

d. Log and track complaints received from the Department pertaining to fiscal employer agent services. (3-17-22)

e. Compile a summary report and analyze complaints received on a quarterly basis to determine the quality of services to participants and to identify any corrective action necessary. (3-17-22)

f. Post the complaint to the SFTP site within twenty-four (24) hours any day a complaint is received Monday through Friday. Saturday and Sunday complaints must be posted to the SFTP site by close of business the following Monday. Failure to comply will result in a fifty dollar (\$50) penalty payable to Medicaid within ninety (90) days of incident. (3-17-22)

(BREAK IN CONTINUITY OF SECTIONS)

310. FISCAL EMPLOYER AGENT DUTIES AND RESPONSIBILITIES: PERFORMANCE METRICS.
The provider must do the following: (9-1-23)I

01. Readiness Review. ~~The provider must e~~Complete a readiness review conducted by the Department with the provider prior to providing fiscal employer agent services. (3-17-22)(9-1-23)I

a. ~~Required Level of Expectation:~~The provider must complete one hundred percent (100%) of the readiness review. (3-17-22)(9-1-23)I

b. ~~Method of Monitoring:~~The Department will access SFTP site for review of provider documents and conduct an onsite review. (3-17-22)(9-1-23)I

02. Compliance with Tax Regulations and Labor Laws. ~~The provider must e~~Ensure each participant's compliance with regulations for both federal ~~taxes~~ and state taxes, ~~as well as~~ and all applicable labor laws. (3-17-22)(9-1-23)I

03. Fiscal Support and Financial Consultation. (3-17-22)

a. The provider must provide each participant with fiscal support and financial consultation. (3-17-22)

b. ~~Required Level of Expectation:~~The provider must respond to ninety-five percent (95%) of ~~participant~~ calls and voicemails within two (2) business days and to ~~e-mails~~ written and electronic correspondence within five business (5) days. (3-17-22)(9-1-23)I

04. Federal and State Forms Submitted. ~~The provider must e~~Ensure each participant's compliance with regulations for both federal ~~taxes~~ and state taxes, including preparation and submission of all federal and state forms for each participant and their employees. (3-17-22)(9-1-23)I

05. Mandatory Reporting, Withholding, and Payment. ~~The provider must p~~Perform all mandatory reporting, withholding, and payment actions according to the compliance requirements of the state and federal agencies. (3-17-22)(9-1-23)I

06. Payroll Checks. ~~The provider must i~~Issue payroll checks within the two (2) week or semi-monthly payroll cycle, after receipt of completed, approved time sheets. (3-17-22)(9-1-23)I

07. Adherence to Support and Spending Plan. ~~The provider must d~~Distribute payments to each participant employee ~~in accordance with~~ under the participant's support and spending plan. (3-17-22)(9-1-23)I

08. Record Activities. ~~The provider must r~~Record all activities in an individual file for each participant

and their employees.

~~(3-17-22)~~(9-1-23)T

09. **Records in Participant File.** ~~The provider must m~~Maintain complete records in each participant's file. ~~(3-17-22)~~(9-1-23)T

10. **Manage Phone, Fax, and E-Mail for Fiscal and Financial Questions.** (3-17-22)

a. The provider must manage toll-free telephone line, fax, and e-mail related to participant fiscal and financial questions. (3-17-22)

b. ~~Required Level of Expectation:~~The provider must respond to ninety-five percent (95%) of ~~participant queries~~ calls and voicemails within two (2) business days and to written and electronic correspondence within five (5) business days. ~~(3-17-22)~~(9-1-23)T

11. **Tracking of Complaints and Complaint Resolution.** ~~(3-17-22)~~(9-1-23)T

a. The provider must maintain a register of complaints from participants, participant employees, and others, with corrective action implemented by the provider within one (1) business day of the complaint response. ~~(3-17-22)~~(9-1-23)T

b. ~~Required Level of Expectation:~~The provider must respond to ninety-five percent (95%) of ~~complaints within one (1) business day~~ calls and voicemails within two (2) business days and to written and electronic complaints within five (5) business days. ~~(3-17-22)~~(9-1-23)T

12. **Web Access to Electronic Time Sheet Entry.** ~~The provider must m~~Maintain web access to electronic time sheet entry for participants. ~~(3-17-22)~~(9-1-23)T

13. **Participant Enrollment Packets and Employment Packets.** ~~The provider must p~~Prepare and distribute participant enrollment ~~packets~~ and employment packets to each participant. ~~(3-17-22)~~(9-1-23)T

14. **Payroll Spending Summaries.** ~~The provider must p~~Provide each participant with payroll spending summaries and information about how to read the payroll spending summary each time payroll is executed. ~~(3-17-22)~~(9-1-23)T

15. **Quarterly Reconciliation.** Each fiscal quarter after initiating service, the provider must reconcile its Medicaid Billing Report to a zero-dollar (\$0) balance with the Medicaid Bureau of Financial Operations. The provider has ninety (90) days to comply with reconciling each participant's spending plan balance to a zero dollar (\$0) balance with Medicaid's reimbursements. The provider must: ~~(3-17-22)~~(9-1-23)T

a. ~~Required Level of Expectation:~~The provider must ~~h~~Have one hundred percent (100%) compliance with the required quarterly reconciliation of the Medicaid Billing Report. ~~(3-17-22)~~(9-1-23)T

b. ~~Strategy for Correcting Noncompliance:~~The provider must ~~n~~Notify the Department immediately if an issue is identified that may result in the provider not reconciling the Medicaid Billing Report. The Department will notify the provider when a performance issue is identified. The Department may require the provider to submit a written corrective action plan for Department approval within two (2) business days after notification. If the provider fails to reconcile within ninety (90) days after the end of each quarter, the provider will be penalized fifty dollars (\$50) each week until the provider has reconciled with Medicaid to a zero dollar (\$0) balance. ~~(3-17-22)~~(9-1-23)T

16. **Cash Management Plan.** Each provider's cash management plan must equal one point five (1.5) times the monthly payroll cycle amount. ~~The cash management plan~~ and can be forms of liquid cash and lines of credit. For example, ~~in the case that the~~ if a provider's current payroll minimum has averaged one hundred thousand dollars (\$100,000) per payroll cycle, the provider would be required to have one hundred fifty thousand dollars (\$150,000) in a cash management plan. The Department must be ~~listed~~ on the notification list if any lines of credit are decreased in the amount accessible or terminated. The expectation is to provide a seamless payroll cycle to the participant, without loss of pay to their employees. ~~(3-17-22)~~(9-1-23)T

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.18 – MEDICAID COST-SHARING

DOCKET NO. 16-0318-2301 (ZBR CHAPTER REWRITE, FEE RULE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202(b), 56-253, and 56-257, Idaho Code and 42 CFR Part 447 Payments for services.

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

VIRTUAL TELECONFERENCE Via WebEx
Thursday, October 12, 2023 9:00 a.m. - 10:00 a.m. (MT)
Join from the meeting link https://idhw.webex.com/idhw/j.php?MTID=maa22e58e051eda7333887306634fa3e9
Join by meeting number Meeting number (access code): 2762 153 2942 Meeting password: MSfpqxPp727 (67377977 from phones and video systems)
Join by phone +1-415-527-5035 United States Toll +1-303-498-7536 United States Toll (Denver)

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below. Meeting(s) will conclude after 30 minutes if no participants sign in or wish to comment in the meeting.

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

Due to [Executive Order 2020-01](#), Zero-Based Regulation, agencies are required to rewrite IDAPA chapters every 5 years on an approved schedule. This rulemaking is complying to this mandate and is scheduled for presentation to the 2024 Legislature. Under this Executive Order, the Department is rewriting this chapter of rules to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government while serving those receiving benefits subject to under Medicaid Cost-Sharing. This chapter rewrite is intended to perform a comprehensive review of this chapter in collaboration with the public to update, clarify, streamline, and simplify the rule language.

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

This chapter contains designation, records, and establishes a premium fee schedule for Youth Empowerment Services (YES) and SCHIP program participants. This chapter has no anticipated fee changes.

FISCAL IMPACT: The following is a specific 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 is not anticipated to have any fiscal impact on the State General Fund, or any other known 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 May 3, 2023, Idaho Administrative Bulletin Vol. 23-5, pages 150 through 151.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 incorporations by reference in this chapter of rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cindy Brock at 208-364-1983 or Jennifer Pinkerton at 208-287-1171.

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 25, 2023.

DATED this 6th day of July, 2023.

Trinette Middlebrook and Frank Powell
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
e-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 16-0318-2301
(ZBR Chapter Rewrite)

16.03.18 – MEDICAID COST-SHARING

000. LEGAL AUTHORITY.

Under Section 56-202(b), Idaho Code, ~~the Legislature has delegated to~~ the Department of Health and Welfare ~~the responsibility to~~ establish and enforce ~~such~~ rules ~~as may be necessary or proper~~ to administer public assistance programs ~~within the state of Idaho~~. Under Sections 56-253, 56-255 and 56-257, Idaho Code, and 42 CFR Part 447 Payments for Service the Department of Health and Welfare ~~is to~~ establish enforceable cost-sharing requirements within the limits of federal Medicaid law and regulations. ~~Furthermore, the~~ Idaho Department of Health and Welfare is the designated agency to administer programs under Title XIX and Title XXI of the Social Security Act. (3-15-22)()

~~001. TITLE AND SCOPE.~~

~~01. Title.~~ These rules are titled IDAPA 16.03.18, “Medicaid Cost-Sharing.” (3-15-22)

~~02. Scope.~~ These rules describe the general requirements regarding the administration of the cost-sharing provisions for participation in a medical assistance program providing direct benefits in Idaho. (3-15-22)

~~002. WRITTEN INTERPRETATIONS.~~

~~This agency may have written statements which pertain to the interpretation of the rules of this chapter. These documents are available for public inspection. (—)~~

~~003. -- 009. (RESERVED)~~

~~010. DEFINITIONS.~~

~~In addition to definitions under Section 56-252, Idaho Code, the following definitions apply: (—)~~

~~01. Copayment (Copay).~~ The amount a participant ~~is required to pay~~ s to the a provider for specified services. (3-15-22)(—)

~~02. Cost Sharing.~~ A payment the participant or the financially responsible adult is required to make toward the cost of the participant's health care. Cost sharing includes both copays and premiums. (3-15-22)

~~03. Creditable Health Insurance.~~ Creditable health insurance is coverage that provides benefits for inpatient and outpatient hospital services and physicians' medical and surgical services. Creditable coverage excludes liability, limited scope dental, vision, specified disease or other supplemental type benefits. (3-15-22)

~~04. Department.~~ The Idaho Department of Health and Welfare, or a person authorized to act on behalf of the Department its designee. (3-15-22)(—)

~~05. Family Income.~~ The gross income of all financially responsible adults who reside with the participant, as calculated under IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children." (3-15-22)

~~06. Family Size.~~ Family size is the number of people living in the same home as the child. This includes relatives and other optional household members. (3-15-22)

~~07. Federal Poverty Guidelines (FPG).~~ The federal poverty gGuidelines issued annually by the U. S. Department of Health and Human Services (HHS). ~~The federal poverty guidelines are available on the U.S. Health and Human Services website at <http://aspe.hhs.gov/poverty>~~ <http://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>. (3-15-22)(—)

~~08. Financially Responsible Adult.~~ An individual who is the biological or adoptive parent of a child and is financially responsible for the participant. (3-15-22)

~~09. Medical Assistance.~~ Payments for part or all of the cost of services funded by Titles XIX or XXI of the federal Social Security Act, as amended. (3-15-22)

~~10. Participant.~~ A person eligible for and enrolled in the Idaho Medical Assistance Program. (3-15-22)

~~11. Physician Office Visit.~~ Services performed provided to a participant by a physician, nurse practitioner, or physician's assistant ~~at the practitioner's place of business, including Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs). Indian Health Clinic/638 Clinics providing services to individuals eligible for Indian Health Services are not included.~~ (3-15-22)(—)

~~12. Premium.~~ A regular and periodic charge or payment for health coverage. ()

~~13. Social Security Act.~~ 42 U.S.C. 101 et seq., authorizing, in part, federal grants to the states for medical assistance to eligible low-income individuals. (3-15-22)

~~14. State.~~ The state of Idaho. (3-15-22)

~~15. Title XIX. Title XIX of the Social Security Act, known as Medicaid, is a medical benefits program jointly financed by the federal and state governments and administered by the states. This program pays for medical assistance for certain individuals and families with low income and limited resources. (3-15-22)~~

~~16. Title XXI. Title XXI of the Social Security Act, known as the State Children's Health Insurance Program (SCHIP). This is a program that primarily pays for medical assistance for low income children. (3-15-22)~~

011. -- 024. (RESERVED)

025. PARTICIPANTS NOT ALREADY FEDERALLY EXEMPT FROM COST-SHARING.

~~Native American and Alaskan Native participants are exempt from the cost sharing provisions of Sections 200, 205, 215, 320, and 400 of these rules. The participant must declare his race to the Department to receive this exemption. Participants in the Medicaid Workers with Disabilities (MWD) program are exempt from the cost-sharing provisions of Sections 200, 205, 207, and 400 of these rules. (3-15-22)(____)~~

026. -- 049. (RESERVED)

050. GENERAL COST-SHARING.

~~01. Cost Sharing Maximum Amount. A family will be required to pay out of pocket costs not to exceed five percent (5%) of the family's anticipated gross monthly income unless an exception is made as provided in Subsection 050.02 of this rule. (3-15-22)~~

~~02. Exception to Cost Sharing Maximum. A family will be required to pay cost sharing amounts as provided in Sections 215 and 400 of these rules. These cost sharing amounts may exceed the family's five percent (5%) of anticipated gross monthly income. (3-15-22)~~

~~031. Proof of Cost-Sharing Payment. If a participant believes that their cost-sharing exceeded the five percent (5%) cost sharing of the family's anticipated gross monthly household income, they must provide proof to the Department of the copay amounts that were paid for an assessment of suspension or reimbursement. (3-15-22)(____)~~

~~042. Excess Cost-Sharing. A family household that establishes proof of payment for cost-sharing that exceeds the five percent (5%) of the family's anticipated gross monthly household income will be reimbursed by the Department for the amount paid that exceeds the five percent (5%), except as provided in Subsection 050.02 of this rule. (3-15-22)(____)~~

~~053. Cost-Sharing Suspended. A family household that exceeds the five percent (5%) maximum amount for cost-sharing will for the calendar month is not be required to pay a cost-sharing portion for any family participant household member for the remainder of the calendar month in which proof of payment is established. (3-15-22)(____)~~

051. - 199. (RESERVED)

200. PREMIUMS FOR PARTICIPATION UNDER THE STATE CHILDREN'S HEALTH INSURANCE PROGRAM (SCHIP).

~~01. Family Household Income Above 133% of FPG. Each SCHIP participant with family household income above one hundred thirty-three percent (133%) and equal to or less than one hundred fifty percent (150%) of the current FPG must pay a monthly premium of ten dollars (\$10) to the Department. (3-15-22)(____)~~

~~02. Family Household Income Above 150% of FPG. Each SCHIP participant with family household income above one hundred fifty percent (150%) and equal to or less than one hundred eighty-five percent (185%) of the current FPG must pay a monthly premium of fifteen dollars (\$15) to the Department. (3-15-22)(____)~~

~~03. Premium Recalculation. Premiums are recalculated at each annual eligibility redetermination. If the Department receives verification of a reduction in household income prior to annual eligibility redetermination,~~

~~the premium is recalculated. The Department waives any premium for participants who become eligible for Title XIX Medicaid.~~ ()

~~04. Premium Reduction. The monthly premium for SCHIP participants may be reduced by ten dollars (\$10) per month under IDAPA 16.03.09, "Medicaid Basic Plan Benefits."~~ ()

201. -- 204. (RESERVED)

205. PREMIUMS FOR PARTICIPATION UNDER HOME CARE FOR CERTAIN DISABLED CHILDREN (HCCDC).

~~01. FamilyHousehold Income Above 150% and Equal to or Less Than 185% of FPG. Each HCCDC participant with a family household income above one hundred fifty percent (150%) and equal to or less than one hundred eighty-five percent (185%) of the current FPG must pay a monthly premium of fifteen dollars (\$15) to the Department. The maximum monthly premium a family must pay is limited to thirty dollars (\$30).~~ (3-15-22)()

~~02. FamilyHousehold Income Above 185% of FPG. Each HCCDC family Participant with income above one hundred eighty-five percent (185%) of the current FPG must pay a monthly premium to the Department. The monthly premium is a fixed percentage of the family's household income as provided in the table below.~~

TABLE 205.02 SLIDING FEE SCHEDULE FOR MONTHLY PREMIUMS FOR HCCDC PARTICIPATION		
FamilyHousehold Income Above 185% of Current FPG		Premium Based on % of FamilyHousehold Income
ABOVE	LESS THAN OR EQUAL TO	
185%	250%	1.0%
250%	300%	1.5%
300%	400%	2.0%
400%	500%	2.5%
500%	600%	3.0%
600%	700%	3.5%
700%	800%	4.0%
800%	900%	4.5%
900%	No Upper Limit	5.0%

(3-15-22)()

~~03. Reduction of Premium for Creditable Health Insurance. A family who purchases creditable health insurance for the participant may receive a twenty five percent (25%) reduction of the required monthly premium.~~ (3-15-22)

~~043. Failure to Provide Information. Failure to provide the Department with information needed to~~

determine ~~family income and household size~~ eligibility may subject the participant to a monthly premium equal to the average monthly cost of coverage for participants receiving Medicaid Enhanced Plan Benefits through HCCDC.

(3-15-22)()

054. Failure to Pay Premium. Failure to pay the premium ~~for an HCCDC participant~~ will not cause the participant to lose coverage or eligibility for services. ~~A participant eligible through HCCDC is exempt from the provisions of Section 250 of these rules.~~

(3-15-22)()

065. Waiver of Premium. The premium ~~may be~~ is waived if the Department determines ~~that~~ payment of the premium would cause undue hardship ~~on the family~~. Undue hardship exists when an unexpected expense would cause the ~~family~~ household to forgo basic food or shelter ~~in order~~ to make a premium payment. Detailed documentation of the ~~family's~~ household's living ~~and insurance~~ expenses demonstrating such hardship must be provided to the Department.

(3-15-22)()

076. Premium Recalculation. ~~The p~~ Premiums amount is are recalculated at each annual eligibility renewal determination. ~~If a financially responsible adult reports a reduction in family income prior to renewal the Department receives verification of a reduction in household income prior to annual redetermination, the premium will be reduced to the appropriate level upon verification of the reduction to the family's income is recalculated. When the family income is at a level that does not require premium payments, the premium will no longer be assessed.~~

(3-15-22)()

206. (RESERVED)

207. **PREMIUMS FOR PARTICIPATION UNDER THE YOUTH EMPOWERMENT SERVICES (YES) PROGRAM.**

01. Premium Fee Schedule. ~~Each YES program p~~ Participants, as that individual is defined in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 636, is are subject to assessment of a premium ~~based on family income~~. The Department ~~will~~ establishes a premium fee schedule ~~at rates not to exceed maximums set forth in federal law and regulations governing state Medicaid programs. The fee schedule will be that is~~ published on the Department's website ~~and provided to families participating in the YES program who are subject to premiums at~~ <https://healthandwelfare.idaho.gov/services-programs/medicaid-health>.

(3-15-22)()

02. Enforcement of Premiums. ~~Payment of premiums will be enforced within the limitations of federal laws and regulations governing state Medicaid programs.~~

(3-15-22)

032. Waiver of Premium. The monthly premium ~~described in Subsection 207.01 of~~ under this rule ~~may be~~ is waived if the Department determines ~~that~~ the ~~family~~ household is unable to participate in the cost of care.

(3-15-22)()

043. Premium Recalculation. The premium amount is recalculated at each annual eligibility redetermination. ~~If a financially responsible adult reports a reduction in family income prior to eligibility redetermination, the premium will be reduced to the appropriate level upon verification of the reduction in the family's income. When the family income is reduced to a level that does not require premium payments, the premium will no longer be assessed.~~

(3-15-22)()

208. -- 209. (RESERVED)

210. **DEPARTMENT RESPONSIBILITIES.**

01. Assessed Premiums. A participant ~~will is~~ is not ~~be~~ assessed premiums during the ~~time~~ initial eligibility ~~is~~ determined at on. Obligation for premium payments does not begin for at least sixty (60) days after receipt of application, except for workers with disabilities under ~~Section 215 of~~ these rules.

(3-15-22)()

02. Premiums Not Assessed Due to Late Review. A participant cannot be assessed premiums for extra months of eligibility received due solely to the Department's ~~late~~ untimely review of continuing eligibility, except for workers with disabilities under ~~Section 215 of~~ these rules.

(3-15-22)()

03. **No Retroactive Premiums Assessed.** A participant cannot be assessed premiums for months of retroactive eligibility. ()

04. **Notification of Premiums.** The Department ~~is required to~~ routinely ~~notify~~ notifies a participants of their premium payment obligations including any delinquencies, if applicable. (3-15-22)()

211. -- 214. (RESERVED)

215. PREMIUMS FOR PARTICIPATION IN MEDICAID—~~ENHANCED PLAN~~ WORKERS WITH DISABILITIES.

01. **Workers with Disabilities.** ~~A participant in the Medicaid for Workers with Disabilities coverage group must share in the cost of Medicaid coverage, if required.~~ Countable income is determined under IDAPA 16.03.05, “Eligibility for Aid to the Aged, Blind, and Disabled (AABD).” ~~A participant’s premium for his share of Medicaid costs under this coverage group is determined in Subsections 215.01.a. through 215.01.e. of this rule. The monthly premium is a fixed percentage of countable income as provided on the Department’s website at <https://healthandwelfare.idaho.gov/services-programs/medicaid-health>.~~ (3-15-22)()

~~a. A participant who has countable income at or below one hundred thirty three percent (133%) of the current federal poverty guideline is not required to pay a premium for Medicaid. (3-15-22)~~

~~b. A participant who has countable income above one hundred thirty three percent (133%) to two hundred fifty percent (250%) of the current federal poverty guideline is required to pay a monthly premium of ten dollars (\$10) to the Department. (3-15-22)~~

~~e. A participant who has countable income in excess of two hundred fifty percent (250%) of the current federal poverty guideline is required to pay a monthly premium to the Department. The amount due is the greater of ten dollars (\$10); or seven and one half percent (7.5%) of the participant’s income above two hundred fifty percent (250%) of the current federal poverty guideline. (3-15-22)~~

02. **Recomputed Premium Amount.** Premium amounts are recomputed when changes to a participant’s countable income result in a different percentage premium calculation as determined in ~~Subsections 215.02 through 215.04~~ of this rule, and at the annual re-determination. (3-15-22)()

216. -- 249. (RESERVED)

250. DELINQUENT PREMIUM PAYMENTS.

If the participant is sixty (60) days or more past due on ~~its~~ premium payments, the participant is contacted to determine the reason for the delinquency. If the participant’s ~~countable~~ income is less than the amount used for the most recent eligibility determination, the participant is offered a new eligibility determination. ~~If a participant’s family income is at a level that does not require premium payments, the premium will no longer be assessed. The change is effective the month after the participant becomes eligible for such benefits. The following Subsections 250.01 through 250.03 of this rule apply to delinquent premium payments.~~ (3-15-22)()

01. **Delinquent Payments.** A participant ~~must~~ is not ~~be~~ approved for or renewed for coverage that requires premium payments, if their premium payments are sixty (60) days or more delinquent ~~as of the last working day of their twelve (12) month eligibility period.~~ (3-15-22)()

02. **Reestablishing Eligibility.** A participant can reestablish eligibility by paying the premium debt in full, unless ~~one (1) of the conditions listed in Subsection 250.03 applies~~ forgiven in this rule. (3-15-22)()

03. **Premium Debt.** Any premium debt assessed, but not paid, will be forgiven if one (1) of the following applies: ()

a. The participant reports and the Department determines that the participant’s ~~family~~ household income is below one hundred and thirty-three percent (133%) FPG. This may occur at any time during the eligibility

period; or (3-15-22)()

b. A participant in the Medicaid Basic Plan has a medical condition that requires the participant to receive the benefits provided in IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” (3-15-22)()

251. -- 299. (RESERVED)

300. PARTICIPANTS EXEMPT FROM COPAYMENT NOT ALREADY FEDERALLY EXEMPTED.
This includes participants who have other health care coverage that is the primary payor for the services provided. ()

~~01. Exempt Participants.~~ Certain participants are exempt from copayments for services described in Section 320.03 through 320.10 of these rules. Exempt participants include: (3-15-22)

~~a. A child under the age of nineteen (19) with family income less than or equal to one hundred and thirty-three percent (133%) of the current federal poverty guidelines (FPG); (3-15-22)~~

~~b. An individual age of nineteen (19) or older with family income less than or equal to one hundred percent (100%) of the current federal poverty guidelines (FPG); (3-15-22)~~

~~c. A pregnant or post-partum woman when the services provided are related to the pregnancy; (3-15-22)~~

~~d. An inpatient in a hospital, nursing facility, intermediate care facility for persons with intellectual disabilities (ICF/IID), or other medical institution, who is required to pay all but a nominal amount of their income to the institution for their care; (3-15-22)~~

~~e. An adult participant who receives services provided under a waiver of Section 1915c of the Social Security Act (SSA); (3-15-22)~~

~~f. A participant who has other health care coverage that is the primary payor for the services provided; (3-15-22)~~

~~g. A participant receiving hospice care; (3-15-22)~~

~~h. A child in foster care receiving aid or assistance under the Social Security Act (SSA), Title IV, Part B; (3-15-22)~~

~~i. A participant receiving adoption or foster care assistance under the Social Security Act (SSA), Title IV, Part E, regardless of age; and (3-15-22)~~

~~j. A woman eligible under the breast and cervical cancer eligibility group. (3-15-22)~~

~~02. Notification of Copayment.~~ The Department will provide notification to each participant who is not exempt from the copayment requirements in Subsections 320.03 through 320.10 of these rules. (3-15-22)

301. -- 309. (RESERVED)

310. COPAYMENT FEE AMOUNTS.

~~01. Nominal Amount.~~ The amount of the copayment must be a nominal amount as provided in 42 CFR 447.54. This nominal amount is set by the U.S. Department of Health and Human Services. (3-15-22)

~~02. Fee Amount.~~ Beginning on November 1, 2011, ~~the nominal Copayment~~ fee amount required to be paid by the participant as a copayment, when applicable, is three dollars and sixty-five cents (\$3.65). ~~This copayment amount will be adjusted annually as determined by the Secretary of Human Services.~~ (3-15-22)()

~~03. Annual Increase. The nominal fee amount will be increased annually by an adjusted percentage rate determined by the Secretary of Health and Human Services as set in the Social Security Act Section 1916. (3-15-22)~~

311. -- 319. (RESERVED)

320. MEDICAID OUTPATIENT SERVICES SUBJECT TO COPAYMENTS.

Medicaid participants are responsible for making copayments for the outpatient services described in Subsections 320.01 through 320.10 of this rule, unless otherwise exempt or exempted under this rule for the following. The amount of the copayment is provided in Section 310 of these rules. (3-15-22)()

~~01. Accessing Hospital Emergency Department for Non-Emergency Medical Conditions. A participant who seeks care at a hospital emergency department for services that do not meet the definition of an emergency medical condition as defined in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," may be required to pay a copayment to the provider. A participant who must access a hospital emergency department in order to receive routine services for their medical condition is exempt from this provision. (3-15-22)()~~

~~02. Accessing Emergency Transportation Services for Non-Emergency Medical Conditions. A participant who accesses emergency transportation services for a condition that is determined by the Department to be a non-emergency medical condition may be required to pay a copayment to the provider of the service. (3-15-22)()~~

~~03. Chiropractic Services. Those services for spinal manipulation performed by a chiropractor. (3-15-22)()~~

~~04. Occupational Therapy, Speech or Physical. (3-15-22)()~~

~~05. Optometric Services. Those services performed by an optometrist that fall into the "General Ophthalmological Services" category of Current Procedural Terminology (CPT). (3-15-22)()~~

~~06. Outpatient Hospital Services. Any of the services included in Subsections 320.03 through 320.05 and Subsections 320.07 through 320.10 of this rule performed in an outpatient hospital setting. Services performed in a Hospital Emergency Department are excluded, except as provided for in Subsection 320.01 of this rule. (3-15-22)()~~

~~07. Physical Therapy. (3-15-22)~~

~~08. Podiatry Services. Services provided by a podiatrist during an office visit. (3-15-22)()~~

~~09. Physician Office Visit. Each physician office visit, unless the visit is for: (3-15-22)()~~

~~a. The visit is for a preventive service, including wellness exams, immunizations, or family planning. (3-15-22)()~~

~~b. The visit is for urgent care provided at a clinic billing as an urgent care facility. (3-15-22)()~~

~~10. Speech Therapy. ()~~

321. -- 324. (RESERVED)

325. EXCEPTION TO CHARGING A COPAYMENT.

In order for a copay to be charged by the provider, the Medicaid payment amount for the services rendered during a visit must be A provider may charge a copayment if the Medicaid reimbursement for the services rendered is equal to or greater than ten (10) times the amount of the copayment under described in Section 310 of these rules. The Medicaid payment amount is determined by the Department and published in the Medicaid Fee Schedule. (3-15-22)()

326. -- 329. (RESERVED)

330. COLLECTION OF COPAYMENTS.

01. **Responsibility for Collection.** The provider ~~of services~~ is responsible for collection of the copayment from the participant. (3-15-22)(____)

02. **Denial of Services.** The provider may require payment of ~~an~~ applicable copay~~ment prior to~~ before rendering services. (3-15-22)(____)

03. **Waiver of Copayment.** The provider may ~~choose to~~ waive payment of any copay~~ment~~. The provider must have a written policy describing the criteria for waiving or enforcing collection of copayments ~~and when the copay may be waived~~. (3-15-22)(____)

04. **Reduction in Reimbursement.** When a copay~~ment~~ is applicable, the provider's reimbursement ~~will be is~~ reduced by the amount of the copay~~ment~~ regardless of whether ~~or not~~ a copay~~ment~~ was charged or collected by the provider. (3-15-22)(____)

331. -- 399. (RESERVED)

400. PARTICIPATION IN THE COST OF HOME AND COMMUNITY-BASED WAIVER SERVICES (HCBS).

~~Medicaid p~~Participants required to participate in the cost of Home and Community Based Waiver (HCBS) services as described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," must have their share of cost determined ~~as described in Subsections 400.01 through 400.10 of~~ under this rule. (3-15-22)(____)

01. **Excluded Income.** Income excluded under ~~the provisions of~~ IDAPA 16.03.05, "Eligibility for Aid to the Aged, Blind, and Disabled (AABD)," ~~Sections 723 and 725,~~ is excluded in determining participation. (3-15-22)(____)

02. **Base Participation Amount.** ~~The B~~base participation amount is income available ~~for participation to the participant~~ after subtracting all allowable deductions, except for the incurred medical expense ~~deduction in Subsection 400.07 of this rule.~~ Base participation is calculated by the participant's Self-Reliance Specialist. ~~The incurred medical expense deduction is calculated by the Division of Welfare, in IDAPA 16.03.05, "Eligibility for Aid to the Aged, Blind, and Disabled (AABD)."~~ (3-15-22)(____)

03. **Community Spouse.** ~~Except for the elderly or physically disabled participant's personal needs allowance, base participation for a participant with a community spouse is calculated under IDAPA 16.03.05, "Eligibility for Aid to the Aged, Blind, and Disabled (AABD)," Section 725. A community spouse is the spouse of an HCBS participant who is not an HCBS participant and is not institutionalized. The HCBS personal needs allowance for a participant living in adult residential care equals the federal Supplemental Security Income (SSI) benefit rate for an individual living independently.~~ (3-15-22)

04. **Home and Community Based Services (HCBS) Spouse.** ~~Except for the elderly or physically disabled participant's personal needs allowance (PNA), base participation for a participant with an HCBS spouse is calculated and specified under IDAPA 16.03.05, "Eligibility for Aid to the Aged, Blind, and Disabled (AABD)," Section 723. An HCBS spouse is the spouse of a participant who also receives HCBS.~~ (3-15-22)

05. **Personal Needs Allowance (PNA).** The participant's ~~personal needs allowance~~ PNA depends on ~~whether the participant's~~ has a legal obligation to pay rent or mortgage. ~~The participant's personal needs allowance and is deducted from any countable income after income exclusions and before other allowable deductions any incurred medical expenses allowances.~~ To determine the amount of the personal needs allowance, use Table 400.05 of this rule:

TABLE 400.05 – PERSONAL NEEDS ALLOWANCE	
Amount of Personal Needs Allowance (PNA) for Participation	
Not Responsible for Rent or Mortgage	Responsible for Rent or Mortgage
One hundred percent (100%) of the federal SSI benefit for a person with no spouse	One hundred and eighty percent (180%) of the Federal SSI benefit for a person with no spouse

(3-15-22)()

a. PNA for participants not responsible for rent or mortgage equals one hundred percent (100%) of the federal SSI benefit. ()

b. PNA for participants responsible for rent or mortgage equals one hundred eighty percent (180%) of the federal SSI benefit. ()

064. ~~Developmentally Disabled Participants~~ **with Developmental Disabilities.** These allowances are specified in IDAPA 16.03.05, “Eligibility for Aid to the Aged, Blind, and Disabled (AABD).” ~~The HCBS personal needs allowance PNA~~ for adult participants receiving ~~waiver~~ services under the Developmentally Disabled Waiver is three (3) times the federal SSI benefit amount to an individual in ~~his~~ their own home. (3-15-22)()

075. **Incurred Medical Expenses.** Amounts for certain limited medical or remedial services not covered by the participant’s Idaho Medicaid Plan and not paid by a third party may be deducted from the base participation amount. The Department must determine whether ~~a participant’s~~ incurred expenses for such limited services meet the criteria for deduction. The participant must ~~report such expenses and provide verification in order for an expense~~ verify such expenses for any to be considered for deduction. Costs for over-the-counter medications are included in the ~~personal needs allowance PNA~~ and ~~will not be~~ are not considered a medical expense. Department-approved ~~D~~eductions for necessary medical or remedial expenses ~~approved by the Department will be deducted at application, and changed, as necessary, based on changes reported~~ are subtracted upon application, and updated when a participant reports changes to the Department ~~by the participant~~. (3-15-22)()

086. **Remainder After Calculation.** Any remainder after the calculation ~~in Subsection 400.05 of this rule~~ is the maximum participation amount to be deducted from the participant's provider payments to offset the cost of services. The participation amount ~~will be~~ is collected from the participant by the provider. The Department notifies the provider and the participant ~~will be notified by the Department~~ of the amount to be collected. (3-15-22)()

097. **Recalculation of Participation.** The participant’s participation amount ~~must be~~ is recalculated annually at eligibility redetermination or ~~whenever a change in income or deductions becomes known to the Department upon verified changes~~. (3-15-22)()

1008. **Adjustment of Participation Overpayment or Underpayment Amounts.** The participant’s participation amount is reduced or increased the month following the month ~~the participant overpaid or underpaid the provider of overpayment or underpayment~~. (3-15-22)()

401. -- 999. (RESERVED)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.07.39 – DESIGNATED EXAMINERS AND DISPOSITIONERS

DOCKET NO. 16-0739-2301

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 16-2403, 66-317, 56-1003, and 56-1004, Idaho Code.

PUBLIC HEARING SCHEDULE: Two Public hearings concerning this rulemaking will be held as follows:

VIRTUAL TELECONFERENCE Via WebEx
Monday, October 16, 2023 10:00 a.m. - 11:00 a.m. (MT)
<p><i>Join from the meeting link:</i> https://idhw.webex.com/idhw/j.php?MTID=mdd58f7a4277a841d9ed6e81a1c9752c6</p> <p><i>Join by meeting number:</i> Meeting number (access code): 2762 045 6415 Meeting password: rPKHVAFB379 (77548232 from phones and video systems)</p> <p><i>Join by phone:</i> +1-415-527-5035 United States Toll +1-303-498-7536 United States Toll (Denver)</p>

VIRTUAL TELECONFERENCE Via WebEx
Wednesday, October 18, 2023 1:00 p.m. - 2:00 p.m. (MT)
<p><i>Join from the meeting link:</i> https://idhw.webex.com/idhw/j.php?MTID=m901e9a6f246ffa3be14ef1855c197049</p> <p><i>Join by meeting number:</i> Meeting number (access code): 2760 391 9633 Meeting password: VnEn734Xsuy (86367349 from phones and video systems)</p> <p><i>Join by phone:</i> +1-415-527-5035 United States Toll +1-303-498-7536 United States Toll (Denver)</p>

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 changes are being initiated to align and comply with new statute changes from Senate Bill 1327 (2022). The consequences of this rulemaking not being approved will prevent designations as a Senior Designated Examiners and will result in the continued use of outdated regulations that increases the regulatory burden on behavioral health professionals in Idaho. The application and letter of designation for designated examiners and dispositioners will be updated as a result of this rulemaking being approved.

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

This chapter contains no fees or charges.

FISCAL IMPACT: The following is a specific 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:

There is no anticipated fiscal impact to the state general fund, and the Division of Behavioral Health will use dedicated funds already allocated.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these changes are being done to comply with Senate Bill 1327 (2022).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 incorporates by reference the revised Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR), replacing the currently incorporated document, DSM-5. This document is incorporated by reference to save space in the chapter and ensure that it continues to have the force and effect of law.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Treena Clark at 208-334-6611.

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 25, 2023.

DATED this 1st day of September, 2023.

Trinette Middlebrook and Frank Powell
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
email: dhwrules@dhw.idaho.gov

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0739-2301
(Only Those Sections With Amendments Are Shown.)**

16.07.39 – DESIGNATED EXAMINERS AND DISPOSITIONERS

~~001. SCOPE.~~

~~These rules set forth the qualifications, appointment requirements, appointment process, duration of appointment, revocation of appointment, and requirements for reappointment for designated examiners and designated dispositioners in Idaho. (3-17-22)~~

~~002~~**1. INCORPORATION BY REFERENCE.**

American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5^{TR}) Washington, DC, American Psychiatric Association, 2013~~22~~, is hereby incorporated by reference under this chapter of rules. Copies of the manual are available from the American Psychiatric Association, ~~1000 Wilson Boulevard~~ 800 Maine Avenue, Suite ~~1825 900~~, Arlington, VA Washington DC 22209-3901 20024. A copy of the manual is also available for public review at the Department of Health and Welfare, 450 West State Street, Boise, Idaho, 83702. (3-17-22)()

~~003~~**2. -- 008. (RESERVED)**

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

Each individual who is seeking appointment as a designated examiner, senior designated examiner, or designated dispositioner, ~~or both~~, must comply with the provisions in IDAPA 16.05.06, "Criminal History and Background Checks." An individual who is seeking appointment is available to practice as a designated examiner, senior designated examiner or designated dispositioner on a provisional basis at the discretion of the Department once the individual has completed the following: (3-17-22)()

01. ~~Submission Of Criminal History~~Background Check Application. An individual has submitted their ~~criminal history and~~ background check application; (3-17-22)()

02. Application Review. The completed application has been reviewed by the Regional Behavioral Health Program Hub Manager or the State Hospital Administrative Director of the region where the applicant intends to practice, and no disqualifying crimes or relevant records are disclosed on the application. (3-17-22)()

010. DEFINITIONS.

~~For the purposes of these rules, the following terms apply:~~ (3-17-22)

01. Advanced Practice Registered Nurse. ~~An individual licensed as an Advanced Practice Registered Nurse~~ Licensed under Title 54, Chapter 14, Idaho Code. (3-17-22)()

02. Clinical Professional Counselor (LCPC). ~~An individual licensed as a Clinical Professional Counselor~~ Licensed under Title 54, Chapter 34, Idaho Code. (3-17-22)()

03. Clinical Social Worker (LCSW). ~~An individual licensed as a Clinical Social Worker~~ Licensed under Title 54, Chapter 32, Idaho Code. (3-17-22)()

04. Department. The Idaho Department of Health and Welfare or designee. (3-17-22)()

05. Designated Dispositioner. A ~~designated dispositioner is a~~ designated examiner ~~employed~~ under contract with the Department and designated by the Director. (3-17-22)()

06. Designated Examination. An evaluation by an appointed mental health professional to determine if an individual is mentally ill, and if the individual is either likely to injure themselves or others, or is gravely disabled due to mental illness. (3-17-22)()

07. Designated Examiner. A ~~designated examiner is a~~ psychiatrist, psychologist, psychiatric nurse, social worker, or such other mental health professional ~~as may be~~ designated under these rules. (3-17-22)()

08. **Director.** The Director of the ~~Idaho~~ Department ~~of Health and Welfare~~ or their designee. (3-17-22)()
09. **Division.** The Department's Division of Behavioral Health. (3-17-22)
- 10. Hub Manager.** An individual responsible for and provides direction for the Division's adult and children's clinical mental health services in one (1) of the three (3) division hubs. Hubs are delineated by Department regions: Northern Idaho (Regions 1 and 2) Southwest Idaho (Regions 3 and 4) Eastern Idaho (Regions 5, 6, and 7). ()
- 101. Marriage and Family Therapist (LMFT).** ~~An individual licensed as a Marriage and Family Therapist~~ Licensed under Title 54, Chapter 34, Idaho Code. (3-17-22)()
- 142. Masters of Social Worker (LMSW).** ~~An individual licensed as a Masters of Social Work~~ Licensed under Title 54, Chapter 32, Idaho Code. (3-17-22)()
- 123. Physician.** ~~An individual licensed as a Physician to practice medicine~~ Licensed under Title 54, Chapter 18, Idaho Code. (3-17-22)()
- 134. Physician Assistant.** ~~An individual licensed as a Physician Assistant~~ Licensed under Title 54, Chapter 18, Idaho Code. (3-17-22)()
- 145. Professional Counselor (LPC).** ~~An individual licensed as a Professional Counselor~~ Licensed under Title 54, Chapter 34, Idaho Code. (3-17-22)()
- 156. Psychologist.** An individual licensed to practice psychology in Idaho as defined under Title 54, Chapter 23, Idaho Code. (3-17-22)()
011. -- 199. (RESERVED)
- 200. MINIMUM—QUALIFICATIONS AND REQUIREMENTS FOR APPOINTMENT AS A DESIGNATED EXAMINER.**
To be appointed and practice as a designated examiner ~~in Idaho~~, an applicant must meet the following ~~minimum qualifications and requirements~~: (3-17-22)()
01. **Required License.** Each applicant maintains their professional licensure for the duration of their appointment and be one (1) of the following: (3-17-22)
- a. Physician; (3-17-22)
 - b. Psychologist; (3-17-22)
 - c. Advanced Practice Registered Nurse; (3-17-22)
 - d. Clinical Professional Counselor; (3-17-22)
 - e. Professional Counselor; (3-17-22)
 - f. Clinical Social Worker; (3-17-22)
 - g. Masters Social Worker; (3-17-22)
 - h. Marriage and Family Therapist. (3-17-22)
 - i. Physician Assistant. (3-17-22)

j. Psychiatrist. ()

k. Psychiatric Nurse. ()

02. Required Experience and Abilities. ~~Each applicant meets the minimum requirements and qualifications listed below:~~ (3-17-22)()

a. At least two (2) years of post-master's degree experience in a clinical mental health setting which includes: (3-17-22)

i. Assessment of the likelihood of danger to self or others, grave disability, capacity to give informed consent, and capacity to understand legal proceedings; (3-17-22)

ii. Use of DSM-5~~TR~~ diagnostic criteria; (3-17-22)()

iii. Treatment of mental health disorders including knowledge of treatment modalities and experience applying treatment modalities in a clinical setting; and (3-17-22)

iv. An understanding of the differences between behavior due to mental illness, which poses a substantial likelihood of serious harm to self or others, or which may result in grave disability from behavior which does not represent such a threat or risk. (3-17-22)()

b. Knowledge of and experience applying Idaho mental health law based on the required training outlined under Subsection 200.03 of this rule including: (3-17-22)

i. Experience that demonstrates understanding of the judicial process, including the conduct of commitment hearings. (3-17-22)

ii. Experience preparing reports for the court and testifying before a court of law. Experience includes demonstrating an ability to provide the court with a thorough and complete oral and written evaluation that addresses the standards and questions set forth in the law; and (3-17-22)

iii. Knowledge of a client's legal rights. (3-17-22)

03. Required Training. Completion of: (3-17-22)

a. A minimum of six (6) hours of training, provided by a Department-approved trainer, on the role of designated examiners and the processes used in fulfilling the responsibilities of designated examiners. (3-17-22)

b. A minimum of four (4) additional hours observing a designated examiner conducting a designated examination. (3-17-22)

201. MINIMUM QUALIFICATIONS AND REQUIREMENTS FOR APPOINTMENT AS A SENIOR DESIGNATED EXAMINER.

To be appointed and practice as a senior designated examiner, an applicant must meet the requirements of Section 66-317(17), Idaho Code, and Subsections 200.02 and 200.03 of these rules. ()

204. -- 299. (RESERVED)

300. MINIMUM QUALIFICATIONS AND REQUIREMENTS FOR APPOINTMENT AS A DESIGNATED DISPOSITIONER.

To be appointed as a designated dispositioner ~~in Idaho~~, an applicant must meet the following ~~minimum qualifications and requirements.~~ (3-17-22)()

01. Appointment as a Designated Examiner. Applicants for designated dispositioner are also appointed as a designated examiner by the Director. (3-17-22)

02. **Required Experience and Abilities.** Each applicant has received training on the available treatment alternatives, types of treatment available for appropriate placement, and level of care requirements all within Idaho. (3-17-22)

301. -- 399. (RESERVED)

400. APPOINTMENT OR REAPPOINTMENT AS A DESIGNATED EXAMINER, SENIOR DESIGNATED EXAMINER OR DESIGNATED DISPOSITIONER.

Each applicant seeking an appointment or reappointment as a designated examiner or designated dispositioner, must submit the following information to the ~~Regional Behavioral Health Program Manager Hub~~ of the region where they intend to practice or the State Hospital Administrative Director of the hospital at which they intend to practice. (3-17-22)()

01. **Complete an Application.** Each applicant completes and signs an application using forms approved by the Department. (3-17-22)

02. **Provide Verification of Credentials.** Each applicant provides the Department with the following: (3-17-22)

a. A current resume that documents: (3-17-22)

i. The applicant's degree, the date the degree was awarded, and the school from which the degree was received; and (3-17-22)

ii. How the applicant meets the requirements under ~~Subsection Section 2001.02~~ of these rules. (3-17-22)()

b. ~~A copy of the applicant's license~~ Documentation of current licensure. If the applicant is an LMSW, they must also provide ~~a copy~~ documentation of the supervision plan approved by the Board of Social Work Examiners; (3-17-22)()

c. Evidence of completion of the required ten (10) hours of training within sixty (60) days prior to the date of application under Subsection 200.03 of these rules showing the date(s), place(s), number of hours of training, and the qualifications of the person(s) providing the training. Applicants seeking reappointment, prior to their current appointment expiring, are not required to provide evidence of training; (3-17-22)()

d. Documentation of a ~~criminal history and~~ background check clearance completed within ninety (90) days of the date of the application. Department employees who have had continuous employment with the Department may use a previous background check clearance received through their Department employment ~~with the Department.~~ (3-17-22)()

03. **Regional or Hospital Recommendation.** (3-17-22)

a. To be eligible for consideration and appointment or reappointment as a designated examiner, senior designated examiner, or designated dispositioner, each applicant must receive a favorable recommendation from a Regional Behavioral Health Program Hub Manager or State Hospital Administrative Director. (3-17-22)()

b. Within thirty (30) days of the receipt of a completed and signed application, the ~~Regional Behavioral Health Program Hub~~ Manager or the State Hospital Administrative Director of the region where they intend to practice will review the applicant's qualifications and, if satisfied, sign the application and forward it to the Division along with all the information provided by the applicant as required under Subsection 400.02 of this rule. (3-17-22)()

c. Each Regional Program Hub Manager and State Hospital Administrative Director agrees to honor recommendations for appointments made by another ~~Regional Behavioral Health Program Hub~~ Manager or State Hospital Administrative Director. (3-17-22)()

04. Final Decision on Appointment. (3-17-22)

a. Upon receiving a favorable recommendation under Subsection 400.03 of ~~these~~ this rules, the Division will review each application for completeness and compliance with these rules. (3-17-22)()

b. Upon completion of this review, the Division will make recommendations to the Director regarding appointments as designated examiner, senior designated examiner, or designated dispositioner. (3-17-22)()

c. The Director has the authority to appoint applicants for designated examiner, senior designated examiner, or designated dispositioner who meet the requirements under these rules. (3-17-22)()

d. The Division will notify each applicant in writing of the Department's decision within sixty (60) days of the date the application was received by the Division. (3-17-22)

05. Appointment. An appointed designated examiner, senior designated examiner, or designated dispositioner may practice in any region of the state or at any state hospital at the discretion of the ~~Regional Program Hub~~ Manager or State Hospital Administrative Director. (3-17-22)()

06. Reappointment. (3-17-22)

a. The request for reappointment must be received by the Division at least sixty (60) days prior to the expiration date of the previous appointment of the designated examiner, senior designated examiner, or designated dispositioner. (3-17-22)()

b. If a designated examiner, senior designated examiner, or designated dispositioner allows their appointment to expire, the applicant must follow appointment requirements under ~~Section 400~~ of this rule. Department employees who have had continuous Department employment ~~with the Department~~ may have the reapplication process waived. (3-17-22)()

401. -- 499. (RESERVED)

500. DURATION OF APPOINTMENT AS DESIGNATED EXAMINER, SENIOR DESIGNATED EXAMINER OR DESIGNATED DISPOSITIONER.

01. Appointment. ~~Appointment e~~Expires one (1) year from the date of appointment, unless the designated examiner, senior designated examiner, or designated dispositioner applies for, and is granted, a reappointment. (3-17-22)()

02. Reappointment. ~~Reappointment e~~Expires two (2) years from the date of such appointment. (3-17-22)()

03. Expiration of Appointment Upon Leaving Department Employment. When an individual serving as a designated dispositioner leaves ~~the employ of the~~ Department employment, their designation of dispositioner is suspended, until such time that the appointment expires, or the individual is under contract with the Department as a designated dispositioner. (3-17-22)()

501. -- 699. (RESERVED)

700. REVOCATION OF APPOINTMENT AS DESIGNATED EXAMINER, SENIOR DESIGNATED EXAMINER OR DESIGNATED DISPOSITIONER.

The Department may deny, suspend, or revoke the appointment or reappointment of designated examiners, senior designated examiner, and designated dispositioners, ~~or both~~, under the following procedures: (3-17-22)()

01. Emergency Denial, Suspension, Revocation of Appointment or Reappointment. The Department will deny, suspend, or revoke appointment or reappointment, without prior notice, when conditions exist that endanger the health or safety of any client. (3-17-22)

02. Written Request for Denial, Suspension, or Revocation of Appointment or Reappointment. In the absence of an emergency, a written request from the ~~Regional Behavioral Health Program Hub~~ Manager or State Hospital Administrative Director will be made to the Division stating the reason(s) for the requested denial, suspension, or revocation of an appointment or reappointment. (3-17-22)()

03. Grounds for Revocation of Appointment or Reappointment. The Department may deny, suspend, or revoke an appointment or reappointment for any of the following reasons: (3-17-22)

- a. Failure to comply with these rules. (3-17-22)
- b. Failure to furnish data, information, or records as requested by the Department. (3-17-22)
- c. Revocation or suspension of the applicant's professional license. (3-17-22)
- d. Refusal to participate in a quality assurance process as requested by the Department. (3-17-22)
- e. Inadequate knowledge or performance as demonstrated by repeated substandard peer or quality assurance reviews. (3-17-22)

f. Misrepresentation by the applicant in their application, or in documents required by the Department, or by an appointee in which there is a criminal, civil, or administrative determination that they have misrepresented the facts or the law to the court or administrative agency. (3-17-22)

g. Conflict of interest in which an appointee exploits their position as a designated examiner, senior designated examiner, or designated dispositioner for personal benefit. (3-17-22)()

h. A criminal, civil, or administrative determination that an appointee has committed fraud or gross negligence in their capacity as a designated examiner, senior designated examiner, or designated dispositioner. (3-17-22)()

i. Substantiated disposition of a child protection referral or adult protection referral. (3-17-22)

j. Failure to correct within thirty (30) days of written notice, any unacceptable conduct, practice, or condition as determined by the Department to be detrimental to public health or safety. (3-17-22)

04. Appeal of Department Decision. Applicants may appeal a Department decision to deny, suspend, or revoke an appointment under IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings." (3-17-22)

05. Reapplication for Appointment. Following denial, suspension, or revocation of appointment or reappointment, the same appointee may not reapply for appointment for a period of one (1) year after the effective date of the action. (3-17-22)

IDAPA 20 – IDAHO DEPARTMENT OF LANDS
20.04.01 – RULES PERTAINING TO FOREST FIRE PROTECTION
DOCKET NO. 20-0401-2301
NOTICE OF INTENT TO PROMULGATE RULES –
ZERO-BASED REGULATION (ZBR) NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections 38-115, 38-132, 38-402, 58-104(6), 58-105, and 67-5201 et seq., Idaho Code.

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

Tuesday, October 10, 2023 4:00 p.m. to 5:00 p.m. (PT)
<i>In-person participation is available at:</i> Idaho Department of Lands Coeur d’Alene Staff Office Sundance Room 3284 W Industrial Loop Coeur d’Alene, ID 83815
<i>Join on your computer, mobile app, or room device</i> Click here to join the meeting Meeting ID: 227 783 468 761 Passcode: hKCmxn Download Teams Join on the web
<i>To attend by telephone call</i> +1 469-998-7393,,127613129# Phone Conference ID: 127 613 129#

Wednesday, October 11, 2023 6:00 p.m. to 7:00 p.m. (MT)
<i>In-person participation is available at:</i> Evergreen Hotel McCall Western Larch Room 210 N. Third Street McCall, ID 83638
<i>Join on your computer, mobile app, or room device</i> Click here to join the meeting Meeting ID: 264 100 652 596 Passcode: vMK9kq Download Teams Join on the web
<i>To attend by telephone call</i> +1 469-998-7393,,310381629# Phone Conference ID: 310 381 629#

If additional meetings are scheduled, the dates, times, and locations will be posted on the Idaho Department of Lands (IDL) website at: [https://www.idl.idaho.gov/rulemaking/docket 20-0401-2301](https://www.idl.idaho.gov/rulemaking/docket%2020-0401-2301). The meeting sites 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: Those interested in participating in the negotiated rulemaking process are encouraged to attend scheduled meetings and submit written comments to the address below or by email to rulemaking@idl.idaho.gov. If providing comments by email, please enter IDAPA 20.04.01 in the subject line. Written comments must be provided within the comment period listed on the rulemaking page for this docket.

Upon conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusions reached during the negotiated rulemaking will be addressed in a written summary. The summary will be made available to interested persons who contact the agency or, if the agency chooses, the summary may be posted 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 principal issues involved:

Following Executive Order 2020-01, Zero-Based Regulation ([Executive Order No. 2020-1](#)), this rule chapter is scheduled to be repealed and replaced in 2024 for review during the 2025 legislative session. The State Board of Land Commissioners has authorized the Department of Lands to enter negotiated rulemaking in accordance with the Executive Order and with the intent to remove unnecessary rule language and amend other rules to reduce verbiage and improve readability. The Department will review the rules with stakeholders to ensure it provides clarity in our processes. Preliminary research from the Department has not identified any major changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES: For assistance on technical questions concerning this negotiated rulemaking, requests for special meeting accommodations or accessibility, or to obtain a preliminary draft copy of the rule text, contact Brooke Heasty at bheasty@idl.idaho.gov.

Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the Idaho Department of Lands website at the following web address: <https://www.idl.idaho.gov/rulemaking>.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 17, 2023.

DATED this 1st day of September, 2023.

Joshua J. Harvey
Fire Management Chief
Forestry and Fire Division
Idaho Department of Lands
3284 W Industrial Loop
Coeur d'Alene, Idaho, 83815
Phone: (208) 666-8649
Fax: (208) 769-1524

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

**20.04.02 – RULES PERTAINING TO THE IDAHO FORESTRY ACT
AND FIRE HAZARD REDUCTION LAWS**

DOCKET NO. 20-0402-2301

**NOTICE OF INTENT TO PROMULGATE RULES –
ZERO-BASED REGULATION (ZBR) NEGOTIATED RULEMAKING**

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections 38-132 and 38-402, Idaho Code.

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

Tuesday, October 10, 2023 5:00 p.m. to 6:00 p.m. (PT)
<i>In-person participation is available at:</i> Idaho Department of Lands Coeur d’Alene Staff Office Sundance Room 3284 W Industrial Loop Coeur d’Alene, ID 83815
<i>Join on your computer, mobile app, or room device</i> Click here to join the meeting Meeting ID: 227 783 468 761 Passcode: hKCmxn Download Teams Join on the web
<i>To attend by telephone call</i> +1 469-998-7393,,127613129# Phone Conference ID: 127 613 129#

Wednesday, October 11, 2023 7:00 p.m. to 8:00 p.m. (MT)
<i>In-person participation is available at:</i> Evergreen Hotel McCall Western Larch Room 210 N. Third Street McCall, ID 83638
<i>Join on your computer, mobile app, or room device</i> Click here to join the meeting Meeting ID: 264 100 652 596 Passcode: vMK9kq Download Teams Join on the web
<i>To attend by telephone call</i> +1 469-998-7393,,310381629# Phone Conference ID: 310 381 629#

If additional meetings are scheduled, the dates, times, and locations will be posted on the Idaho Department of Lands (IDL) website at: [https://www.idl.idaho.gov/rulemaking/docket 20-0402-2301](https://www.idl.idaho.gov/rulemaking/docket%2020-0402-2301). The meeting sites 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: Those interested in participating in the negotiated rulemaking process are encouraged to attend scheduled meetings and submit written comments to the address below or by email to rulemaking@idl.idaho.gov. If providing comments by email, please enter IDAPA 20.04.02 in the subject line. Written comments must be provided within the comment period listed on the rulemaking page for this docket.

Upon conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusions reached during the negotiated rulemaking will be addressed in a written summary. The summary will be made available to interested persons who contact the agency or, if the agency chooses, the summary may be posted 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 principal issues involved:

Following Executive Order 2020-01, Zero-Based Regulation ([Executive Order No. 2020-1](#)), this rule chapter is scheduled to be repealed and replaced in 2024 for review during the 2025 legislative session. The State Board of Land Commissioners has authorized the Department of Lands to enter negotiated rulemaking with the intent to remove unnecessary rule language and amend other rules to reduce verbiage and improve readability. The Department will review the rules with stakeholders to ensure it provides clarity in our processes. Preliminary research from the Department has not identified any major changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES: For assistance on technical questions concerning this negotiated rulemaking, requests for special meeting accommodations or accessibility, or to obtain a preliminary draft copy of the rule text, contact Brooke Heasty at bheasty@idl.idaho.gov.

Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the Idaho Department of Lands website at the following web address: <https://www.idl.idaho.gov/rulemaking>.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 17, 2023.

DATED this 1st day of September, 2023.

Joshua J. Harvey
Fire Management Chief
Forestry and Fire Division
Idaho Department of Lands
3284 W Industrial Loop
Coeur d'Alene, Idaho, 83815
Phone: (208) 666-8649
Fax: (208) 769-1524

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

20.05.01 – RULES PERTAINING TO THE RECREATIONAL USE OF ENDOWMENT LAND

DOCKET NO. 20-0501-2301 (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 58-156 and 58-104(6), Idaho Code.

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

Wednesday, October 11, 2023 2:00 p.m. (MT)
<i>In-person participation is available at:</i> Idaho Department of Lands Boise Staff Office Garnet Conference Room 300 N 6th St., Suite 103 Boise, Idaho 83702
<i>Join on your computer, mobile app, or room device via Zoom at:</i> https://idl.zoom.us/j/88116158144?from=addon
<i>To attend by telephone call:</i> +1 (253)-215-8782 Meeting ID: 881 1615 8144

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 purpose of this rulemaking is to address distinct problems at specific locations on state endowment trust lands. Endowment lands are different than other types of publicly managed land. Idaho's 2.5 million acres of endowment lands are meant to generate revenue through timber, grazing, and other management activities. This revenue helps fund the endowment beneficiaries, primarily K-12 education, and reduces taxes on hard-working Idahoans. Recreational use of endowment land is a secondary privilege allowed only if it does not cause damage or disturb the revenue-generating potential of the land. Unfortunately, damage to endowment land happens all too frequently.

Idaho's increasing population has resulted in more people recreating and compounding damage to endowment land. Destructive behaviors on endowment land reduce the revenue-generating potential of the land and are costly to mitigate.

This rulemaking implements Senate Bill 1049, passed during the 2023 legislative session to help deter destructive behaviors on endowment land. The new law, Section 58-156, Idaho Code, provides an alternative to heavy handed misdemeanor or felony criminal trespass changes for those who damage endowment land. Instead, it allows POST certified Idaho law enforcement to issue warnings/citations for minor offenses. Under the new law, rulemaking is required before a warning ticket or infraction citation may be written.

The proposed rule creates a targeted approach to curb damage to endowment land. The proposed rule addresses extended camping in one location, trail misuse, blocking access points, dumping, and damaging signs. It requires proper use of roads and trails on endowment land; campfires to be contained within a ring; and adherence to Stage 1 and Stage 2 fire restrictions as listed in the Idaho Fire Restrictions Plan. By regulating recreational use of endowment land, the proposed rule will help deter destructive behavior and preserve the lands' revenue-generating potential for the beneficiaries so endowment land can remain open to the 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 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 7, 2023, Idaho Administrative Bulletin, [Vol. 23-6, pages 58-59](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 Todd Wernex at (208) 334-0282 or twernex@idl.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2023.

DATED this 29th day of August, 2023.

Todd Wernex, Recreation Program Manager
Idaho Department of Lands
300 N. 6th Street, Suite 103
P.O. Box 83720 Boise, Idaho 83720-0050
Phone: (208) 334-0282 Fax: (208) 334-3698
rulemaking@idl.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0501-2301
(New Chapter)

20.05.01 – RULES PERTAINING TO THE RECREATIONAL USE OF ENDOWMENT LAND

000. LEGAL AUTHORITY.
Sections 58-104(6), 58-105, and 58-156, Idaho Code. ()

001. SCOPE.
These rules govern the closure, restriction, regulation, or prohibition of certain regulated recreational uses on Idaho endowment lands, that are subject to a warning ticket, citation, or misdemeanor pursuant to Idaho Code Section 58-156. Nothing in these rules precludes enforcement under any other applicable state statutes, including enforcement under Sections 18-7031, 18-3906, 18-7012, 18-7001, 18-7008, and 31-4410, Idaho Code. Uses of endowment land authorized by lease or permit are not regulated under this rule. ()

002. – 009. (RESERVED)

010. DEFINITIONS.

01. Camping. To use a location as a temporary or with the intent to use as a permanent place of dwelling, lodging or living accommodation. Indicators of camping may include, but are not limited to, storing personal belongings, using tents or other temporary structures for storing personal belongings or for sleeping, carrying on cooking activities, laying out bedding or making any fire. ()

02. Creation of a Trail or Road. Modifying the natural condition of the landscape by manipulating rocks, vegetation, soils or other materials to purposely create a travel way. ()

03. Department. The Idaho Department of Lands. ()

04. Endowment Lands. Lands held in trust by the State of Idaho and managed for the benefit of specific endowment beneficiaries. ()

011. – 019. (RESERVED)

020. REGULATED USES OF ENDOWMENT LAND.

01. Camping. Permanent camping is prohibited. Temporary camping on endowment land is allowed, provided: ()

a. Camping in one location is limited to a total of fourteen (14) days within a period of twenty-eight (28) consecutive days. Continued camping on endowment lands beyond fourteen (14) days is allowed if the camp, all camping equipment, and all personal belongings are moved outside of a five (5) mile radius of the prior site, and if the campers otherwise comply with the requirements of Subsection 20.01. ()

b. Campers must not leave any personal property unattended for more than forty-eight (48) hours; ()

c. The location is not posted as “closed to camping”; and ()

d. Campfires are contained within a ring no wider than three (3) feet in diameter. ()

02. Roads and Trails. Using roads and trails on endowment land is allowed, provided users: ()

a. May not create any roads or trails. ()

b. Follow vehicle width, weight, length, and type limitations. ()

c. Comply with any posted road or trail closures. ()

d. Follow road and trail limitations and closures posted at trailheads, gates, and local Department offices, as shown on maps and the Department website (www.idl.idaho.gov). ()

e. May not block, obstruct, or interfere with vehicular or pedestrian traffic, with vehicles or by any other means. ()

03. Motorized and Mechanized Use. Motorized and mechanized travel is permitted on department designated roads, trails, and cross-country travel areas. ()

04. Gates and Fences. Blocking gates, fence access points, or livestock handling equipment is prohibited. ()

05. Litter. Depositing any debris, paper, litter, glass bottles, glass, nails, tacks, hooks, hoops, cans, barbed wire, boards, trash, garbage, or other waste substances on endowment land is prohibited. ()

a. When toilet facilities are unavailable, solid human waste must be disposed of at least two hundred (200) feet from water sources, trails, parking areas and campsites. Waste can either be bagged and carried out or buried in a hole at least six (6) inches deep. ()

b. Any construction or placement of restroom facilities must be temporary in nature. All concentrations of solid human waste must be packed out. ()

06. Signs. Interfering with or damaging signs is prohibited. ()

07. Fire Restrictions. Prohibited acts enumerated in the annual Idaho Fire Restrictions Plan for Stage 1 and Stage 2 fire restrictions apply to endowment land. ()

021. – 999. (RESERVED)

IDAPA 24 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES

24.18.01 – RULES OF THE REAL ESTATE APPRAISER BOARD

DOCKET NO. 24-1801-2301 (ZBR CHAPTER REWRITE, FEE RULE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. This rulemaking action is authorized pursuant to Section 67-2604, Idaho Code, and Sections 54-4106, 67-2614, 67-9406, and 67-9409, Idaho Code.

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

Friday, October 20, 2023, 9:00 a.m. MT
Division of Occupational and Professional Licenses Chinden Campus Building 4 11341 W. Chinden Blvd., Bldg. #4 Boise, ID 83714
Telephone and web conferencing information will be posted on: https://dopl.idaho.gov/calendar/ and https://townhall.idaho.gov/

The hearing 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.

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

Under [Executive Order 2020-01, Zero-Based Regulation](#), the Real Estate Appraisers Board is striving to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. In conjunction with stakeholders, the proposed rule changes reflect a comprehensive review of this chapter by collaborating with the public to streamline or simplify the rule language in this chapter and to use plain language for better understanding. This proposed rulemaking updates the rules to comply with governing statute and Executive Order 2020-01.

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

The fees for applications, licenses, and reinstatement as designated in Rule 400 of these proposed rules are authorized in Section 54-4106, Idaho Code. None of these fees are being changed as a result of this rulemaking or since being previously reviewed by the Idaho legislature.

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

This rulemaking is not anticipated to have any negative fiscal impact on the State General Fund

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was conducted under Docket No. 24-ZBRR-2301. The (Second) Omnibus Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 7, 2023 Idaho Administrative Bulletin, [Vol. 23-6, p. 74](#).

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

document titled “Uniform Standards of Professional Appraisal Practice (USPAP),” 2024 Edition, excluding standards 7, 8, 9, and 10, published by the Appraisal Foundation and effective January 1, 2024.

The materials cited are incorporated by reference because they would be unduly cumbersome, expensive, or otherwise inexpedient to republish all or in part. The materials cited are codes, standards, or rules adopted by a nationally recognized organization or association.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES: For assistance on technical questions concerning this proposed rule, contact Katie Stuart, Bureau Chief, at (208) 577-2489. Materials pertaining to the proposed rulemaking, including any available preliminary rule drafts, can be found on the following DOPL website: <https://dopl.idaho.gov/rulemaking/>.

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 25, 2023.

DATED this 1st day of September, 2023.

Katie Stuart
Bureau Chief
11341 W. Chinden Blvd., Bldg. #4
Boise, ID 83714
Phone: (208) 577-2489
Email: katie.stuart@dopl.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 24-1801-2301
(ZBR Chapter Rewrite)

**Note – Due to extensive reorganization of this ZBR chapter, the rule text below is presented as clean text without showing amendments in legislative format. A redline copy provided by the agency has been included at the end of the docket for transparency and can be utilized to track all edits used to formulate the proposed rule.*

24.18.01 – RULES OF THE REAL ESTATE APPRAISER BOARD

000. LEGAL AUTHORITY.

These rules are adopted under Sections 54-4106, 67-2604, 67-2614, 67-9409, and 67-9406 Idaho Code. ()

001. SCOPE.

These rules govern the practice of real estate appraisal in Idaho. ()

002. (RESERVED)

003. INCORPORATION BY REFERENCE.

The current and updated document titled “Uniform Standards of Professional Appraisal Practice (USPAP),” 2024 Edition, excluding standards 7, 8, 9, and 10, published by the Appraisal Foundation and effective January 1, 2024, is herein adopted and incorporated by reference and is available on the Appraisal Foundation website: <https://www.appraisalfoundation.org/>. ()

004. DEFINITIONS.

01. Accredited. Accredited by the Commission on Colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education. ()

02. Appraiser Qualifications Board. Appraiser Qualifications Board (AQB) of the Appraisal Foundation establishes the qualifications criteria for licensing, certification and recertification of appraisers. ()

03. Appraisal Standards Board. The Appraisal Standards Board of the Appraisal Foundation develops, publishes, interprets and amends the Uniform Standards of Professional Appraisal Practice (USPAP) on behalf of appraisers and users of appraisal services. ()

04. Classroom Hour. A classroom hour is defined as sixty (60) minutes with at least fifty (50) minutes of instruction. ()

05. Field Real Estate Appraisal Experience. Personal inspections of real property, assembly and analysis of relevant facts, and by the use of reason and the exercise of judgment, formation of objective opinions as to the market or other value of such properties or interests therein and preparation of written appraisal reports or other memoranda showing data, reasoning, and conclusion. Professional responsibility for the valuation function is essential. ()

06. Practical Applications of Real Estate Appraisal (PAREA). An AQB-approved training programs which provide another pathway for applicants to fulfill their experience requirements through practical experience in a virtual environment combining appraisal theory and methodology in real-world simulations. This experience can be provided through a wide range of online and virtual reality technologies. ()

07. Real Estate. In addition to the previous definition in Section 54-4104(12), Idaho Code, will also mean an identified parcel or tract of land, including improvements, if any. ()

08. Real Property. In addition to the previous definition in Section 54-4104(12), Idaho Code, will also mean one or more defined interests, benefits, or rights inherent in the ownership of real estate. ()

09. Residential Unit. Real estate with a current highest and best use of a residential nature. A residential unit includes a kitchen and a bathroom. ()

005. -- 099. (RESERVED)

100. LICENSURE.

All applicants for licensure must comply with the following requirements: ()

01. Education. Classroom hours will be credited only for the Required Core Curriculum as outlined by the AQB. ()

a. Credit toward the classroom hour requirement may only be granted where: ()

i. The length of the educational offering is at least fifteen (15) hours, and the individual successfully completes a closed-book examination, or; ()

ii. A Trainee Appraiser successfully completes a course which meets the AQB content requirements of the Valuation Bias and Fair Housing Laws and Regulations Outline. ()

iii. Distance education courses intended for use as qualifying education must include a written, proctored closed-book final examination - proctored by an official approved by the college or university or by the sponsoring organization. Biometric proctoring is acceptable. The testing must be in compliance with the examination requirements of this section. ()

b. Credit for the classroom hour requirement may be obtained: from Colleges or Universities; Community or Junior Colleges, the Appraisal Foundation or its boards; State or Federal Agencies or commissions; or other providers approved by the Board. ()

c. Only those courses completed preceding the date of application will be accepted for meeting educational requirements. ()

d. Course credits that are obtained from the course provider by challenge examination without attending the course will not be accepted. ()

e. Credit toward education requirements may be obtained through completion of a degree in Real Estate from an accredited degree-granting college or university approved by the Association to Advance Collegiate Schools of Business, or a regional or national accreditation agency recognized by the US Secretary of Education whose curriculum has been reviewed and approved by the AQB. ()

f. Applicants with a college degree from a foreign country may have their education evaluated for equivalency by one (1) of the following: ()

i. An accredited, degree-granting domestic college or university; ()

ii. The American Association of Collegiate Registrars and Admissions Officers (AACRAO); ()

iii. A foreign degree credential evaluation services company that is a member of the National Association of Credential Evaluation Services (NACES); or ()

iv. A foreign degree credential evaluation service company that provides equivalency evaluation. ()

02. Experience. ()

a. The work product claimed must be in conformity with USPAP. All appraisal experience must be obtained as a registered trainee, licensed or certified appraiser, or participant in an AQB approved PAREA program. For Registered Trainees, only experience gained during the five (5) years immediately preceding application will be considered. Each applicant must verify completion of the required experience on a Board approved form. An appraisal log that contains the following must be submitted: ()

i. Type of property; ()

ii. Address of the property; ()

iii. Report date; ()

iv. Description of work performed by the trainee/applicant and scope of the review and supervision of the Supervisory Appraiser; ()

v. Number of work hours by the trainee/applicant on the assignment; ()

vi. Signature and certification number of the Supervisory Appraiser. ()

b. Ad valorem tax appraisers must demonstrate the use of techniques to value properties similar to those used by appraisers and effectively use the process as defined in Subsection 004.05, Field Real Estate Appraisal Experience. ()

c. PAREA programs approved by the AQB may serve as an alternative pathway to the experience requirements, subject to the following rules: ()

i. Applicants may not receive partial credit for PAREA training; ()

ii. Applicants may not receive a certificate of completion until all required components of PAREA training have been successfully completed and approved by a program mentor; ()

iii. Certificates of completion must be signed by an individual from the training entity qualified to verify an applicant's successful completion and; ()

iv. Certificates of completion must not contain an expiration date or other constraints that either limit or restrict the applicant's ability to receive appropriate credit. ()

03. Examination. A passing grade on an examination approved by the Board pursuant to the guidelines of the AQB. ()

04. Registered Real Estate Appraiser Trainee. ()

a. Qualifications. An applicant must have completed seventy-five (75) hours of qualifying education as specified in the Required Core Curriculum within the last five (5) years, consisting of not less than thirty (30) hours of Basic Appraisal Principles, including: fifteen (15) hour National USPAP course or AQB approved equivalent. ()

b. Appraisers holding a Licensed Residential Real Property Appraiser credential satisfy the educational requirements for the Trainee Appraiser credential. ()

i. Each trainee applicant shall pass the end of course examinations in each of the prerequisite courses in order to earn credit. ()

ii. Prior to registration as an Appraiser Trainee, each applicant must complete a trainee appraiser course that complies with the requirements established by the AQB. ()

iii. An Appraiser Trainee shall not be involved in the appraisal of any property that exceeds the scope of practice of the Supervisory Appraiser, and is subject to USPAP. ()

iv. Each Appraiser Trainee is permitted to have more than one (1) Supervisory Appraiser. An appraisal log shall be maintained jointly. ()

c. Prior to the second and subsequent renewals an appraiser trainee shall be required to obtain he equivalent of twenty-eight (28) classroom hours of instruction in approved courses or seminars. Once every twenty-four (24) months, registered appraiser trainees will be required to attend an approved seven-hour USPAP Continuing Education Course or the equivalent. The course must cover the most recent USPAP edition. ()

i. If the licensee completes two (2) or more courses having substantially the same content during any one (1) continuing education cycle, the licensee only will receive continuing education credit for one (1) of the courses. ()

ii. Continuing education credit may be granted for participation in appraisal educational processes and programs, including: teaching, program development, authorship of textbooks, or similar activities that are determined to be equivalent to obtaining continuing education, up to one-half (1/2) of total credits for renewal period. ()

d. An individual may only be registered as an appraiser trainee for a maximum period of five (5) years, unless approved by the Board. ()

05. Supervisory Appraiser. ()

a. Qualifications. Hold a license in good standing with no disciplinary history in any jurisdiction that affected the Supervisory Appraiser's eligibility to engage in appraisal practice for at least three (3) years immediately prior to providing supervision; and; ()

i. Completion of a course that complies with requirements established by the AQB focused on the responsibilities of a Supervisory Appraiser. ()

- ii. Not supervise more than three (3) Appraiser Trainees at one time; ()
 - iii. Be responsible for the training and direct supervision of the Appraiser Trainee; and ()
 - iv. Accept responsibility for all Trainee Appraiser appraisal reports by signing and certifying that the report is in compliance with USPAP; and ()
 - v. Review and sign all appraiser trainee appraisal report(s); and ()
 - vi. Personally inspect each appraised property with the appraiser trainee until the Supervisory Appraiser determines the Appraiser Trainee is competent in accordance with the Competency Rule of USPAP for the property type. ()
- b.** An accurate, current and complete appraisal experience log shall be maintained by the Supervisory Appraiser and the Appraiser Trainee. ()
- c.** A Supervisory Appraiser may not continue to supervise if: ()
- i. The appraiser ceases to meet supervisor requirements; or has ()
 - ii. Discipline that affects the Supervisory Appraiser's ability to engage in appraisal practice. ()

06. Licensed Residential Real Estate Appraiser. Applies to the appraisal of residential real property consisting of one (1) to four (4) non-complex residential units having a transaction value less than one million dollars (\$1,000,000) and complex one (1) to four (4) residential units having a transaction value less than four hundred thousand dollars (\$400,000). Requirements: ()

- a.** Education. An applicant may either complete one hundred and fifty (150) qualified class hours as specified in the Required Core Curriculum, including the 15-Hour National USPAP course or, register as an Appraiser Trainee and complete seventy-five (75) classroom hours in: Residential Market Analysis and Highest and Best Use –fifteen (15) hours; Residential Appraiser Site Valuation and Cost Approach –fifteen (15) hours; Residential Sales Comparison and Income Approaches –thirty (30) hours; and Residential Report Writing and Case Studies – fifteen (15) hours. ()
- b.** Experience. One thousand (1,000) hours of experience in no less than six (6) months. ()
- c.** Examination. Successful completion of the AQB-approved Licensed Residential or the successful completion of the Certified Residential or Certified General examination. ()

07. State Certified Residential Real Estate Appraiser. Applies to the appraisal of residential properties of four (4) or less units without regard to value or complexity. Requirements: ()

- a.** Education. ()
- i. Bachelor’s degree in any field of study from an accredited degree-granting college or university, or meet one of the following options: ()
 - ii. Associate’s degree in a field of study related to business administration, accounting, finance, economics or real estate; or ()
 - iii. Completion of thirty (30) semester hours of college-level courses that cover each of the following specific topic areas and hours: English composition (three (3) semester hours), microeconomics (three (3) semester hours), macroeconomics (three (3) semester hours), finance (three (3) semester hours), algebra, geometry or higher mathematics (three (3) semester hours), statistics (three (3) semester hours), computer science (three (3) semester hours), business or real estate law (three (3) semester hours), and two (2) elective courses in any of the topics listed above or in accounting, geography, agricultural economics, business management, or real estate (three (3) semester hours). ()

hours each); or ()

iv. Completion of at least thirty (30) semester hours of College Level Examination Program® (CLEP®) examinations from each of the following subject matter areas: college algebra (three (3) semester hours), college composition (six (6) semester hours), college composition modular (three (3) semester hours), college mathematics (six (6) semester hours), principles of macroeconomics (three (3) semester hours), principles of microeconomics (three (3) semester hours), introductory business law (three (3) semester hours), and information systems (three (3) semester hours), or ()

v. Any combination of the above. ()

b. As an alternative to the requirements above, individuals who have held a Licensed Residential credential for a minimum of five (5) years may qualify if they do not have a record of any disciplinary action affecting their legal eligibility to engage in appraisal practice within the five (5) years immediately preceding the date of application. ()

c. Registration as an Appraiser Trainee and completion of the education required for licensure as a Licensed Residential Real Estate Appraiser, or hold a current license as a Licensed Residential Real Estate Appraiser; and; ()

d. Document the successful completion of not less than fifty (50) classroom hours of courses in subjects related to real estate appraisal as follows: ()

i. Statistics, Modeling and Finance: not less than fifteen (15) hours; ()

ii. Advanced Residential Applications and Case Studies: not less than fifteen (15) hours; and ()

iii. Appraisal Subject Matter Electives: not less than twenty (20) hours. ()

e. Experience. One thousand five hundred (1,500) hours of appraisal experience in no less than twelve (12) months, with at least one thousand two hundred (1,200) hours of the experience from residential field appraisal experience. ()

f. Examination. Successful completion of the Certified Residential Appraiser examination approved by the Board pursuant to the guidelines of the AQB. ()

08. State Certified General Real Estate Appraiser. Applicants must meet the following: ()

a. Education ()

i. Bachelor's degree or higher from an accredited degree-granting college or university; and document two hundred and twenty-five (225) classroom hours or ()

ii. Document registration as an Appraiser Trainee and successful completion of not less than two hundred twenty-five (225) classroom hours of courses in: ()

iii. Statistics, Modeling and Finance: not less than fifteen (15) hours, specifically including Statistics; Valuation Models (AVM's and Mass Appraisal), and Real Estate Finance; ()

iv. General Appraiser Market Analysis and Highest and Best Use: not less than thirty (30) hours; ()

v. General Appraiser Sales Comparison Approach: not less than thirty (30) hours, including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; ()

vi. General Appraiser Site Valuation and Cost Approach: not less than thirty (30) hours; ()

- vii. General Appraiser Income Approach: not less than sixty (60) hours, specifically including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; ()
- viii. General Appraiser Report Writing and Case Studies: not less than thirty (30) hours, specifically including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies; and ()
- ix. Appraisal Subject Matter Electives: not less than thirty (30) hours; or ()
- b. Completion of not less than one hundred fifty (150) classroom hours of courses in: ()
- i. Statistics, Modeling and Finance: not less than fifteen (15) hours, specifically including Statistics; Valuation Models (AVM's and Mass Appraisal); and Real Estate Finance; and ()
- ii. General Appraiser Market Analysis and Highest and Best Use: not less than fifteen (15) hours; and ()
- iii. General Appraiser Sales Comparison Approach: not less than fifteen (15) hours, specifically including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; and ()
- iv. General Appraiser Site Valuation and Cost Approach: not less than fifteen (15) hours; and ()
- v. General Appraiser Income Approach: not less than forty-five (45) hours, specifically including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; and ()
- vi. General Appraiser Report Writing and Case Studies: not less than fifteen (15) hours, specifically including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies; and ()
- vii. Appraisal Subject Matter Electives: not less than thirty (30) hours, or completion of one hundred five (105) classroom hours of courses in: General Appraiser Market Analysis and Highest and Best Use: not less than fifteen (15) hours; and General Appraiser Sales Comparison Approach: not less than fifteen (15) hours, including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; and General Appraiser Site Valuation and Cost Approach: not less than fifteen (15) hours; and General Appraiser Income Approach: not less than forty-five (45) hours, including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; and General Appraiser Report Writing and Case Studies: not less than fifteen (15) hours, including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies. ()
- c. Experience. Three thousand (3,000) hours of appraisal experience in no less than eighteen (18) months. One thousand five hundred (1,500) hours of the experience must be non-residential appraisal experience. The balance of one thousand five hundred (1,500) hours may be solely residential experience or can include up to five hundred (500) hours of non-field experience. ()
- d. Examination. Successful completion of the Certified General Appraiser examination approved by the Board pursuant to the guidelines of the AQB. ()
- 09. Continuing Education.** All certified/licensed appraisers must comply with the following requirements: ()

a. Twenty-eight (28) classroom hours of instruction in courses or seminars during the twenty-four (24) months prior to renewal. If the licensee completes two (2) or more courses having substantially the same content during anyone (1) continuing education cycle, the licensee only will receive continuing education credit for one (1) of the courses. ()

i. If the educational offering is taken in a virtual classroom, the course must include successful completion of prescribed course mechanisms required to demonstrate knowledge of the subject matter. ()

ii. Credit toward the classroom hour requirement may be granted only where the length of the educational offering is at least two (2) hours. ()

iii. Credit for the classroom hour requirement may be obtained by accredited courses which have been approved by the AQB and by courses approved by Real Estate Appraiser Boards of states with reciprocity with Idaho. All other courses must have approval of the Board. Courses shall be approved for a period of four (4) years. ()

iv. Every twenty-four (24) months, Idaho State Certified/Licensed Real Estate Appraisers and registered trainees will be required to attend an approved seven (7) hour USPAP Continuing Education course covering the most recent edition, or the AQB approved equivalent. ()

v. Continuing education credit may be granted for participation, other than as a student, in appraisal educational processes and programs. Continuing education shall not exceed one-half (1/2) of the total continuing education credits required for a renewal period. ()

vi. Credit may be awarded for a single state appraisal regulatory meeting per continuing education cycle. The must be open to the public and must be a minimum of two (2) hours in length. The total credit cannot exceed two (2) hours. ()

vii. Continuing education will be granted for successful completion of a course which meets the AQB content requirements of the Valuation Bias and Fair Housing Laws and Regulations Outline. ()

viii. For each year in which a license is inactive, fourteen (14) hours of continuing education must be completed prior to reinstatement. For a license inactive for less than two (2) years, the hours must include the most recent seven (7) hour USPAP Continuing Education course. For a license inactive more than two (2) years but less than five (5) years, the hours must include the most recent fifteen (15) hour National USPAP course. ()

10. Temporary License. An individual may receive a permit to temporarily practice on a per appraisal assignment basis for not more than six (6) months. The applicant must be listed on the National Registry, maintained by the Appraisal Subcommittee, as current and in good standing and comply with Section 54-4115(3), Idaho Code. ()

101. -- 299. (RESERVED)

300. DISCIPLINE.

The Uniform Standards of Professional Practice, excluding standards 7, 8, 9, and 10, are hereby adopted as the rules of conduct and code of ethics for all Real Estate Appraisers. ()

01. Appraisals in Litigation. Licensed or certified appraisers providing opinions of value shall comply with USPAP Standard 1 including maintaining a work file in support of the opinion of value in litigation. ()

301. -- 399. (RESERVED)

400. FEES.

TYPE	AMOUNT	RENEWAL (PER YEAR)
Application	\$200	
License	\$100	\$275
AMC Registration	\$1,000	\$900
Application for Reciprocity	\$200	
Original license via Reciprocity	\$100	
Temporary Permit	\$75	
Trainee Registration	\$50	
Continuing Education Provider Application	\$100	

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401. -- 999. (RESERVED)

[Agency redlined courtesy copy]

24.18.01 – RULES OF THE REAL ESTATE APPRAISER BOARD

000. LEGAL AUTHORITY.

These rules are adopted under Section 54-4106, ~~67-2604, 67-2614, 67-9409, and 67-9406.~~ Idaho Code.()

001. SCOPE.

These rules govern the practice of real estate appraisal in Idaho.()

~~002. 003.(RESERVED)~~

004. INCORPORATION BY REFERENCE.

The document titled “Uniform Standards of Professional Appraisal Practice (USPAP),” ~~2020-2021~~ 2024 Edition, excluding standards 7, 8, 9, and 10, published by the Appraisal Foundation and effective January 1, 2024, is herein adopted and incorporated by reference and is available on the Appraisal Foundation Website: <https://www.appraisalfoundation.org/> or review at the Board’s office and may be purchased from the Appraisal Foundation, Distribution Center, P. O. Box 381, Annapolis Junction, MD 20701-0381.()

~~005. 009.(RESERVED)~~

004.10. DEFINITIONS.

01. Accredited. Accredited by the Commission on Colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education.()

~~02. Advisory Committee.~~ A committee of state certified or licensed real estate appraisers appointed by the board to provide technical assistance relating to real estate appraisal standards and real estate appraiser experience, education and examination requirements that are appropriate for each classification of state certified or licensed real estate appraiser.()

023. Appraiser Qualifications Board. Appraiser Qualifications Board (AQB) of the Appraisal Foundation establishes the qualifications criteria for licensing, certification and recertification of appraisers.()

034. Appraisal Standards Board. The Appraisal Standards Board of the Appraisal Foundation develops, publishes, interprets and amends the Uniform Standards of Professional Appraisal Practice (USPAP) on behalf of appraisers and users of appraisal services.()

045. Classroom Hour. Fifty (50) minutes out of each sixty (60) minute hour in a setting which may include a classroom, conference/seminar, on-line or a virtual classroom.()

056. Field Real Estate Appraisal Experience. Personal inspections of real property, assembly and analysis of relevant facts, and by the use of reason and the exercise of judgment, formation of objective opinions as to the market or other value of such properties or interests therein and preparation of written appraisal reports or other memoranda showing data, reasoning, and conclusion. Professional responsibility for the valuation function is essential. ()

06. Practical Applications of Real Estate Appraisal (PAREA). An AQB-approved training programs which provide another pathway for applicants to fulfill their experience requirements through practical experience in a virtual environment combining appraisal theory and methodology in real-world simulations. This experience can be provided through a wide range of online and virtual reality technologies.

~~**07. FIRREA.** Title XI, Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended, was designed to ensure that more reliable appraisals are rendered in connection with federally related transactions. ()~~

078. Real Estate. In addition to the previous definition in Section 54-4104(12), Idaho Code, will also mean an identified parcel or tract of land, including improvements, if any.()

089. Real Property. In addition to the previous definition in Section 54-4104(12), Idaho Code, will also mean one or more defined interests, benefits, or rights inherent in the ownership of real estate.()

09.10. Residential Unit. Real estate with a current highest and best use of a residential nature. A residential unit includes a kitchen and a bathroom.()

~~**11. Uniform Standards of Professional Appraisal Practice or USPAP.** Those uniform standards adopted by the Appraisal Foundation's Appraisal Standards Board. These standards may be altered, amended, interpreted, supplemented, or repealed by the Appraisal Standards Board (ASB) from time to time.()~~

~~**12. USPAP Course.** For the purposes of licensure and license renewal, any reference to the approved USPAP course means the National USPAP Course provided by Appraisal Qualifications Board Certified USPAP Instructors and Educational Providers.()~~

~~**13. Appraisal Management Company or AMC.** Appraisal Management Company or AMC means a natural person or organization that meets the definition in Section 54-4122, Idaho Code, and is registered under the Idaho Appraisal Management Company Registration and Regulation Act.()~~

~~**011.—149.(RESERVED)**~~

400.150. FEES.
Fees are non-refundable and established in accordance with Sections 54-4113, 54-4124, and 54-4134, Idaho Code, as follows:

FEE-TYPE	AMOUNT (Not to Exceed)	RENEWAL (Per Year) Not to Exceed
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Application	\$200	
License	\$100*	\$275*
AMC Registration	\$1,000**	\$900**
Reinstatement	As provided in Section 67-2614, Idaho Code	
Application for Reciprocity	\$200	
Original license via Reciprocity	\$100*	
Temporary Permit	\$75	
Trainee Registration	\$50	
Continuing Education Provider Application	\$100	
Examination and Reexamination	As charged by the provider	

()

~~**01. 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. (—)~~

~~**02. 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. (—)~~

~~**151.—199.(RESERVED)**~~

~~**200. APPLICATION.**~~

~~**01. Appraiser License Application.** Any person desiring to apply for licensure must submit a completed application with required supporting documents and appropriate fees to the Division at its official address. After the qualifications have been reviewed, verified and approved by the Board, the applicant will receive the pre-approved examination card and must submit the appropriate fees to the examining entity. (—)~~

~~**02. Eligibility for Examination.** The qualified applicant will be sent notification on how to register for the examination subsequent to the determination of eligibility based on documentation that the applicant has met the required education and experience requirements. (—)~~

~~**03. Trainee Registration Application.** Any person desiring registration as a trainee must submit a completed application with required supporting documents and appropriate fees to the Division at its official address. (—)~~

~~**04. AMC Registration Application.** Any person or organization desiring registration as an AMC must submit a completed application with required supporting documents and appropriate fees to the Division at its official address. (—)~~

~~201. — 249. (RESERVED)~~

250. REQUIREMENTS FOR LICENSURE.

All applicants for licensure must comply with the following requirements: ~~in any real estate appraiser classification must comply with the following education, experience and examination requirements in addition to meeting those requirements set forth in Sections 275, 300, 350, and 400 below. ()~~

01. Education. Classroom hours will be credited only for ~~courses with content that follows the~~ Required Core Curriculum as outlined by the ~~AQB, Appraisal Qualification Board.~~ ()

a. Credit toward the classroom hour requirement may only be granted where:

i. ~~The length of the educational offering is at least fifteen (15) hours, and the individual successfully completes a closed-book examination; or pertinent to the educational offering. In addition,~~

ii. A Trainee Appraiser successfully completes a course which meets the AQB content requirements of the Valuation Bias and Fair Housing Laws and Regulations Outline.

iii. Distance education courses intended for use as qualifying education must include a written, closed-book final examination - proctored by an official approved by the college or university or by the sponsoring organization. Biometric proctoring is acceptable. The term "written" as used herein refers to an exam that might be written on paper or administered electronically on a computer workstation or other device. Oral exams are not acceptable. The testing must be in compliance with the examination requirements of this section. ()

b. Credit for the classroom hour requirement may be obtained from from Colleges or Universities; Community or Junior Colleges, the Appraisal Foundation or its boards; State or Federal Agencies or commissions; or other providers approved by the Board, ~~the following:~~ ()

i. ~~Colleges or Universities.~~ ()

ii. ~~Community or Junior Colleges.~~ ()

iii. ~~Courses approved by the Appraisal Qualifications Board.~~ ()

iv. ~~State or Federal Agencies or Commissions.~~ ()

v. ~~Other providers approved by the Board.~~ ()

c. Only those courses completed preceding the date of application will be accepted for meeting educational requirements. ()

d. Course credits that are obtained from the course provider by challenge examination without attending the course will not be accepted. ()

e. Credit toward education requirements may be obtained through completion of a degree in Real Estate from: an accredited degree-granting college or university approved by the Association to Advance Collegiate Schools of Business, or a regional or national accreditation agency recognized by the US Secretary of Education whose curriculum has been reviewed and approved by the AQB. ()

i. ~~An accredited degree-granting college or university that has been approved by the Association to Advance Collegiate Schools of Business; or~~ ()

ii. ~~A regional or national accreditation agency that is recognized by the U.S. Secretary of Education and whose curriculum has been reviewed and approved by the Appraiser Qualifications Board.~~ ()

f. Applicants with a college degree from a foreign country may have their education evaluated for

equivalency by one (1) of the following:()

- i. An accredited, degree-granting domestic college or university;()
- ii. The American Association of Collegiate Registrars and Admissions Officers (AACRAO);()
- iii. A foreign degree credential evaluation services company that is a member of the National Association of Credential Evaluation Services (NACES); or()
- iv. A foreign degree credential evaluation service company that provides equivalency evaluation, ~~reports accepted by an accredited degree-granting domestic college or university or by a state licensing board that issues credentials in another discipline.~~()

02. Experience.()

a. The work product claimed for experience credit must be in conformity with USPAP. All appraisal experience must be obtained as a registered trainee, licensed or certified appraiser, or participant in an AQB approved PAREA program. For Registered Trainees, only experience gained during the five (5) years immediately preceding application will be considered. Each applicant must verify completion of the required experience on a Board approved form. An appraisal log that contains the following must be submitted:()

~~**b.** All appraisal experience must be obtained as a registered trainee or as a licensed appraiser. At least five hundred (500) hours in no less than three (3) months must be obtained in Idaho pursuant to these rules. The Board will only consider experience from other jurisdictions with substantially equal requirements.()~~

~~**c.** Only experience gained during the five (5) years immediately preceding application will be considered for evaluation.()~~

~~**d.** Acceptable non field appraisal experience includes, but is not limited to the following: Fee and Staff appraisal analysis, ad valorem tax appraisal, condemnation appraisal, technical review appraisal, appraisal analysis, review appraisal, real estate counseling, highest and best use analysis, and feasibility analysis/study.()~~

~~**e.** Each applicant applying for licensure must verify completion of the required experience via affidavit, under oath subject to penalty of perjury, and notarized on a form provided by the Board.()~~

~~**i.** The Board requires submission of a log that details hours claimed for experience credit. The log must include the following:()~~

~~**i.**(1) Type of property;()~~

~~**ii.**(2) Address of the property;()~~

~~**iii.**(3) Report date;()~~

~~**iv.**(4) Description of work performed by the trainee/applicant and scope of the review and supervision of the Supervisory Appraiser;()~~

~~**v.**(5) Number of work hours by the trainee/applicant on the assignment;()~~

~~(6) Complexity;()~~

~~(7) Approaches to value;()~~

~~(8) Appraised value;()~~

~~(9) Scope of supervising appraiser's review; and()~~

~~vi. (10)~~ Signature and license number of the supervising appraiser.()

~~ii.~~ The Board reserves the right to contact an employer for confirmation of length and extent of experience claimed. This may require an employer to submit appraisal reports and/or an affidavit.()

~~iii.~~ The Board may request submission of written reports or file memoranda that substantiate an applicant's claim for experience credit.()

~~b. f.~~ Ad valorem tax appraisers must demonstrate the use of techniques to value properties similar to those used by appraisers and effectively use the process as defined in Subsection 010.056, Field Real Estate Appraisal Experience, in order to receive experience credit.()

~~03. Examination.~~ Successful completion of an examination appropriate to the license classification being applied for and approved by the Board pursuant to the guidelines of the Appraisal Qualifications Board. A passing grade on an examination approved by the Board pursuant to the guidelines of the AQB.()

~~251.— 274.(RESERVED)~~

~~275. REGISTERED TRAINEE REAL ESTATE APPRAISER.~~

~~044. Registered Real Estate Appraiser Trainee.~~

~~a. Qualifications.~~ Each applicant for registration as an appraiser trainee must meet the following requirements: An applicant must have completed seventy-five (75) hours of qualifying education as specified in the Required Core Curriculum within the last five (5) years, consisting of not less than thirty (30) hours of Basic Appraisal Principles, including: not less than thirty (30) hours of Basis Appraisal Principles; fifteen (15) hour National USPAP course or AQB approved equivalent. ()

~~a.~~ Education. Within the five year period preceding application, all applicants for registration as a trainee must document completion of at least seventy five (75) classroom hours of courses in subjects related to real estate appraisal as follows:()

~~i.~~ Basic Appraisal Principles— not less than thirty (30) hours specifically including Real Property Concepts and Characteristics, Legal Considerations, Influences on Real Estate Values, Types of Value, Economic Principles, Overview of Real Estate Markets and Analysis, and Ethics and How They Apply in Appraisal Theory and Practice; and ()

~~ii.~~ Basic Appraisal Procedures— not less than thirty (30) hours specifically including Overview of Approaches to Value, Valuation Procedures, Property Description, and Residential Applications; and()

~~iii.~~ National USPAP Course— not less than fifteen (15) hours.()

~~b.~~ Appraisers holding a Licensed Residential Real Property Appraiser credential satisfy the educational requirements for the Trainee Appraiser credential. ()

~~Experience.~~ All applicants for registration as a trainee must retain and identify at least one (1) qualified supervisor as required by law and rule.()

~~i.e.~~ Examination.—Each trainee applicant shall pass the end of course document successful passage of examinations in each of the prerequisite courses in order to earn credit. required for registration as a trainee.()

~~ii.d.~~ Prior to registration ~~as an appraiser trainee~~, each applicant ~~trainee applicant~~ must complete a trainee appraiser course that complies with the ~~content~~ requirements established by the AQB. Appraisal Qualifications Board. This course is in addition to the education requirements set forth in Section 275.()

~~iii. 02. Scope and Practice.~~ An Appraiser Trainee shall not be involved in the appraisal of any property that exceeds the lawful scope of practice of the Supervising Appraiser, and is subject to USPAP. The appraiser

~~trainee shall be subject to USPAP. ()~~

~~**iv.a.** Each appraiser trainee is permitted to have more than one (1) Supervisory Appraiser. An appraisal log shall be maintained jointly. ing appraiser provided a supervising appraiser is not registered to more than three (3) trainees at any one (1) time. ()~~

~~**b.** An appraisal log shall be maintained for each supervising appraiser by the appraiser trainee and shall include no less than the requirements outlined in Subsection 250.02.e.i. for each appraisal. ()~~

~~**e.** An appraiser trainee shall be entitled to obtain copies of all appraisal reports prepared by the trainee. ()~~

~~**c. 03. Continuing Education.** Prior to the second and subsequent renewals an appraiser trainee shall be required to obtain the equivalent of twenty-eight (28) classroom hours of instruction in approved courses or seminars.. Once every twenty-four (24) months, registered appraiser trainees will be required to attend an approved seven-hour USPAP Continuing Education Course or the equivalent. The course must cover the most recent USPAP edition. renewal and for each continuing education cycle thereafter as provided in Section 275 of this rule, an appraiser trainee shall be required to obtain: ()~~

~~**a.** The equivalent of thirty (30) classroom hours of instruction in approved courses or seminars during the twenty-four (24) month period preceding the renewal. Once every twenty-four (24) months, registered appraiser trainees will be required to attend an approved seven-hour USPAP update course or the equivalent. The course must cover the most recent USPAP edition. ()~~

~~**b.** All continuing education shall be in compliance with Subsections 401.01 through 401.05.~~

~~**i.** If the licensee completes two (2) or more courses having substantially the same content during any one (1) continuing education cycle, the licensee only will receive continuing education credit for one (1) of the courses. ()~~

~~**ii.e.** Continuing education credit may be granted for participation in appraisal educational processes and programs, including: teaching, program development, authorship of textbooks, or similar activities that are determined to be equivalent to obtaining continuing education, up to one-half (1/2) of total credits for renewal period. also be granted for participation, other than as a student, in appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, program development, authorship of textbooks, or similar activities that are determined to be equivalent to obtaining continuing education. Credit for educational processes and programs continuing education shall not exceed one-half (1/2) of the total continuing education credits required for a renewal period. ()~~

~~**d.** The purpose of continuing education is to ensure that the appraiser trainee participates in a program that maintains and increases skill, knowledge and competence in real estate appraising. ()~~

~~**04. Renewal and Reinstatement.** An appraiser trainee shall renew their registration annually as set forth in Section 67-2614, Idaho Code, and may reinstate after expiration as provided in Section 67-2614, Idaho Code. Beginning July 1, 2017, an individual may only be registered as an appraiser trainee for a maximum period of five (5) years, unless approved by the Board for good cause.~~

~~**d.** An individual may only be registered as an appraiser trainee for a maximum period of five (5) years, unless approved by the Board. ()~~

276. REGISTERED TRAINEE SUPERVISORS.

~~**051. Supervisory Appraiser. Registered Trainee Supervisor Requirements:** ()~~

~~**a.** Qualifications. Hold a license in good standing with no disciplinary history in any jurisdiction that affected the Supervisory Appraiser's eligibility to engage in appraisal practice for at least three (3) years immediately prior to providing supervision; and; A supervising appraiser shall: ()~~

- ~~i. Hold a current Idaho license as a Certified Residential Appraiser or as a Certified General Appraiser when supervising a trainee registered in Idaho. ()~~
- ~~ii. Have held a current and unrestricted license as a Certified Residential Appraiser or a Certified General Appraiser for at least three (3) years prior to providing supervision; and; ()~~
- ~~iii. Submit evidence of Completion of a course that complies with requirements established by the AQB focused on the responsibilities of a Supervisory Appraiser, an approved four hour (4) continuing education course regarding the role of a supervising appraiser. ()~~
- ~~iv. Not have been disciplined by the Board or any other state or jurisdiction within the previous four (4) years; and ()~~
- ~~ii. v. Not supervise more than three (3) Appraiser Trainees at one time; and ()~~
- ~~iii. vi. Be responsible for the training and direct supervision of the Appraiser Trainee; and ()~~
- ~~iv. vii. Accept responsibility for all appraiser trainee appraisal reports by signing and certifying that the report is in compliance with USPAP; and ()~~
- ~~v. viii. Review and sign all Appraiser Trainee appraisal report(s); and ()~~
- ~~vi. ix. Personally inspect each appraised property with the Appraiser Trainee until the supervising appraiser determines the appraiser trainee is competent in accordance with the Competency Provision of USPAP for the property type. ()~~
- ~~b. An accurate, current and complete appraisal experience log shall be maintained jointly by the Supervising Appraiser and the Appraiser Trainee as outlined in Subsection 250.02.e.i. ()~~
- ~~c. A Supervising Appraiser may not continue to supervise if: ()~~
 - ~~i. The appraiser ceases to meet supervisor requirements; or has ()~~
 - ~~ii. The appraiser is disciplined, unless the board grants a waiver and a waiver may be subject to conditions set by the board. Discipline that affects the Supervisory Appraiser's ability to engage in appraisal practice. ()~~

~~277. — 299. (RESERVED)~~

~~**300. LICENSED RESIDENTIAL REAL ESTATE APPRAISER CLASSIFICATION APPRAISER QUALIFICATION CRITERIA:**~~

~~The state licensed residential real estate appraiser classification applies to the appraisal of residential real property consisting of one (1) to four (4) non-complex residential units having a transaction value less than one million dollars (\$1,000,000) and complex one (1) to four (4) residential units having a transaction value less than two hundred fifty thousand dollars (\$250,000). Applicants must meet the following education, experience and examination requirements in addition to complying with Section 250. Subsequent to being licensed, every licensee must annually meet the continuing education requirement. ()~~

~~**06. Licensed Residential Real Estate Appraiser.** Applies to the appraisal of residential real property consisting of one (1) to four (4) non-complex residential units having a transaction value less than one million dollars (\$1,000,000) and complex one (1) to four (4) residential units having a transaction value less than four hundred thousand dollars (\$400,000). Requirements:~~

~~**a01. Education.** An applicant may either complete one hundred and fifty (150) qualified class hours as specified in the Required Core Curriculum, including the 15-Hour National USPAP course or, register as an Appraiser Trainee and complete seventy-five (75) classroom hours in: Residential Market Analysis and Highest and~~

~~Best Use –fifteen (15) hours; Residential Appraiser Site Valuation and Cost Approach –fifteen (15) hours; Residential Sales Comparison and Income Approaches –thirty (30) hours; and Residential Report Writing and Case Studies –fifteen (15) hours.()~~

~~As a prerequisite to taking the examination for licensure as an Idaho Licensed Residential Real Estate Appraiser, each applicant shall:()~~

- ~~a. Document registration as an Appraiser Trainee; and()~~
- ~~b. Document the successful completion of not less than seventy five (75) classroom hours of courses in subjects related to real estate appraisal as follows:()~~
 - ~~i. Residential Market Analysis and Highest and Best Use —not less than fifteen (15) hours; and ()~~
 - ~~ii. Residential Appraiser Site Valuation and Cost Approach —not less than fifteen (15) hours; and ()~~
 - ~~iii. Residential Sales Comparison and Income Approaches —not less than thirty (30) hours specifically including: Valuation Principles and Procedures —Sales Comparison Approach; Valuation Principles and Procedures— Income Approach; Finance and Cash Equivalency; Financial Calculator Introduction; Identification, Derivation and Measurement of Adjustments; Gross Rent Multipliers; Partial Interests; Reconciliation; and Case Studies; and()~~
 - ~~iv. Residential Report Writing and Case Studies —not less than fifteen (15) hours specifically including: Writing and Reasoning Skills; Common Writing Problems; Form Reports; Report Options and USPAP Compliance; Case Studies.()~~

~~**02. Experience.** One thousand (1,000) hours of experience in no less than six (6) months. Prerequisite to sit for the examination:()~~

- ~~a. Document one thousand (1,000) hours of supervised appraisal experience as a registered Appraiser Trainee in no less than six (6) months. Experience documentation in the form of reports or file memoranda should be available to support the claim for experience.()~~
- ~~b. Of the required one thousand (1,000) hours, the applicant must accumulate a minimum of seven hundred fifty (750) hours from field real estate appraisal experience. The balance of two hundred fifty (250) hours may include non-field experience, refer to Subsection 250.02.d.()~~

~~**03. Examination.** Successful completion of the AQB-approved Licensed Residential Appraiser examination the successful completion of the Certified Residential or Certified General examination, approved by the Board pursuant to the guidelines of the Appraisal Qualifications Board:()~~

~~**301.—349.(RESERVED)**~~

~~**350. CERTIFIED RESIDENTIAL REAL ESTATE APPRAISER CLASSIFICATION APPRAISER QUALIFICATION CRITERIA.**~~

~~The~~

~~**06. State Certified Residential Real Estate Appraiser.** classification A applies to the appraisal of residential properties of four (4) or less units without regard to transaction value or complexity. Applicants must meet the following education, experience and examination requirements in addition to complying with Section 250. Subsequent to being certified every licensee must annually meet the continuing education requirement.()~~

~~**a.01. Education.** As a prerequisite to taking the examination for licensure as an Idaho Certified Residential Real Estate Appraiser, each applicant shall:()~~

- ~~**i.** Hold a Bachelor’s degree in any field of study from an accredited degree-granting college or university, or meet one of the following options:()~~

~~ii. Possession of an Associate's degree in a field of study related to business administration, accounting, finance, economics or real estate; or()~~

~~iii. Successful Completion of thirty (30) semester hours of college-level courses that cover each of the following specific topic areas and hours: English composition (three (3) semester hours), microeconomics (three (3) semester hours), macroeconomics (three (3) semester hours), finance (three (3) semester hours), algebra, geometry or higher mathematics (three (3) semester hours), statistics (three (3) semester hours), computer science (three (3) semester hours), business or real estate law (three (3) semester hours), and two (2) elective courses in any of the topics listed above or in accounting, geography, agricultural economics, business management, or real estate (three (3) semester hours each); or()~~

~~iv. iii. Successful Completion of at least thirty (30) semester hours of College Level Examination Program® (CLEP®) examinations from each of the following subject matter areas: college algebra (three (3) semester hours), college composition (six (6) semester hours), college composition modular (three (3) semester hours), college mathematics (six (6) semester hours), principles of macroeconomics (three (3) semester hours), principles of microeconomics (three (3) semester hours), introductory business law (three (3) semester hours), and information systems (three (3) semester hours), or()~~

~~iv. Any combination of the above criteria (within Subsections 350.01.a.ii. and 350.01.a.iii. of these rules) that ensures coverage of all topics and hours identified in Subsection 350.01.a.ii.-()~~

~~b. As an alternative to the requirements in Subsection 350.01.a., above, individuals who have held a Licensed Residential credential for a minimum of five (5) years may qualify if they do not have a record of any disciplinary action affecting their legal eligibility to engage in appraisal practice within the five (5) years immediately preceding the date of application, as meeting the requirements of Subsection 350.01.a., if it is established that there is no record of any adverse, final, and non appealable disciplinary action affecting the Licensed Residential appraiser's legal eligibility to engage in appraisal practice within the five (5) years immediately preceding the date of application for a Certified Residential license.-()~~

~~c. Document Registration as an Appraiser Trainee and completion of the education required for licensure as a Licensed Residential Real Estate Appraiser, or hold a current license as a Licensed Residential Real Estate Appraiser; and()~~

~~d. Document the successful completion of not less than fifty (50) classroom hours of courses in subjects related to real estate appraisal as follows:()~~

~~i. Statistics, Modeling and Finance: not less than fifteen (15) hours, specifically including Statistics; Valuation Models (AVM's and Mass Appraisal); and Real Estate Finance; and()~~

~~ii. Advanced Residential Applications and Case Studies: not less than fifteen (15) hours, specifically including Complex Property, Ownership and Market Conditions; Deriving and Supporting Adjustments; Residential Market Analysis; and Advanced Case Studies; and()~~

~~iii. Appraisal Subject Matter Electives: not less than twenty (20) hours, and may include hours over the minimum shown in Subsection 350.01.d. of these rules.-()~~

~~e02. Experience. One thousand five hundred (1,500) hours of appraisal experience in no less than twelve (12) months, with at least one thousand two hundred (1,200) hours of the experience from residential field appraisal experience. Experience is a prerequisite to sit for the licensure examination.-()~~

~~a. Document one thousand five hundred (1,500) hours of appraisal experience in no less than twelve (12) months (see Subsection 250.02). Experience documentation in the form of reports or file memoranda should be available to support the claim for experience.-()~~

~~b. One thousand two hundred (1,200) hours of the experience shall be from residential field appraisal experience. The balance of three hundred (300) hours may include non field experience, refer to Subsection 250.02.d. ()~~

fe. **Examination.** Successful completion of the Certified Residential Appraiser examination approved by the Board pursuant to the guidelines of the ~~AQB. Appraisal Qualifications Board.~~()

~~351. 399.(RESERVED)~~

~~400. CERTIFIED GENERAL REAL ESTATE APPRAISER CLASSIFICATION APPRAISER QUALIFICATION CRITERIA.~~

~~The State Certified General Real Estate Appraiser classification applies to the appraisal of all types of real property. Applicants must meet the following examination, education, and experience requirements in addition to complying with Section 250. Subsequent to being certified, an individual must meet the continuing education requirement.~~

~~()~~

074. State Certified General Real Estate Appraiser. Applicants must meet the following:

a. Education. ~~As a prerequisite to taking the examination for licensure as an Idaho Certified General Real Estate Appraiser, each applicant shall:~~()

ia. ~~Hold a Bachelor's degree or higher from an accredited degree-granting college or university and document two hundred twenty-five (225) in ; and~~
()

ii.b. Document registration as an Appraiser Trainee and document the successful completion of not less than two hundred twenty-five (225) classroom hours of courses in subjects related to real estate appraisal as follows:
()

iii.† Statistics, Modeling and Finance: not less than fifteen (15) hours, specifically including Statistics; Valuation Models (AVM's and Mass Appraisal), and Real Estate Finance;()

iv.‡ General Appraiser Market Analysis and Highest and Best Use: not less than thirty (30) hours;
()

v.‡‡ General Appraiser Sales Comparison Approach: not less than thirty (30) hours, specifically including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies;
()

vi.‡‡ General Appraiser Site Valuation and Cost Approach: not less than thirty (30) hours;()

vii.‡‡ General Appraiser Income Approach: not less than sixty (60) hours, specifically including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies;()

viii.‡‡ General Appraiser Report Writing and Case Studies: not less than thirty (30) hours, specifically including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies; and()

ix. vii Appraisal Subject Matter Electives: not less than thirty (30) hours, ~~and may include hours over the minimum shown in Subsection 400.01.b. of these rules;~~ or()

b.e. ~~Document licensure as a Licensed Residential Real Estate Appraiser and the successful~~
Completion of not less than one hundred fifty (150) classroom hours of courses in subjects related to real estate appraisal as follows:()

i. Statistics, Modeling and Finance: not less than fifteen (15) hours, specifically including Statistics; Valuation Models (AVM's and Mass Appraisal); and Real Estate Finance; and()

- ii. General Appraiser Market Analysis and Highest and Best Use: not less than fifteen (15) hours; and ()
 - iii. General Appraiser Sales Comparison Approach: not less than fifteen (15) hours, specifically including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; and ()
 - iv. General Appraiser Site Valuation and Cost Approach: not less than fifteen (15) hours; and()
 - v. General Appraiser Income Approach: not less than forty-five (45) hours, specifically including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; and ()
 - vi. General Appraiser Report Writing and Case Studies: not less than fifteen (15) hours, specifically including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies; and()
 - vii. Appraisal Subject Matter Electives: not less than thirty (30) hours, or completion of one hundred five (105) classroom hours of courses in: General Appraiser Market Analysis and Highest and Best Use: not less than fifteen (15) hours; and General Appraiser Sales Comparison Approach: not less than fifteen (15) hours, including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; and General Appraiser Site Valuation and Cost Approach: not less than fifteen (15) hours; and General Appraiser Income Approach: not less than forty-five (45) hours, including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; and General Appraiser Report Writing and Case Studies: not less than fifteen (15) hours, including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies. ~~and may include hours over the minimum shown in Subsection 400.01.c.; or()~~
- ~~d. Document licensure as a Certified Residential Real Estate Appraiser and the successful completion of not less than one hundred five (105) classroom hours of courses in subjects related to real estate appraisal as follows: ()~~
- ~~i. General Appraiser Market Analysis and Highest and Best Use: not less than fifteen (15) hours; and ()~~
 - ~~ii. General Appraiser Sales Comparison Approach: not less than fifteen (15) hours, specifically including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; and ()~~
 - ~~iii. General Appraiser Site Valuation and Cost Approach: not less than fifteen (15) hours; and()~~
 - ~~iv. General Appraiser Income Approach: not less than forty five (45) hours, specifically including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; and ()~~
 - ~~v. General Appraiser Report Writing and Case Studies: not less than fifteen (15) hours, specifically including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies. ()~~
- c 02. Experience.** Three thousand (3,000) hours of appraisal experience in no less than eighteen (18)

~~months. One thousand five hundred (1,500) hours of the experience must be non-residential appraisal experience. The balance of one thousand five hundred (1,500) hours may be solely residential experience or can include up to five hundred (500) hours of non-field experience.. xperience is a prerequisite to sit for the licensure examination:(—)~~

~~a. Document three thousand (3,000) hours of appraisal experience in no less than eighteen (18) months (See Subsection 250.02). Experience documentation in the form of reports or file memoranda should be available to support the claim for experience.(—)~~

~~b. One thousand five hundred (1,500) hours of the experience must be non-residential appraisal experience. The balance of one thousand five hundred (1,500) hours may be solely residential experience or can include up to five hundred (500) hours of non field experience as outlined in Subsection 250.02.d.(—)~~

~~d. Examination. Successful completion of the Certified General Appraiser examination approved by the Board pursuant to the guidelines of the AQB. Appraisal Qualifications Board.()~~

~~401. CONTINUING EDUCATION.~~

~~All certified/licensed appraisers must comply with the following continuing education requirements:(—)~~

~~08. Continuing Education.~~

~~1. Purpose of Continuing Education. The purpose of continuing education is to ensure that the appraiser participates in a program that maintains and increases his skill, knowledge and competency in real estate appraising.()~~

~~a.02. Hours Required. The equivalent of thirty (30) Twenty-eight (28) classroom hours of instruction in courses or seminars during the twenty-four (24) months prior to renewal is required. If the licensee completes two (2) or more courses having substantially the same content during any one (1) continuing education cycle, the licensee only will receive continuing education credit for one (1) of the courses.()~~

~~ia. If the educational offering is taken on-line or in a virtual classroom, the course must include successful completion of prescribed course mechanisms required to demonstrate knowledge of the subject matter.()~~

~~ii.b. Credit toward the classroom hour requirement may be granted only where the length of the educational offering is at least two (2) hours.()~~

~~iiie. Credit for the classroom hour requirement may be obtained by accredited courses which have been approved by the AQB and by courses approved by Real Estate Appraiser Boards of states with reciprocity with Idaho. All other courses must have approval of the Board. Courses shall be approved for a period of four (4) years. Appraisal Qualifications Board and by courses approved by Real Estate Appraiser Boards of states with reciprocity with Idaho. All other courses must have approval of the Board, which shall require the continuing education provider to submit the educational course approval application and application fee as set forth in these rules along with the documentation including the instructors and their qualifications, course content, length of course, and its location. Courses shall be approved for a period of four (4) years:()~~

~~ivd. Once eEvery twenty-four (24) months, Idaho State Certified/Licensed Real Estate Appraisers and registered trainees will be required to attend an approved seven (7) hour USPAP Continuing Education course covering the most recent edition, or the AQB approved equivalent. update course or the equivalent. The course must cover the most recent USPAP edition.()~~

~~y03. Credit for Appraisal Educational Processes and Programs. Continuing education credit may also be granted for participation, other than as a student, in appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, program development, authorship of textbooks, or similar activities which are determined to be equivalent to obtaining continuing education. Credit for educational processes and programs. Continuing education shall not exceed one-half (1/2) of the total continuing education credits required for a renewal period.()~~

~~vi. Credit may be awarded for a single state appraisal regulatory meeting per continuing education~~

~~cycle. The must be open to the public and must be a minimum of two (2) hours in length. The total credit cannot exceed two (2) hours.()~~

~~vii. Continuing education will be granted for successful completion of a course which meets the AQB content requirements of the Valuation Bias and Fair Housing Laws and Regulations Outline.~~

~~viii. For each year in which a license is inactive, fourteen (14) hours of continuing education must be completed prior to reinstatement. For a license inactive for less than two (2) years, the hours must include the most recent seven (7) hour USPAP Continuing Education course. For a license inactive more than two (2) years but less than five (5) years, the hours must include the most recent fifteen (15) hour National USPAP course.~~

~~09. Temporary License. An individual may receive a permit to temporarily practice on a per appraisal assignment basis for not more than six (6) months. The applicant must be listed on the National Registry, maintained by the Appraisal Subcommittee, as current and in good standing and comply with Section 54-4115(3), Idaho Code.()~~

~~04. Credit for Attending the Licensure Board Meetings. Continuing education credit may be granted for a maximum of two (2) hours each continuing education cycle for time spent attending one (1) Board meeting. Members of the board shall not be entitled to continuing education credit for board service.()~~

~~05. Requirement When a Certificate/License Is Canceled. For each year (less than five (5)) in which a license is lapsed, canceled, or otherwise non-renewed, fifteen (15) hours of continuing education must be documented, including a seven (7) hour USPAP update course, prior to reinstatement. The course must cover the most recent USPAP edition.()~~

~~402.—449.(RESERVED)~~

~~450. RECIPROCITY.~~

~~Applicant must comply with Section 54-4115, Idaho Code, and Submit current notarized statement verifying certification/licensure in good standing in another state()~~

~~451.—499.(RESERVED)~~

~~500. TEMPORARY PRACTICE.~~

~~01. Requirements for Issuance. A permit to temporarily practice may be issued to individuals coming to Idaho who are certified/licensed in another state and are either transferring to Idaho or have a temporary assignment in Idaho.()~~

~~02. Proof of Current Certification or Licensure. The applicant must be listed on the National Registry, maintained by the Appraisal Subcommittee, as current and in good standing and comply with Section 54-4115(3), Idaho Code, regarding irrevocable consent.()~~

~~03. Assignments and Length of Time Permit Will Be Issued. Permit to temporarily practice will be issued on a per appraisal assignment basis for a period not to exceed six (6) months. A temporary permit may be extended one (1) time only.()~~

~~501.—524.(RESERVED)~~

~~300.525. DISCIPLINE.~~

~~The Board may impose a civil fine not to exceed one thousand dollars (\$1,000) upon a licensed or certified real estate appraiser for each violation of Section 54-4107(1), Idaho Code.()~~

~~The Uniform Standards of Professional Practice, excluding standards 7, 8, 9, and 10, are hereby adopted as the rules of conduct and code of ethics for all Real Estate Appraisers. ()~~

~~01. Appraisals in Litigation. Licensed or certified appraisers providing opinions of value shall comply with USPAP Standard 1 including maintaining a work file in support of the opinion of value in litigation.~~

~~526.—539.(RESERVED)~~

~~540. APPRAISALS IN LITIGATION.~~

~~Licensed or certified appraisers providing opinions of value in litigation shall comply with USPAP Standard 1 including maintaining a work file in support of the opinion of value in litigation.(—)~~

~~541.—699.(RESERVED)~~

~~700. UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE/CODE OF ETHICS.~~

~~The Uniform Standards of Professional Practice, excluding standards 7, 8, 9, and 10, as published by the Appraisal Foundation and referenced in Section 004, are hereby adopted as the rules of conduct and code of ethics for all Real Estate Appraisers licensed under Title 54, Chapter 41, Idaho Code, and these rules.(—)~~

~~701.—999.(RESERVED)~~

400. FEES

<u>TYPE</u>	<u>AMOUNT</u>	<u>RENEWAL (PER YEAR)</u>
<u>APPLICATION</u>	<u>\$200</u>	
<u>LICENSE</u>	<u>\$100</u>	<u>\$275</u>
<u>AMC REGISTRATION</u>	<u>\$1,000</u>	<u>\$900</u>
<u>APPLICATION FOR RECIPROCITY</u>	<u>\$200</u>	
<u>ORIGINAL LICENSE VIA RECIPROCITY</u>	<u>\$100</u>	
<u>TEMPORARY PERMIT</u>	<u>\$75</u>	
<u>TRAINEE REGISTRATION</u>	<u>\$50</u>	
<u>CONTINUING EDUCATION PROVIDER APPLICATION</u>	<u>\$100</u>	

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IDAPA 24 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES

24.33.01 – RULES OF THE BOARD OF MEDICINE FOR THE LICENSURE TO PRACTICE MEDICINE AND OSTEOPATHIC MEDICINE IN IDAHO

DOCKET NO. 24-3301-2301

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 negotiated rulemaking action is authorized pursuant to Section 67-2604, Idaho Code, and Sections 6-1002, 54-1806, 54-1806A, 54-1807, 54-1812, 54-1813, 54-1814, 54-1841, 54-1867, 67-2614, 67-9406 and 67-9409, Idaho Code.

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

Monday, October 16, 2023, 9:00 a.m. MT
Division of Occupational and Professional Licenses Chinden Campus Building 4 11341 W. Chinden Blvd., Bldg. #4 Boise, ID 83714
Telephone and web conferencing information will be posted on: https://dopl.idaho.gov/calendar/ and https://townhall.idaho.gov/

The hearing 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.

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

This rulemaking is being proposed to address legislative changes made through House Bill 3 and Senate Bill 1094. The legislative changes, which went into effect on July 1, 2023, resulted in the removal of the registration requirement for supervising physicians and the addition of a temporary registration for certain experienced international medical graduates. The proposed rulemaking will address these statutory changes.

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

The proposed amendments to the rules do not impose any new or increased 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 as a result of this rulemaking:

This rulemaking is not anticipated to have any negative fiscal impact on the State General Fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was conducted under Docket No. 24-3301-2301. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 5, 2023, Idaho Administrative Bulletin, [Vol. 23-7, pp.94-95](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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.

No materials have been incorporated by reference into the proposed rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES: For assistance on technical questions concerning this proposed rule, contact Katie Stuart, Bureau Chief, at (208) 577-2489. Materials pertaining to the proposed rulemaking, including any available preliminary rule drafts, can be found on the following DOPL website: <https://dopl.idaho.gov/rulemaking/>.

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 25, 2023.

DATED this 1st day of September, 2023.

Katie Stuart
Bureau Chief
11341 W. Chinden Blvd., Bldg. #4
Boise, ID 83714
Phone: (208) 577-2489
Email: katie.stuart@dopl.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-3301-2301
(Only Those Sections With Amendments Are Shown.)

151. DEFINITIONS RELATING TO SUPERVISING AND DIRECTING PHYSICIANS.

01. Athletic Trainer. A person who has met the qualifications for licensure as set forth in Title 54, Chapter 39, Idaho Code, is licensed under that chapter, and carries out the practice of athletic training under the direction of a designated Idaho licensed physician, registered with the Board. (3-28-23)

02. Directing Physician. A designated Idaho licensed physician, registered with the Board pursuant to this chapter and Title 54, Chapter 39, Idaho Code, who oversees the practice of athletic training and is responsible for the athletic training services provided by the athletic trainer. This chapter does not authorize the practice of medicine or any of its branches by a person not so licensed by the Board. (3-28-23)

03. Medical Personnel. An individual who provides cosmetic treatments using prescriptive medical/cosmetic devices and products that are exclusively non-incisive or non-ablative under the direction and supervision of a supervising physician ~~registered with the Board~~, pursuant to the applicable Idaho statutes and the applicable rules promulgated by the Board. (~~3-28-23~~)()

04. Supervising Physician of Interns or Residents. Any person approved by ~~and registered with~~ the Board who is licensed to practice medicine and surgery or osteopathic medicine and surgery in Idaho, who signs the application for registration of an intern or resident, and who is responsible for the direction and supervision of their activities. (~~3-28-23~~)()

05. Supervising Physician of Medical Personnel. An Idaho licensed physician ~~who is registered with the Board pursuant to this chapter~~, who supervises and has full responsibility for cosmetic treatments using prescriptive medical/cosmetic devices and products provided by medical personnel. (~~3-28-23~~)()

(BREAK IN CONTINUITY OF SECTIONS)

243. ~~RESIDENT AND INTERN~~ TEMPORARY REGISTRATION.

01. Eligibility. Any person identified in Section 54-1813(2), Idaho Code. ()

042. Registration Certificate. Upon approval of the registration application, the Board may issue a registration certificate that sets forth the period during which the registrant may engage in activities that may involve the practice of medicine. Each registration will be issued for a period of not less than one (1) year and will set forth its expiration date on the face of the certificate. Each registration will identify the supervising physician. Each registrant will notify the Board in writing of any change of the supervising physician or the program or course of study fourteen (14) days prior to any such change. If the Board deems the intern or resident applicant qualified, and if the course of study requires, the Board may additionally certify on the registration certificate that the intern or resident registrant is qualified to write prescriptions for Class III through Class V scheduled medications. (3-28-23)()

023. Termination of Registration Discipline. The rRegistrants of an intern or resident may be terminated, suspended, or made conditional by the Board on the grounds set forth in Section 54-1814, Idaho Code, and under the procedures set forth in Section 54-1806A, Idaho Code. (3-28-23)()

034. Annual Renewal of Registration. Each rRegistration must may be renewed annually prior to its expiration date. Any registration and, if not renewed by its the expiration date, will be canceled. (3-28-23)()

045. Notification of Changes. Each rRegistrants must notify the Board in writing of any adverse action or termination, whatever the outcome, from any post graduate training program and any name changes within fourteen (14) days of such event. (3-28-23)()

056. Disclosure. It is the responsibility of each A registrant to must ensure that every patients are is aware of the fact informed that such intern and resident the registrant is currently enrolled in a post graduate training program and working under the supervision of a licensed physician. (3-28-23)()

244. FEES - TABLE.
Nonrefundable fees are as follows:

Fees Table	
<u>Resident and Intern</u> <u>Temporary</u> Registration Fee	- Not more than \$25 <u>annu-ally</u>
<u>Registration Annual Renewal Fee</u>	- Not more than \$25

(3-28-23)()

IDAPA 24 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES

24.39.10 – RULES OF THE IDAHO ELECTRICAL BOARD

DOCKET NO. 24-3910-2302 (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. This rulemaking action is authorized pursuant to Sections 54-1001, 54-1005, 54-1006, 54-1007, 54-1009, 54-1018, 67-2604, 67-2614, 67-9406 and 67-9409, Idaho Code.

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

Wednesday, October 25, 2023, 9:00 a.m. MT
Division of Occupational and Professional Licenses Chinden Campus Building 4 11341 W. Chinden Blvd., Bldg. #4 Boise, ID 83714
Telephone and web conferencing information will be posted on: https://dopl.idaho.gov/calendar/ and https://townhall.idaho.gov/

The hearing 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.

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

Under [Executive Order 2020-01, Zero-Based Regulation](#), the Idaho Electrical Board is striving to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. In conjunction with stakeholders, the proposed rule changes reflect a comprehensive review of this chapter by collaborating with the public to streamline or simplify the rule language in this chapter and to use plain language for better understanding. This proposed rulemaking updates the rules to comply with governing statute and Executive Order 2020-01.

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

The fees for applications, licenses, and reinstatement as designated in Rule 400 of these proposed rules are authorized in Section 54-1005, Idaho Code. None of these fees are being changed as a result of this rulemaking or since being previously reviewed by the Idaho legislature.

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

This rulemaking is not anticipated to have any negative fiscal impact on the State General Fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was conducted under Docket No. 24-ZBRR-2301. The (Second) Omnibus Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 7, 2023 Idaho Administrative Bulletin, [Vol. 23-6, p. 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: National Electrical Code, 2023 Edition.

The materials cited are incorporated by reference because they would be unduly cumbersome, expensive, or otherwise inexpedient to republish all or in part. The materials cited are codes, standards, or rules adopted by a nationally recognized organization or association.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES: For assistance on technical questions concerning this proposed rule, contact Katie Stuart, Bureau Chief, at (208) 577-2489. Materials pertaining to the proposed rulemaking, including any available preliminary rule drafts, can be found on the following DOPL website: <https://dopl.idaho.gov/rulemaking/>.

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 25, 2023.

DATED this 1st day of September, 2023.

Katie Stuart
Bureau Chief
11341 W. Chinden Blvd., Bldg. #4
Boise, ID 83714
Phone: (208) 577-2489
Email: katie.stuart@dopl.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 24-3910-2302
(Only Those Sections With Amendments Are Shown.)

100. LICENSURE AND REGISTRATION.

01. Journeyman. An applicant must pass an examination designated by the Board and either (a) submit evidence of a minimum of eight thousand (8,000) hours of work experience as an apprentice making electrical installations in accordance with the requirements of the jurisdiction in which the applicant obtained the experience and satisfactory completion of a four-year sequence of instruction approved by the Idaho Division of Career-Technical Education, or (b) submit proof of sixteen thousand (16,000) hours of electrical experience in accordance with the requirements of the jurisdiction in which the applicant obtained the experience. (3-28-23)

a. Examination. An applicant may sit for the exam after showing proof of completion of either the approved 4-year sequence of instruction or 16,000 hours of electrical experience. (3-28-23)

b. Provisional Journeyman License. A provisional journeyman license can be issued to an applicant who has completed the 16,000 hours of electrical experience but has not yet passed the examination. (3-28-23)

c. Work experience in appliance repair, motor winding, or communications will not count towards the requirements to take the journeyman examination or obtain a provisional journeyman or journeyman license. (3-28-23)

d. No more than two thousand (2,000) hours of work experience gained while engaged in the practice of a limited electrical installer or trainee may be counted toward the satisfaction of the experience requirements for journeyman licensure. (3-28-23)

02. Master. A master electrician does not need to also hold a journeyman license. (3-28-23)

03. Limited Electrical Installer. An applicant must submit evidence of a minimum of four thousand (4,000) hours of work experience in the same limited category in accordance with the requirements of the jurisdiction in which the applicant obtained the experience. (3-28-23)

04. Electrical Contractor and Limited Electrical Contractor. Applicant or its entity designee must pass an examination designated by the Board and submit an application signed by the applicant or an official representative of the entity making the application and countersigned by the supervising electrician. (3-28-23)

a. An entity applicant (such as, corporation, partnership, company, firm, or association) must designate in writing an individual to represent it for examination purposes. Any such designee shall be a supervisory employee and may not represent any other applicant for a contractor's license. (3-28-23)

b. In the event the working relationship between a contractor and its designee terminates, the contractor will notify the Division in writing within ten (10) days of the date of termination. The contractor may not purchase permits or make electrical installations unless another duly qualified designee passes the contractor's examination on behalf of the contractor. (3-28-23)

05. Continuing Education. To renew, journeymen and master electricians must provide proof of completion, during the prior three-year license cycle, ~~of twenty four (24) hours of continuing education instruction consisting of eight sixteen (816) hours of Idaho Electrical eCode update training covering changes included in the latest edition of the National Electrical Code and sixteen eight (168) hours of any combination of National Electrical Code code-update training, code-related training, or industry-related training, or independent study.~~ (3-28-23)T()

101. – 199. (RESERVED)

200. PRACTICE STANDARDS.

01. Electrical Contracting Work. Contracting work includes electrical maintenance or repair work, in addition to new electrical installations, unless such work is expressly exempted by Section 54-1016, Idaho Code. (3-28-23)

02. Contractor Scope. A contractor's allowable scope of work is the same as the scope of its licensed employee. (3-28-23)

03. Supervision. (3-28-23)

a. The master, journeyman, residential electrician, or limited electrical installer shall be designated the supervising electrician; must be available during working hours to carry out the duties of supervising, as set forth herein; and will be responsible for supervision of electrical installations made by said contractor as provided by Section 54-1010, Idaho Code. (3-28-23)()

i. A master electrician, journeyman, residential electrician, or limited electrical installer is not qualified for one (1) year as the supervising electrician if his contractor license was revoked. (3-28-23)()

ii. An individual contractor may act as his own supervising master, journeyman, residential electrician, or limited electrical installer upon the condition that he holds an active master, journeyman, residential electrician, or limited electrical installer license. (3-28-23)()

b. The employing contractor or limited electrical contractor must ensure each apprentice, trainee, and provisional journeyman performs electrical work only under the constant on-the-job supervision and training of a master, journeyman, residential electrician, or installer. (3-28-23)()

c. A journeyman who is an employee of a company, corporation, firm, or association with a facility account may sign as supervising electrician for that facility account in addition to signing as supervising journeyman for his own contractor's license so long as the journeyman is listed as the owner. (3-28-23)

04. Connecting and Energizing Prior to Inspections. At the request of a licensed electrical contractor and upon receipt of a copy of an electrical permit, a power supply company may connect and energize an electrical service, to the line side of the service disconnect, prior to a passed inspection in the following situations: to preserve life or property or to provide temporary service for construction. Any contractor energizing an electrical installation prior to an inspection assumes full responsibility for the installation. (3-28-23)

05. Limited Electrical Installations. A limited electrical installer must be employed by an electrical contractor or limited electrical contractor in the same restricted category and may only countersign a limited electrical contractor's license application as supervising limited electrical installer for work within the same restricted category. Limited electrical installations must comply with the National Electrical Code, as amended herein. The following categories of electrical installations constitute limited electrical installations, the practice of which shall require an electrical contractor or limited electrical contractor license and supervision by a journeyman, master electrician, or limited electrical installer: (3-28-23)

a. Elevator, Dumbwaiter, Escalator, or Moving-Walk Electrical. An elevator electrical limited licensee is only authorized to install, maintain, repair, and replace equipment, controls, and wiring beyond the disconnect switch in the machine room of the elevator and pertaining directly to the operation and control thereof when located in the elevator shaft and machine room. (3-28-23)

b. Sign Electrical. A sign electrical limited licensee is only authorized to install, maintain, repair, and replace equipment, controls, and wiring on the secondary side of sign disconnecting means; provided the disconnecting means is located on the sign or within sight therefrom. (3-28-23)

c. Manufacturing or Assembling Equipment. A licensed limited electrical manufacturing or assembling equipment installer is only authorized to install, maintain, repair, and replace equipment, controls, and accessory wiring, integral to the specific equipment, on the load side of the equipment disconnecting means. Electrical service and feeder are to be installed by others. The licensee may also install circuitry in modules or fabricated enclosures for the purpose of connecting the necessary components which individually bear a label from a nationally recognized testing laboratory when such equipment is designed and manufactured for a specific job installation. (3-28-23)

i. This subsection does not apply to a limited electrical manufacturing or assembling equipment installer installing electrical wiring, equipment, and apparatus in modular buildings as that phrase is defined in Section 39-4105, Idaho Code. Only journeyman electricians and electrical apprentices, employed by an electrical contractor, may perform such installations. (3-28-23)

d. Limited Energy Electrical. Limited energy systems are defined as fire and security alarm systems, class 2 and class 3 signaling circuits, key card operators, nurse call systems, motor and electrical apparatus controls and other limited energy applications covered by the NEC. Unless exempted by Section 54-1016, Idaho Code, any person who installs, maintains, replaces or repairs electrical wiring and equipment for limited energy systems in facilities other than one (1) or two (2) family dwellings shall be required to have a valid limited energy limited electrical license. (3-28-23)

i. Limited energy systems do not include, and no license of any type is required for, the installation of landscape sprinkler controls or communication circuits, wires and apparatus that include telephone systems, telegraph facilities, outside wiring for fire and security alarm systems which are used for communication purposes, and central station systems of a similar nature, PBX systems, audio-visual and sound systems, public address and intercom systems, data communication systems, radio and television systems, antenna systems and other similar systems. (3-28-23)

e. Irrigation Sprinkler Electrical. An irrigation system electrical limited licensee is only authorized to install, maintain, repair and replace equipment, controls and wiring beyond the disconnect switch supplying power to the electric irrigation machine. The irrigation machine is considered to include the hardware, motors and controls of the irrigation machine and underground conductors connecting the control centers on the irrigation machine to the load side of the disconnecting device. Disconnect device to be installed by others. (3-28-23)

f. Well Driller and Water Pump Installer. A license holder in this category is only authorized to

perform the following types of installations: (3-28-23)

i. Single or three (3) phase water pumps: install, maintain, repair and replace all electrical equipment, wires, and accessories from the pump motor up to the load side, including fuses, of the disconnecting device. Disconnecting device to be installed by others. (3-28-23)

ii. Domestic water pumps, one hundred twenty/two hundred forty (120/240) volt, single phase, sixty (60) amps or less: install, maintain, repair and replace all electrical equipment, wires, and accessories from the pump motor up to and including the disconnecting device. (3-28-23)

iii. Temporarily connect into a power source to test the installations, provided that all test wiring is removed before the installer leaves the site. (3-28-23)

iv. Individual residential wastewater pumping units. Install, maintain, repair and replace all electrical equipment, wires, and accessories from the pump motor up to and including the disconnecting device for systems that serve one-family, two-family, or three-family residential installations. (3-28-23)

g. Refrigeration, Heating, and Air-Conditioning Electrical Installer. A license holder in this category is only authorized to perform the following types of installations, which installations shall be limited to factory-assembled, packaged units: (3-28-23)

i. Heating Units (single phase): install, repair, and maintain all electrical equipment, wires, and accessories from the unit up to the load side, including fuses, of the disconnecting device. Disconnecting device to be installed by others. (3-28-23)

ii. Refrigeration, Air-Conditioning Equipment and Heat Pumps (single phase): install, repair, and maintain all electrical equipment, wires, and accessories from the unit up to the load side, including fuses, of the disconnecting device. Disconnecting device to be installed by others. (3-28-23)

iii. Refrigeration, Air-Conditioning and Heating Systems (three (3) phase): install, maintain, and repair all electrical equipment and accessories up to the load side, including fuses, of the disconnecting device. Disconnecting device to be installed by others. (3-28-23)

h. Outside Wireman. Applicants for this license category shall provide documentation of having completed an electrical lineman apprenticeship program or similar program approved by the U.S. Department of Labor, Office of Apprenticeship. Any person currently licensed in this category is only authorized to perform the following types of installation (3-28-23)

i. Overhead distribution and transmission lines in excess of six hundred (600) volts (3-28-23)

ii. Underground distribution and transmission lines in excess of six hundred (600) volts. (3-28-23)

iii. Substation and switchyard construction in excess of six hundred (600) volts. (3-28-23)

i. Solar Photovoltaic. Applicants for this license category shall provide proof of photovoltaic installer certification by the North American Board of Certified Energy Practitioners (NABCEP) or equivalent. Any person licensed in this category is only authorized to perform the following types of installations: (3-28-23)

i. Solar Photovoltaic DC Systems: Install, maintain, repair, and replace all electrical equipment, wires, and accessories up to and including the inverter. (3-28-23)

ii. Solar Photovoltaic micro-inverter/AC Systems: Install, maintain, repair, and replace all electrical equipment, wires, and accessories up to and including the AC combiner box. (3-28-23)

06. Certification and Approval of Electrical Products and Materials. All materials, devices, fittings, equipment, apparatus, luminaires, and appliances installed or to be used in installations that are supplied with electric energy must be approved as provided in one (1) of the following methods: (3-28-23)

- a. Testing Laboratory. Be tested, examined, and certified (Listed) by a Nationally Recognized Testing Laboratory (NRTL). (3-28-23)
- b. Field Evaluation. Non-listed electrical equipment may be approved for use through a field evaluation process performed in accordance with recognized practices and procedures such as those contained in the 2012 edition of NFPA 791 - Recommended Practice and Procedures for Unlabeled Electrical Equipment Evaluation published by the National Fire Protection Association (NFPA). Such evaluations shall be conducted by: (3-28-23)
- i. A field evaluation body approved by the authority having jurisdiction. The field evaluation body shall meet minimum recognized standards for competency, such as NFPA 790 - Standard for Competency of Third-Party Field Evaluation Bodies, 2012 edition, published by the National Fire Protection Association (NFPA); or (3-28-23)
- ii. In the case of industrial machinery only, as defined by NFPA 79 - Electrical Standard for Industrial Machinery, 2012 edition, a field evaluation may be performed by a professional engineer currently licensed to practice electrical engineering by the state of Idaho and who is not involved in the design of the equipment being evaluated or the facility in which the equipment is to be installed. (3-28-23)
- c. Availability of NFPA Standards. The most recent edition of NFPA 790 - Standard for Competency of Third-Party Field Evaluation Bodies and NFPA 791 - Recommended Practice and Procedures for Unlabeled Electrical Equipment Evaluation published by the National Fire Protection Association (NFPA) are available at the Division. (3-28-23)

(BREAK IN CONTINUITY OF SECTIONS)

600. IDAHO ELECTRICAL CODE.

01. Documents. Under the provisions of Section 54-1001, Idaho Code, the National Electrical Code, 2017~~23~~ Edition, (herein NEC) is hereby adopted ~~and incorporated by reference for the state of Idaho and are in full force and effect on and after July 1, 2017,~~ with the following amendments: (3-28-23)T()

~~a. Article 110.3(A) and 110.3(B) shall not apply to submersible well pumps installed in swimming and marine areas; provided however, such articles shall apply to all other equipment required in the installation of a submersible well pump in such areas except for the actual submersible well pump itself. (3-28-23)T~~

~~b. Article 210.8(A)(7) Sinks. Delete article 210.8(A)(7) and replace with the following: Sinks located in areas other than kitchens where receptacles are installed within one and eight tenths (1.8) meters (six (6) feet) of the outside edge of the sink. (3-28-23)T~~

~~c. Article 210.8(A)(10). Delete article 210.8(A)(10). (3-28-23)T~~

~~d. Article 210.8(D). Delete article 210.8(D). (3-28-23)T~~

~~e. Article 210.52(E)(3). Delete article 210.52(E)(3) and replace with the following: Balconies, Decks, and Porches. Balconies, decks, and porches having an overall area of twenty (20) square feet or more that are accessible from inside the dwelling unit shall have at least one (1) receptacle outlet installed within the perimeter of the balcony, deck, or porch. The receptacle shall not be located more than two (2.0) meters (six and one half (6½) feet) above the balcony, deck, or porch surface. (3-28-23)T~~

~~f. Add a new Article 225.30(F) — One (1) or Two (2) Family Dwelling Unit(s). For a one (1) or two (2) family dwelling unit(s) with multiple feeders with conductors one aught (1/0) or larger, it shall be permissible to install not more than six (6) disconnects grouped at one (1) location where the feeders enter the building, provided that the feeder conductors originate at the same switchboard, panelboard, or overcurrent protective device location. (3-28-23)T~~

~~g.~~ Where the height of a crawl space does not exceed one and four tenths (1.4) meters or four and one half (4.5) feet it shall be permissible to secure NM cables, that run at angles with joist, to the bottom edge of joist. NM cables that run within two and one tenth (2.1) meters or seven (7) feet of crawl space access shall comply with Article 320.23. (3-28-23)T

~~h.~~ Article 334.10(3). Delete Article 334.10(3) and replace with the following: Other structures permitted to be of Types III, IV, and V construction. Cables shall be concealed within walls, floors, or ceilings that provide a thermal barrier of material that has at least a fifteen (15) minute fire rating as identified in listings of fire-rated assemblies. For the purpose of this section, cables located in attics and underfloor areas that are not designed to be occupied shall be considered concealed. (3-28-23)T

~~i.~~ Article 675.8(B). Compliance with Article 675.8(B) will include the additional requirement that a disconnecting means always be provided at the point of service from the utility no matter where the disconnecting means for the machine is located. (3-28-23)T

~~j.~~ Article 682.10 shall not apply to submersible well pumps installed in swimming and marine areas; provided however, such articles shall apply to all other equipment required in the installation of a submersible well pump in such areas except for the actual submersible well pump itself. (3-28-23)T

~~k.~~ Article 682.11. Add the following exception to Article 682.11: This article shall not apply to service equipment that is located on or at the dwelling unit and which is not susceptible to flooding. (3-28-23)T

~~l.~~ Article 682.13. Add the following exceptions to Article 682.13: (3-28-23)T

~~i.~~ Exception No. 1. Wiring methods such as HDPE schedule eighty (80) electrical conduit or its equivalent or greater, and clearly marked at a minimum "Caution Electrical" to indicate that it contains electrical conductors shall be approved. It shall be buried whenever practical, and in accordance with the requirements of the authority having jurisdiction. The use of gray HDPE water pipe rated at two hundred (200) PSI (e.g. SIDR 7 or DR-9) is suitable for use as a chase only when the following conditions are met: (3-28-23)T

(1) When internal conductors are jacketed submersible pump cable. (3-28-23)T

(2) When used in continuous lengths, directly buried, or secured on a shoreline above and below the water line. (3-28-23)T

(3) When submersible pump wiring terminations in the body of water according to 682.13 Exception No. 2 are met. (3-28-23)T

~~ii.~~ Exception No. 2. Any listed and approved splices required to be made at the submersible well pump itself, outside of a recognized submersed pump sleeve or housing, when wires are too large to be housed inside such sleeve, shall be covered with a non-metallic, impact resistant material, no less than one quarter (.25) inches thick, such as heavy duty heat shrink or other equivalent method approved by the authority having jurisdiction. (Eg. install a heat shrink over the sleeve or housing that the submersible well pump is installed in, and then recover (apply heat) the heat shrink over both the HDPE and the water line). At least six (6) inches shall be over the sleeve and at least twelve (12) inches over the HDPE and water line. (3-28-23)T

~~iii.~~ Exception No. 3. Pipe, conduit, PVC well casing, or other electrically unlisted tubing may be used as a chase, but not as a raceway, to protect conductors or cables from physical damage. Conductors or cables within a chase shall be rated for the location. (3-28-23)T

~~m.~~ Article 682.14. Add the following additional exception to Article 682.14: For installations of submersible well pumps installed in public swimming and marine areas, submersible well pumps shall be considered directly connected and shall be anchored in place. Ballast is an acceptable form of anchoring. (3-28-23)T

~~n.~~ Article 682.14(A). Add the following exception to Article 682.14(A): For installations of submersible well pumps installed in public swimming and marine areas, motor controller circuits such as remotely

~~located stop pushbutton/s, disconnect/s, relay/s or switches shall be permitted as a required disconnecting means. Such circuits shall be identified at a minimum as "Emergency Pump Stop", or "Emergency Stop" with other obvious indications on the visible side of the enclosure, that it controls a submersible pump in the body of water. (3-28-23)T~~

~~o. Article 682.15. Add the following exceptions to Article 682.15: (3-28-23)T~~

~~i. Exception No. 1. Submersible pumps, and their motor leads, located in bodies of water, and that are rated sixty (60) amperes maximum, two hundred fifty (250) volts maximum of any phase, shall have GFCI or Ground Fault Equipment Protection designed to trip at a maximum of thirty (30) milliamps or less, protected by means selected by a licensed installer, meeting listing or labeling requirements, and inspected by the AHJ prior to submersion in bodies of water. (3-28-23)T~~

~~ii. Exception No. 2. Installations or repair and replacement of submersible pumps located in bodies of water, that are rated over sixty (60) amperes, and rated at any voltage, shall be evaluated by a qualified designer or experienced licensed contractor, or involve engineering or be engineered, for each specific application, with the goal of public safety. Whenever possible, GFCI or Ground Fault Equipment Protection designed to trip at a maximum of thirty (30) milliamps or less, meeting listing or labeling requirements, shall be installed, and inspected by the AHJ prior to submersion in bodies of water. (3-28-23)T~~

~~p. Article 550.32(B). Compliance with Article 550.32(B) shall limit installation of a service on a manufactured home to those homes manufactured after January 1, 1992. (3-28-23)T~~

~~q. Poles used as lighting standards that are forty (40) feet or less in nominal height and that support no more than four (4) luminaires operating at a nominal voltage of three hundred (300) volts or less, shall not be considered to constitute a structure as that term is defined by the National Electrical Code (NEC). The disconnecting means shall not be mounted to the pole. The disconnecting means may be permitted elsewhere in accordance with NEC, Article 225.32, exception 3. SEC special purpose fuseable connectors (model SEC 1791-DF or model SEC 1791-SF) or equivalent shall be installed in a listed handhole (underground) enclosure. The enclosure shall be appropriately grounded and bonded per the requirements of the NEC applicable to Article 230 Services. Overcurrent protection shall be provided by a (fast acting - minimum - 100K RMS Amps 600 VAC) rated fuse. Wiring within the pole for the luminaires shall be protected by supplementary overcurrent device (time delay - minimum - 10K RMS Amps 600 VAC) in break a away fuse holder accessible from the hand hole. Any poles supporting or incorporating utilization equipment or exceeding the prescribed number of luminaires, or in excess of forty (40) feet, shall be considered structures, and an appropriate service disconnecting means shall be required per the NEC. All luminaire-supporting poles shall be appropriately grounded and bonded per the NEC. (3-28-23)T~~

~~r. Article 210.12(A). Delete. (3-28-23)T~~

a. Article 110.3(A) and 110.3(B). Shall not apply to submersible well pumps installed in swimming and marine areas; provided however, such articles shall apply to all other equipment required in the installation of a submersible well pump in such areas except for the actual submersible well pump itself. ()

b. Article 210.8 (A). Delete reference to 250-volt receptacles. ()

c. Article 210.8(A)(7) Sinks. Delete article 210.8(A)(7) and replace with the following: Sinks - located in areas other than kitchens where receptacles are installed within one and eight tenths (1.8) meters (six (6) feet) of the outside edge of the sink. ()

d. Article 210.8(A)(11). Delete article 210.8(A)(11) Laundry Areas. ()

e. Article 210.12(B). Shall apply in full. Exception: In single family or one- and two-family dwelling units Arc-Fault Circuit-Interrupter Protection shall only apply to all branch circuits and outlets supplying bedrooms. All other locations in such units are exempt from the requirements of Article 210.12(B). ()

f. Article 210.52(E)(3). Delete and replace with the following: Balconies, Decks, and Porches. Balconies, decks, and porches having an overall area of twenty (20) square feet or more that are accessible from inside the dwelling unit shall have at least one (1) receptacle outlet installed within the perimeter of the balcony, deck, ()

or porch. The receptacle shall not be located more than two (2.0) meters (six and one half (6½) feet) above the balcony, deck, or porch surface. ()

g. Article 230.67 Surge Protection. Delete NEC Article 230.67. ()

h. Article 230.85 Emergency Disconnects. Delete Article 230.85. ()

i. Article 314.27(C) Boxes at Ceiling-Suspended (Paddle) Fan Outlets. Delete second paragraph. ()

j. Article 334.10(3). Delete and replace with the following: Other structures permitted to be of Types III, IV, and V construction. Cables shall be concealed within walls, floors, or ceilings that provide a thermal barrier of material that has at least a fifteen (15)-minute finish rating as identified in listings of fire-rated assemblies. For the purpose of this section, cables located in attics and underfloor areas that are not designed to be occupied shall be considered concealed. ()

k. Article 334.15(C). Where the height of a crawl space does not exceed one and four tenths (1.4) meters or four and one half (4.5) feet, it shall be permissible to secure NM cables, that run at angles with joist, to the bottom edge of joist. NM cables that run within two and one tenth (2.1) meters or seven (7) feet of crawl space access shall comply with Article 320.23. ()

l. Pole Lighting. Poles used as lighting standards along roadways only (parking areas are not roadways) that are forty (40) feet or less in nominal height and that support no more than four (4) luminaires operating at a nominal voltage of three hundred (300) volts or less to ground, shall not be considered a structure as it is defined as equipment by the NEC. The disconnecting means may be mounted to the pole or elsewhere in accordance with NEC, Article 225.32, exception 3. Special purpose fuseable connectors (model SEC 1791-DF or model SEC 1791-SF) or equivalent shall be installed in a listed handhole (underground) enclosure. The enclosure shall be appropriately grounded and bonded per the requirements of the NEC applicable to Article 230- Services. Overcurrent protection shall be provided by a (fast-acting – minimum - 100K RMS Amps 600 VAC) rated fuse. Wiring within the pole for the luminaires shall be protected by supplementary overcurrent device (time-delay – minimum - 10K RMS Amps 600 VAC) in break-a-away fuse holder accessible from the hand hole. Any poles supporting or incorporating utilization equipment or exceeding the prescribed number of luminaires, or in excess of forty (40) feet, may be considered structures, and an appropriate service disconnecting means shall be required per the NEC. All luminaire- supporting poles shall be appropriately grounded and bonded per the NEC. A service may not need a Watt Hour Meter. ()

m. Article 422.5 (A)(7). Delete Article 422.5 (A)(7) GFCI protection for dwelling unit dishwashers. ()

n. Article 480.7(B) Battery Emergency Disconnect. Delete. ()

o. Article 675.8(B). Compliance with Article 675.8(B) will include the additional requirement that a disconnecting means always be provided at the point of service from the utility no matter where the disconnecting means for the machine is located. ()

p. Article 682.10. Shall not apply to submersible well pumps installed in swimming and marine areas; provided however, such articles shall apply to all other equipment required in the installation of a submersible well pump in such areas except for the actual submersible well pump itself. ()

q. Article 682.11. Add the following exception: This article shall not apply to service equipment that is located on or at the dwelling unit and which is not susceptible to flooding. ()

r. Article 682.13. Add the following exceptions: ()

s. Exception No 1. Wiring methods such as HDPE schedule eighty (80) electrical conduit or its equivalent or greater and clearly marked at a minimum “Caution Electrical” to indicate that it contains electrical conductors shall be approved. It shall be buried whenever practical, and in accordance with the requirements of the

authority having jurisdiction. The use of gray HDPE water pipe rated at two hundred (200) PSI (e.g. SIDR-7 or DR-9) is suitable for use as a chase only when the following conditions are met: when internal conductors are jacketed submersible pump cable; when used in continuous lengths, directly buried, or secured on a shoreline above and below the water line; when submersible pump wiring terminations in the body of water according to 682.13 Exception No. 2 are met. ()

i. Exception No. 2. Any listed and approved splices required to be made at the submersible well pump itself, outside of a recognized submersed pump sleeve or housing, when wires are too large to be housed inside such sleeve, shall be covered with a non-metallic, impact resistant material, no less than one quarter (.25) inches thick, such as heavy-duty heat shrink or other equivalent method approved by the authority having jurisdiction. (e.g. install a heat shrink over the sleeve or housing that the submersible well pump is installed in, and then recover (apply heat) the heat shrink over both the HDPE and the water line). At least six (6) inches shall be over the sleeve and at least twelve (12) inches over the HDPE and water line. ()

ii. Exception No. 3. Pipe, conduit, PVC well casing, or other electrically unlisted tubing may be used as a chase, but not as a raceway, to protect conductors or cables from physical damage. Conductors or cables within a chase shall be rated for the location. ()

t. Article 682.14. Add the following additional exception: For installations of submersible well pumps installed in public swimming and marine areas, submersible well pumps shall be considered directly connected and shall be anchored in place. Ballast is an acceptable form of anchoring. ()

u. Article 682.14(A). Add the following exception: For installations of submersible well pumps installed in public swimming and marine areas, motor controller circuits such as remotely located stop pushbutton/s, disconnect/s, relay/s or switches shall be permitted as a required disconnecting means. Such circuits shall be identified at a minimum as “Emergency Pump Stop”, or “Emergency Stop” with other obvious indications on the visible side of the enclosure, that it controls a submersible pump in the body of water. ()

v. Article 682.15. Add the following exceptions: ()

i. Exception No. 1. Submersible pumps, and their motor leads, located in bodies of water, and that are rated sixty (60) amperes maximum, two hundred fifty (250) volts maximum of any phase, shall have GFCI or Ground Fault Equipment Protection designed to trip at a maximum of thirty (30) milliamps or less, protected by means selected by a licensed installer, meeting listing or labeling requirements, and inspected by the AHJ prior to submersion in bodies of water. ()

ii. Exception No. 2. Installations or repair and replacement of submersible pumps located in bodies of water, that are rated over sixty (60) amperes, and rated at any voltage, shall be evaluated by a qualified designer or experienced licensed contractor, or involve engineering or be engineered, for each specific application, with the goal of public safety. Whenever possible, GFCI or Ground Fault Equipment Protection designed to trip at a maximum of thirty (30) milliamps or less, meeting listing or labeling requirements, shall be installed, and inspected by the AHJ prior to submersion in bodies of water. ()

w. Article 690.12 Rapid Shut Down. Add following Exemptions: ()

i. Detached structures whose sole purpose is to house PV system equipment shall not be considered buildings and thus may have roof mounted PV systems without rapid shutdown equipment according to this exception. ()

ii. PV system circuits installed on or in buildings without the presence of a utility supplied power source shall not be required to comply with Article 690.12 where all of the following apply: the minimum distance to bring electric utility power lines or service conductors to the building is 1000 feet or greater; the building has a minimum setback distance of 100 feet from any building or structure located on adjacent properties; A lockable service entrance rated AC disconnect is installed outside at a readily accessible location; and the AC disconnect has a permanent placard or label with the following words or equivalent: ()

WARNING

SOLAR PV SYSTEM IS NOT EQUIPPED WITH RAPID SHUTDOWN

The warning placard or label shall comply with Article 110.21(B). ()

x. Article 690.12(A) Exception. PV system circuits originating within or from arrays not attached to buildings that terminate on the exterior of buildings or inside nearest the point of entrance, and PV system circuits installed in accordance with Article 230.6 shall not be considered controlled conductors for the purposes of this section. ()

y. Article 706.5: Listing. Energy storage systems shall be listed. This shall not apply to lead-acid batteries. ()

z. Article 706.15(B) Off Grid Systems. Add the following Exception: For one-family and two-family dwellings, a disconnecting means or its remote control shall be located at a readily accessible location. ()

02. Availability. A copy of the 2023 National Electrical Code is available at the offices of the Division.
(~~3-28-23~~) ()

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. 26-0110-2301 (ZBR CHAPTER REWRITE, FEE RULE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-4223 and 67-4249 Idaho Code.

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

Thursday, October 26, 2023 10:00 a.m. to 11:00 a.m. (MT)
Meeting held via video conference: Click here to join the meeting Meeting ID: 237 765 287 372 Passcode: LZH8Ub Download Teams Join on the web
Join with a video conferencing device idahogov@m.webex.com Video Conference ID: 112 753 588 1 Alternate VTC instructions
Or call in (audio only) +1 208-985-2810,,288298300# United States, Boise Phone Conference ID: 288 298 300# Find a local number Reset PIN

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 change updates definitions and standards, updates processing fees on issuance or modifications and updates fees on compensation for cost per acre to be set by official board action, updates processing time, and incorporates edits for clarity and brevity consistent with the Red Tape Reduction Act.

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

The Park and Recreation Board is authorized under Section 67-4223, Idaho Code, to adopt, amend, or rescind rules as may be necessary for the proper administration of Title 67, Chapter 42, Idaho Code. The proposed rule accomplishes the following:

1. Raises the Processing Fees for Issuance or Modification.
2. Raises the Compensation for Cost per Acre to be set by official board action and vote.

FISCAL IMPACT: The following is a specific 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 August 02, 2023 Idaho Administrative Bulletin, Vol. 23-8, page 327.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 Seth Hobbs, (208) 514-2427, seth.hobbs@idpr.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2023.

DATED this 28th day of August, 2023.

Seth Hobbs
Idaho Department of Parks and Recreation
5657 Warm Springs Ave.
Boise, ID 83716
Phone: (208) 514-2427

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 26-0110-2301
(ZBR Chapter Rewrite)

26.01.10 – RULES GOVERNING THE ADMINISTRATION OF TEMPORARY PERMITS ON LANDS OWNED BY THE IDAHO DEPARTMENT OF PARKS AND RECREATION

000. LEGAL AUTHORITY.

~~These rules set forth procedures concerning the issuance of temporary permits on all lands owned by the Idaho Department of Parks and Recreation. Requests for permits on lands administered, but not owned by IDPR must be made directly to the land owner. These rules are promulgated pursuant to Idaho Code Section 67-4223(a) and are construed in a manner consistent with the duties and responsibilities of the Idaho Parks and Recreation Board as set forth in Idaho Code Title 67, Chapter 42. These rules are not be construed as affecting any valid existing rights.~~

~~(3-18-22)()~~

001. TITLE AND SCOPE.

~~**01. Title.** The title of this chapter is cited in full as Idaho Department of Parks and Recreation Rules, IDAPA 26.01.10, “Rules Governing the Administration of Temporary Permits on Lands Owned by the Idaho Department of Parks and Recreation.”~~

~~(3-18-22)~~

~~**02. Scope.** These rules are intended to set forth the procedures for the administration of temporary permits on lands owned by the department.~~

~~(3-18-22)()~~

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Board. The Idaho Parks and Recreation Board or such representative as may be designated by the board. ()

02. Contract Officer. The person assigned by the director of the Idaho Department of Parks and Recreation that is responsible for the administration of temporary permits on lands owned by the Idaho Department of Parks and Recreation. ()

023. Department and IDPR. The Idaho Department of Parks and Recreation. ()

034. Director. The director of the Idaho Department of Parks and Recreation or such representative as may be designated by the director. ()

045. Grantee. The party to whom a temporary permit is granted and their assigns and successors in interest. ()

056. Grantor. The State of Idaho and its assigns and successors in interest. ()

067. Park Manager. The person responsible for administering and supervising a specific state park area, or department owned land not yet a state park, as designated by the director of the Idaho Department of Parks and Recreation. ()

078. Person. An individual, partnership, association, or corporation qualified to do business in the state of Idaho, and any federal, state, county or local unit of government. ()

089. Temporary Permit. An instrument authorizing a temporary use of IDPR owned land for the construction, operation and maintenance of specific typically linear elements including but not limited to power and telephone lines, roadways, driveways, sewer lines, natural gas lines and water lines. ()

011. -- 049. (RESERVED)

050. POLICY.

01. Issuing Authority. Temporary permits are issued by the director, or designee in lieu of easements, and are required for all activities on, ~~or~~ over, through IDPR owned land. (3-18-22)()

02. Discretion. The board retains absolute discretion to grant or withhold a temporary permit on land which it owns. ()

03. Consent Required. Temporary permits, their amendment, renewal and assignment and all subsequent actions are not valid without the written consent of the director. ()

04. Modifications. Temporary permits and subsequent modifications, assignments and renewals require a formal application, and payment of a processing fee to reimburse the agency for staff time devoted to processing the request. ()

05. Purpose Compatible. The purpose for which the temporary permit is sought must not interfere with the existing or anticipated values, objectives, or operation of department owned lands. ()

06. Compensation. An appropriate compensation for use of department-owned lands, as set out in Section 150 of this chapter, ~~must~~ will be paid to ~~the~~ IDPR in cash or in the form of offsetting benefits to be determined by the director. (3-18-22)()

07. Control. At all times the control of gates, roads and park lands is retained by the State. The permit granted is for the grantee's use only, is revocable for cause, is issued for a specific period of time, not to exceed ten (10) years, but usually five (5) years or less, and automatically expires if not used for a period of one (1) year. ()

051. -- 099. (RESERVED)

100. PROCESSING FEES.

01. **Issuance or Modification.** The processing fee for a new temporary permit, or modification of an existing temporary permit, is ~~one~~^{three} hundred dollars (\$~~1~~³00), which ~~must needs to~~ be received from all applicants before processing can proceed. The processing fees are designed to offset processing costs and are nonrefundable. (3-18-22)()

02. **Assignment or Renewal.** The processing fee for assignment or renewal of an existing temporary permit is ~~twenty five~~ ^{fifty} dollars (\$~~25~~⁵⁰), and ~~must needs to~~ be received before processing can proceed. The processing fees are designed to offset processing costs and are nonrefundable. (3-18-22)()

101. -- 149. (RESERVED)

150. COMPENSATION.

01. **Payable in Advance.** Cash compensation for the entire term of the temporary permit will be collected from the applicant prior to issuance. ()

02. **Cost per Acre.** Cash compensation for a temporary permit is charged at a rate ~~of fifty dollars (\$50)~~ ^{set by official board action and vote} per acre of IDPR land utilized per year or any portion thereof, and is specified in the temporary permit. Temporary permits of less than one (1) year in duration will not be prorated. (3-18-22)()

03. **Noncash Compensation.** Offsetting (non-cash) compensation for a temporary permit may be approved on an individual basis by the director, and the terms of the agreement ~~must will~~ be outlined in the temporary permit. (3-18-22)()

04. **Nonrefundable.** Compensation to IDPR for a temporary permit is non-refundable, except as set out in Subsection 200.08 of this chapter. ()

151. -- 199. (RESERVED)

200. STANDARD CONDITIONS.

All temporary permits issued are subject to the following standard conditions: ()

01. **Term Limited.** The use and term of a temporary permit is limited solely to that specifically stated in the instrument. ()

02. **Utilities.** Except under special circumstances with approval of the director, all utilities ~~must need to~~ be installed underground. (3-18-22)()

03. **Construction, Operation and Maintenance.** The grantee ~~must will~~ construct, maintain and operate at grantee's sole expense the facility for which the temporary permit is granted, and maintain the permit site in a condition satisfactory to the Park Manager. (3-18-22)()

~~04. **Compliance with Laws.** The grantee will comply with all applicable state and local laws, rules, and ordinances, including but not limited to: state fire laws and all rules of the State Land Board pertaining to forest and watershed protection, and with the Stream Channel Protection Act as designated in Chapter 38, Title 42 of the Idaho Code. (3-18-22)~~

~~05. **Wetlands.** The grantee will comply with all state and federal statutes, rules, and regulations pertaining to wetlands protection. (3-18-22)~~

~~06. **Land and Water Conservation Fund.** Temporary permits on land located within Land and Water Conservation Fund 6(f) boundaries, their amendment, renewal, assignment and all subsequent actions must be subject~~

~~to the terms and the requirements of the Land and Water Conservation Fund Act of 1965 (P.L. 88-578, 16 U.S.C.S. Section 4601-4 et seq.).~~ (3-18-22)

074. Hold Harmless. The grantee, its agents and contractors must indemnify and hold harmless the department, the state of Idaho and its representatives against and from any and all demands, claims or liabilities of every nature whatsoever, arising directly or indirectly from or in any way connected with the use authorized under the temporary permit. ()

085. Withdrawal for Park Use. Should the land be needed for park development or recreation use, the director reserves the right to order the change of location or the removal of any structure(s) or facility(ies) authorized by a temporary permit at any time. Any such change or removal will be made at the sole expense of the grantee, its successors or assigns. When a temporary permit is terminated prior to its stated expiration date pursuant to this provision, the grantee will receive a pro-rata refund of compensation paid. ()

096. Permits Not Exclusive. The temporary permit is not exclusive to the grantee, and ~~must will~~ not prohibit the department from granting other permits or franchise rights of like or other nature to other public or private entities, nor ~~must will~~ it prevent the department from using or constructing roads and structures over or near the lands encompassed by the temporary permit, or affect the department's right to full supervision or control over any or all lands which are part of the temporary permit. (3-18-22)()

107. Cancellation. The director may cancel the temporary permit or amend any of the conditions of the temporary permit if the grantee fails to comply with any or all of the provisions, or requirements set forth or through willful or unreasonable neglect, fails to heed or comply with notices given. ()

108. Removal of Facilities. Upon termination of the temporary permit for any reason including cancellation, expiration, or relinquishment, the grantee ~~must will~~ have thirty (30) days from the date of termination to remove any facilities and improvements constructed by the grantee, and ~~must will~~ restore the permit site to the satisfaction of the park manager. Upon written request, and for good cause shown, the director may allow a reasonable additional time for the removal of improvements and facilities and the restoration of the site. (3-18-22)()

201. -- 249. (RESERVED)

250. SPECIAL CONDITIONS.

Special conditions addressing unique situations may be included in the temporary permit to protect natural or park resources, or to safeguard public health, safety or welfare. ()

251. -- 299. (RESERVED)

300. APPLICATION PROCEDURE.

01. Contents of Application. A temporary permit application ~~must contain~~ will be completed on the form required by the Department: (3-18-22)()

- ~~a. A temporary permit application/action form;~~ (3-18-22)
- ~~b. A plat of the proposed permit location;~~ (3-18-22)
- ~~c. The appropriate application fee;~~ (3-18-22)
- ~~d. An acceptable written legal description based on a survey of the centerline, or a metes and bounds survey of the temporary permit tract. The survey must be performed by a registered professional land surveyor as required by Idaho Code Section 54-1229.~~ (3-18-22)

02. Engineering Certification. ~~As required in Section 58-601, Idaho Code, for any application for a ditch, canal or reservoir, the plats and field notes must be certified by the engineer under whose direction such surveys or plans were made and four (4) copies filed with the department and one (1) copy with the director, Idaho~~

~~Department of Water Resources.~~

~~(3-18-22)~~

032. Application Submission. Temporary permit applications ~~must~~ need to be submitted to the Park Manager of the park in which the permit is requested. The park manager will forward it for processing as outlined in Section 800. of this chapter. ~~(3-18-22)~~()

301. -- 349. (RESERVED)

350. MODIFICATION OF EXISTING TEMPORARY PERMIT.

A modification of an existing temporary permit ~~must~~ will be processed in the same manner as a new application. Modification includes change of use, enlarging the permit area, or changing the location of the permit area. Modification does not include ordinary maintenance, repair, or replacement of existing facilities. ~~(3-18-22)~~()

351. -- 399. (RESERVED)

400. ASSIGNMENT.

Temporary permits issued by the director cannot be assigned without the approval of the director, or designee. To request approval of an assignment, the assignor and assignee ~~must~~ will complete the department's standard temporary permit application/action form and forward it and the assignment fee to the park manager, for processing as outlined in Section 800 of this chapter. ~~(3-18-22)~~()

401. -- 449. (RESERVED)

450. RENEWAL.

Renewal of temporary permits may be sought by completing a temporary permit application/action form and forwarding it together with the renewal fee to the park manager for processing as outlined in Section 800 of this chapter. Renewal applications ~~must~~ will be submitted at least forty-five (45) days prior to the expiration date of the temporary permit. ~~(3-18-22)~~()

451. -- 499. (RESERVED)

500. ABANDONMENT.

A temporary permit not used for the purpose for which it was granted for a period of one (1) year is presumed abandoned and ~~must~~ will automatically terminate. The director ~~must~~ or designee will notify the grantee in writing of the termination. The grantee ~~must~~ will have thirty (30) days from the date of the written notice to reply in writing to the director to show cause why the temporary permit should be reinstated. Within thirty (30) days of receipt of the statement to show cause, the director ~~must~~ will notify the grantee in writing as to the director's decision concerning reinstatement. The grantee ~~must~~ will have thirty (30) days after receipt of the director's decision to request to appear before the board as outlined in Section 003 of this chapter. Removal of property from and restoration of the site is governed by Subsection 200.11 of this chapter. ~~(3-18-22)~~()

501. -- 549. (RESERVED)

550. RELINQUISHMENT.

The Grantee may voluntarily relinquish a temporary permit any time by submitting a temporary permit application/ action Form to the park manager. Upon relinquishment, removal of property from and restoration of the site is governed by Subsection 200.11 of this chapter. ()

551. -- 599. (RESERVED)

600. EXPIRATION.

Upon expiration, and absent a request for renewal of the temporary permit, removal of property from and restoration of the site is governed by Subsection 200.11 of this chapter. ()

601. -- 649. (RESERVED)

650. CANCELLATION.

The director or designee may cancel a temporary permit if the grantee fails to comply with any or all of its provisions, terms, conditions, or rules; or through willful or unreasonable neglect, fails to heed or comply with notices given.

(3-18-22)()

651. -- 699. (RESERVED)

700. ENFORCEMENT.

~~Should it become necessary to enforce the terms of a temporary permit in a court of law and the grantor prevails, the grantee must pay all costs and fees.~~

(3-18-22)

~~701.~~ -- 749. (RESERVED)

750. ADMINISTRATION.

01. Bureau Responsible. The IDPR ~~Development Bureau must~~ contract officer will be responsible for uniform statewide administration of all IDPR temporary permits.

(3-18-22)()

02. Disposition of Fees. All processing and compensation fees collected from applicants ~~must will~~ be sent to the fiscal section for deposit into the appropriate account.

(3-18-22)()

03. Status Report. The IDPR ~~Development Bureau must~~ contract officer will maintain an up-to-date status report on all temporary permits issued.

(3-18-22)()

751. -- 799. (RESERVED)

800. PROCESSING.

01. Receipt of Application. Upon receipt of a properly filed temporary permit application/action form and the appropriate application fee, the park manager ~~must will~~ review the application and forward it, together with his their comments, to the region ~~supervisor manager~~. The region ~~supervisor must manager will~~ review the application and forward his their comments along with the temporary permit application/action package, to the ~~chief, Development Bureau, IDPR contract office~~ for processing.

(3-18-22)()

02. Time. Processing of temporary permit application/action forms ~~must will~~ not exceed ~~one hundred twenty (120) ninety (90)~~ days from the date of acceptance of a complete application by the park manager. Applications not acted on within ~~one hundred twenty (120) ninety (90)~~ days are deemed denied.

(3-18-22)()

03. Notification. All applicants ~~must will~~ be notified in writing, by the ~~development bureau chief, contract officer~~ of the approval or denial of their application.

(3-18-22)()

801. -- 999. (RESERVED)

IDAPA 26 – DEPARTMENT OF PARKS AND RECREATION

26.01.20 – RULES GOVERNING THE ADMINISTRATION OF PARK AND RECREATION AREAS AND FACILITIES

DOCKET NO. 26-0120-2301 (FEE RULE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-4223 and 67-4249 Idaho Code.

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

Thursday, October 26, 2023 10:00 a.m. to 11:00 a.m. (MT)
Meeting held via video conference: Click here to join the meeting Meeting ID: 237 765 287 372 Passcode: LZH8Ub Download Teams Join on the web
Join with a video conferencing device idahogov@m.webex.com Video Conference ID: 112 753 588 1 Alternate VTC instructions
Or call in (audio only) +1 208-985-2810,,288298300# United States, Boise Phone Conference ID: 288 298 300# Find a local number Reset PIN

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 change updates definitions and standards; removes redundant or unnecessary sections; updates the check-out time for facilities, updates fee caps on items that are currently at or near the fee cap; adds ability for day, month, season admission to the admission fee; removes fee schedule for the winter recreational parking permit program as they are already in Idaho Code 67-7115; removes fee schedule for winter access passes which will be managed by the admission fee; updates the modification fee to separate out individual campsites and facilities from special use and group; and incorporates edits for clarity and brevity consistent with the Red Tape Reduction Act.

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

1. Adds fees and fee caps for: admission for day, month, season; and modification of special use campsites and facilities.
2. Raises fee caps for: fee collection surcharge; daily MVEF; annual MVEF; commercial motor vehicle entrance; campsites; use of campground showers by non-campers; cleaning; reservation service charge for group campsites and facilities; vessel launching; overnight moorage; and cancellation of special use campsites and facilities.

FISCAL IMPACT: The following is a specific 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 August 02, 2023 Idaho Administrative Bulletin, Vol. 23-8, page 329.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 Seth Hobbs, (208) 514-2427, seth.hobbs@idpr.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2023.

DATED this 28th day of August, 2023.

Seth Hobbs
Idaho Department of Parks and Recreation
5657 Warm Springs Ave.
Boise, ID 83716
Phone: (208) 514-2427

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 26-0120-2301
(Only Those Sections With Amendments Are Shown.)

000. LEGAL AUTHORITY.

~~The Idaho Parks and Recreation Board is authorized under Sections 67-4223 and 67-7115 through 67-7118, Idaho Code, to adopt, amend, or rescind rules as may be necessary for the proper administration of Title 67, Chapter 42, Idaho Code, and the use and protection of lands and facilities subject to its jurisdiction. The board is also authorized to further define and make specific the provisions regarding the winter recreational parking permit program as set forth in Sections 67-7115 through 67-7118, Idaho Code.~~ (3-18-22)()

001. TITLE AND SCOPE.

~~**01. Title.** The title of this chapter is cited in full as Idaho Department of Parks and Recreation Rules, IDAPA 26.01.20, "Rules Governing the Administration of Park and Recreation Areas and Facilities."~~ (3-18-22)

~~**02. Scope.** This chapter establishes fees for and rules governing the use of lands and facilities administered by the Department and the winter recreational parking permit; establishes procedures for obtaining individual and group use reservations; sets rules regarding visitor behavior and use of park lands and facilities; and authorizes employees to enforce these rules.~~ (3-18-22)

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. ADA. Americans with Disabilities Act (3-18-22)

- 02. Annual Motor Vehicle Entrance Fee Sticker.** A sticker that allows a single motor vehicle to enter Idaho State Parks without being charged a motor vehicle entrance fee. (3-18-22)
- 03. Annual Motor Vehicle Entrance Fee Sticker Replacement.** Replacement due to a motor vehicle sale or damage to an existing annual motor vehicle entrance fee sticker. (3-18-22)
- 04. Board.** The Idaho Parks and Recreation Board, a bipartisan, six (6) member board, appointed by the Governor. (3-18-22)
- 05. Camping Unit.** The combined equipment and people capacity that a campsite or facility will accommodate. (3-18-22)
- 06. Camping Day.** (3-18-22)
- a.** For individual and group campsites the period between 2 p.m. of one (1) calendar day and 1 p.m. of the following calendar day. (3-18-22)
- b.** For individual and group facilities, the period between 4 p.m. of one (1) calendar day and 12 noon of the following calendar day. (3-18-22)
- 07. Campsite.** (3-18-22)
- a.** Individual. An area within a department managed campground designated for camping use by an individual camping unit or camping party that includes a defined area for either a tent pad or RV pad/area and may include a table and/or grill. The definition includes companion campsites. (3-18-22)
- b.** Group. An area within a department managed campground designated for group camping use or a block of individual campsites designated for group use within a campground primarily managed for individual use. (3-18-22)
- 08. Commercial Motor Vehicle.** A vehicle that has seating capacity of more than fifteen (15) persons including the driver, or that is maintained for the transportation of persons for hire, compensation or profit. (3-18-22)
- 09. Day Use.** Use of any non-camping lands and/or facilities between the hours of 7 a.m. and 10 p.m. unless otherwise posted. (3-18-22)
- 10. Department.** The Idaho Department of Parks and Recreation. (3-18-22)
- 11. Designated Beach.** Waterfront areas designated by the park or program manager for water-based recreation activities. The length and width of each designated beach will be visibly identified with signs. (3-18-22)
- 12. Designated Roads and Trails.** Facilities recognizable by reasonable formal development, signing, or posted rules. (3-18-22)
- 13. Director.** The director and chief administrator of the department, or the designee of the director. (3-18-22)
- 14. Division Administrator.** An employee, or designee, within the department that has supervisory authority over park and program managers. (3-18-22)
- 15. Dock and Boating Facility.** Floats, piers, and mooring buoys owned or operated by the department. (3-18-22)
- 16. Encroachments.** Non-recreational uses of lands under the control of the board including any utilization for personal, commercial, or governmental use by a non-department entity. (3-18-22)

17. **Extra Vehicle.** An additional motor vehicle without built-in temporary living quarters or sleeping accommodations registered to a camp site. (3-18-22)
18. **Facilities.** (3-18-22)
- a. Individual. A camping structure within department managed lands designated for use by an individual camping unit. (3-18-22)
- b. Group. A camping structure within department managed lands designated for group use. (3-18-22)
- c. Day Use. A non-camping area or structure within department managed lands designated for group use during day use periods. (3-18-22)
19. **Group Use.** Twenty-five (25) or more people, or any group needing special considerations or deviations from normal department rules or activities. (3-18-22)
20. **Idaho State Parks Passport.** A sticker, purchased from any county Department of Motor Vehicles' office in the state of Idaho, that matches a particular motor vehicle license number and expiration date, allowing that vehicle to enter Idaho State Parks without being charged a motor vehicle entrance fee. (3-18-22)
21. **Idaho State Parks Passport Replacement.** Replacement due to a motor vehicle registration transfer or damage to an existing passport. (3-18-22)
22. **Motor Vehicle.** Every vehicle that is self-propelled except for vehicles moved solely by human power, electric bikes, and motorized wheelchairs. (3-18-22)
23. **Motor Vehicle Entrance Fee (MVEF).** A fee charged for entry to or operation of a motor vehicle in an Idaho State Park. (3-18-22)
24. **Overnight Use.** Use of any non-camping lands for the parking of motor vehicles or trailers not associated with a campsite between the hours of 10 p.m. and 7 a.m. unless otherwise posted. (3-18-22)
25. **Overnight Use Fee.** A fee charged for overnight use of non-camping lands between the hours of 10 p.m. and 7 a.m. (3-18-22)
26. **Park or Program Manager.** The person, or the person's designee, responsible for administering and supervising particular lands, facilities, and employees that are under the jurisdiction of the department. (3-18-22)
27. **Recreational Vehicle (RV).** ~~A vehicular type unit primarily designed as temporary living quarters for recreational, camping, sleeping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The entities are travel trailer, camping trailer, truck camper, fifth wheel trailer, and motorhome (all as defined in Section 39-4201, Idaho Code) and including~~ **Includes** buses or van type vehicles which are converted to recreation, camping, or sleeping use. It does not include pickup hoods, shells, or canopies designed, created, or modified for occupational use. (3-18-22)()
- ~~28. **Vessel.** Every description of watercraft, including a seaplane on the water, used or capable of being used as a means of transportation on water, but not including float houses, diver's aids operated and designed primarily to propel a diver below the surface of the water, and non-motorized devices not designed or modified to be used as a means of transportation on the water such as inflatable air mattresses, single inner tubes, and beach and water toys as defined in Section 67-7003(22), Idaho Code. (3-18-22)~~

011. PURCHASE, EXPIRATION, DISPLAY AND PLACEMENT OF MVEF AND PASSPORT STICKERS.

01. **Daily MVEF.** (3-18-22)
- a. The daily MVEF may be purchased at any Idaho state park or online. (3-18-22)

b. The daily MVEF expires at 10 p.m. on date of purchase or as posted; MVEF for overnight camping use expires upon checkout which is 1 p.m. for a campsite and ~~12 noon~~ 11 a.m. for a facility. (3-18-22)()

c. The proof of purchase of the MVEF must be visible and properly displayed. (3-18-22)

02. Annual MVEF. (3-18-22)

a. The Annual MVEF may be purchased at any Idaho state park, the department's central or regional offices, or online. An applicant may, after establishing proof of purchase of the original MVEF, apply at any Idaho state park or at the department's central or regional offices for a replacement sticker due to damage. (3-18-22)()

b. The Annual MVEF expires December 31 of the year issued. (3-18-22)

c. The Annual MVEF sticker must be visible, legible at all times, and permanently affixed to the vehicle as follows. For vehicles with a windshield, the sticker must be clearly displayed on the lower corner of the driver's side windshield. For vehicles without a windshield, the sticker must be clearly displayed in a similar location. (3-18-22)

~~**03. Annual MVEF Sticker Replacement.**~~ (3-18-22)

~~a. The applicant may apply at any Idaho state park or at the department's central or regional offices for a replacement sticker due to damage.~~ (3-18-22)

~~b. The applicant must establish proof of purchase of the original Annual MVEF.~~ (3-18-22)

~~e. Display and placement of the replacement sticker must comply with Subsection 011.02.c. of this chapter.~~ (3-18-22)

~~**043. Idaho State Parks Passport.**~~ (3-18-22)

a. The Idaho State Parks Passport, or a replacement, may be purchased from any county department of motor vehicles office in the state of Idaho. (3-18-22)()

b. Idaho State Parks Passport expires concurrent with the expiration of that vehicle's registration. (3-18-22)

c. Display and placement of the Idaho State Parks Passport sticker must comply with Subsection 011.02.c of this chapter. (3-18-22)

~~**05. Idaho State Parks Passport Sticker Replacement.**~~ (3-18-22)

~~a. The applicant may apply in person to a county department of motor vehicles office for a replacement sticker.~~ (3-18-22)

~~b. Display and placement of the replacement sticker must comply with Subsection 011.02.c. of this chapter.~~ (3-18-22)

012. -- 074. (RESERVED)

075. AUTHORITY CONFERRABLE ON EMPLOYEES - ENFORCEMENT.

~~**01. Director Authority.** The director may, pursuant to Section 67-4239, Idaho Code, authorize any employee of the department to exercise any power granted to, or perform any duty imposed upon the director.~~ (3-18-22)

~~**02. Park or Program Manager Authority.** A park or program manager may establish and enforce all rules, including interim rules. Interim rules apply to the public safety, use, and enjoyment or protection of natural,~~

~~cultural, or other resources within lands administered by the department. Interim rules will be posted for public view and will be consistent with established state laws and these rules. Interim rules expire in one hundred twenty (120) days from the established effective date unless approved by the board. (3-18-22)~~

031. Additional Park or Program Manager Authority. A park or program manager may enforce all rules, deny entry to, or reservation of, any department day use area, campsite, or facility, to any individual or group whose prior documented behavior has violated department rules, whose activities are incompatible with operations, or whose activities will violate department rules. (3-18-22)()

(BREAK IN CONTINUITY OF SECTIONS)

~~125. PRESERVATION OF PUBLIC PROPERTY.~~

~~The destruction, injury, defacement, removal, or disturbance in or of any public building, sign, equipment, monument, statue, marker, or any other structures; or of any tree, flower, or other vegetation; or of any cultural artifact or any other public property of any kind, is prohibited unless authorized by the park or program manager of a specific area. (3-18-22)~~

~~126~~5. -- 149. (RESERVED)

150. USE OF MOTOR VEHICLES.

Except where otherwise provided, motor vehicles may enter or be operated in park and recreation areas and facilities only upon payment of the motor vehicle entrance fee or display of a valid Idaho state Parks Passport or Annual Motor Vehicle Entrance Fee sticker. All motor vehicles must stay on authorized established department roadways or parking areas except for trails and areas which are clearly identified by signs for off-road use. Drivers and motor vehicles operated within lands administered by the department must be licensed or certified as required under state law. The operators of all motor vehicles must comply with the motor vehicle entrance fee requirements, speed and traffic rules of the department, and all other federal, state, local laws, and ordinances governing traffic on public roads. (3-18-22)

~~**01. Use of Parking Spaces for Persons With a Disability.** Special zones and parking spaces within state parks are designated and signed for exclusive use by vehicles displaying a special license plate or card denoting legal handicap status as provided in Section 49-213, Idaho Code. (3-18-22)~~

~~**02. Overdriving Road Conditions and Speeding Prohibited.** No person may drive a vehicle at a speed greater than the posted speed or a reasonable and prudent speed under the conditions, whichever is less. Every person must drive at a safe and appropriate speed when traveling on park roads, in congested areas, when pedestrians or bicyclists are present, or by reason of weather or hazardous highway conditions as provided in Section 49-654, Idaho Code. (3-18-22)~~

~~**03. Safety Helmets.** Persons under eighteen (18) years of age must wear a protective safety helmet when riding upon a motorcycle, motorbike, utility type vehicle, or an all-terrain vehicle as operator or passenger as provided in Section 49-666, Idaho Code. (3-18-22)~~

041. Snowmobile Operation. No person may operate a snowmobile on any regularly plowed park road unless authorized by park or program manager. Access on non-plowed roads and trails are only permitted when authorized by the park or program manager. (3-18-22)

~~**05. Compliance with Posted Regulatory Signs.** Persons operating vehicles within state parks are required to obey posted regulatory signs as provided in Section 49-807, Idaho Code. (3-18-22)~~

062. Obedience to Traffic Direction. No person may willfully fail or refuse to comply with any lawful order or directions of any park employee invested with authority to direct, control, or regulate traffic within a state park. (3-18-22)

073. Restrictions. The operation of motor vehicles within a designated campground is restricted to ingress and egress to a campsite or other in-park destination by the most direct route. (3-18-22)

084. Official Use. This rule does not prohibit official use of motor vehicles by department employees anywhere within lands administered by the department. (3-18-22)

095. Commercial Motor Vehicle. Commercial motor vehicles may only enter or be operated in park and recreation areas and facilities upon payment of the appropriate daily fee. (3-18-22)

151. PARKING VIOLATIONS.

01. Land or Facilities Administered by the Department. No person may stop, stand, or park a motor vehicle or trailer anywhere within land or facilities administered by the department unless proof of payment of all required fees or other lawful authorization for entry is plainly visible and properly displayed. (3-18-22)

02. Designated Campgrounds. No person may stop, stand, or park a motor vehicle within designated campgrounds unless proof of payment of the applicable campsite fees is plainly visible and properly displayed. (3-18-22)

03. Designated Overnight Use Area. Except for authorized campers, no person may stop, stand, park, or leave a motor vehicle or trailer unattended outside day use hours unless the motor vehicle or trailer is in a designated overnight use area and proof of payment of the overnight-use fee is plainly visible and properly displayed. (3-18-22)

04. Fee Collection Surcharge. Any person stopping, standing, or parking a motor vehicle or trailer without payment or properly displaying proof of payment of all required fees is subject to the fee collection surcharge as provided in Subsection 225.06 and Section 245 of this chapter. (3-18-22)

05. Citations for Violations. Citations for violations of this section may be issued to the operator of the motor vehicle. If the operator cannot be readily identified, the citation may be issued to the registered owner or lessee of the motor vehicle, subject to the provisions of Section 67-4237, Idaho Code. (3-18-22)

152. -- 174. (RESERVED)

175. PUBLIC BEHAVIOR.

01. Resisting and Obstructing a Park Employee. Persons may not willfully resist, delay, obstruct, or interfere with any park employee in his or her duties to protect the state's resources and facilities and to provide a safe place to recreate. (3-18-22)

02. Day Use. Between the hours of 10 p.m. and 7 a.m., unless otherwise posted, all personal property must be removed from day use areas. (3-18-22)

03. Quiet Hours. Within lands administered by the department, the hours between 10 p.m. and 7 a.m. are considered quiet hours unless otherwise posted. During that time, users are restricted from the production of noise that may be disturbing to other users. (3-18-22)

04. Noise. Amplified sound, poorly muffled vehicles, loud conduct, or loud equipment are prohibited within lands administered by the department, except in designated areas or by authority of the park or program manager. (3-18-22)

~~**05. Alcohol.** State laws regulating alcoholic beverages and public drunkenness are enforced within lands administered by the department. (3-18-22)~~

~~**06. Littering.** Littering is prohibited within lands administered by the department. (3-18-22)~~

~~**07. Smoking.** Persons may not smoke within park structures or facilities, or at posted "no smoking" outdoor areas. (3-18-22)~~

~~**08. Trespass.** It is unlawful to enter, use, or occupy land or facilities administered by the department~~

~~where such lands or facilities are posted against entry, use, or occupancy, except as authorized by the department.~~
(3-18-22)

095. Pets. Pets are allowed within lands administered by the department only if confined or controlled on a leash not longer than six (6) feet in length. No person may allow their pet to create a disturbance which might be bothersome to other users. Excepting persons with disabilities who are assisted by service animals, no person may permit their pet animals to enter or remain on any swim area or beach. Pet owners are responsible to clean up after their animals. Pet owners may not leave pets unattended. Areas for exercising pets off leash may be designated by the park or program manager. Department employees may impound or remove any stray or unattended animals at the owner's expense. (3-18-22)

106. Fires. The use of fires is restricted to fire rings, grills or other places otherwise designated by the park or program manager. All fires must be kept under control at all times and must be extinguished before checking out of the campsite or whenever fire is left unattended. Areas may be closed to open fires during extreme fire danger. (3-18-22)

107. Fireworks. No person may use fireworks of any kind within lands administered by the department, except under special permit issued by the director for exhibition purposes, and then only by persons designated by the director. (3-18-22)

128. Protection of Wildlife. All molesting, feeding, injuring, or killing of any wild creature is strictly prohibited, except as provided by action of the board and as established in board policy. Persons in possession of wildlife, which may be legally taken within state park boundaries, must comply with Idaho Fish and Game rules. (3-18-22)

139. Protection of Historical, Cultural and Natural Resources. The digging, destruction or removal of historical, cultural or natural resources is prohibited. Collection for scientific and educational purposes may be allowed through a permit. (3-18-22)

140. Personal Safety, Firearms. No person may purposefully or negligently endanger the life of any person or creature within any land administered by the department. No person may discharge firearms or other projectile firing devices within any lands administered by the department, except as follows: in the lawful defense of person, persons, or property; in the course of lawful hunting; for exhibition; or at designated ranges as authorized by the director. (3-18-22)

151. Non-traditional Recreational Activities. Non-traditional recreational activities such as model airplane and glider operations, geo-caching, gold panning, drone operation, and metal detecting may be authorized by the park or program manager if such activities do not interfere with traditional uses of the park and are consistent with preservation of park resources. (3-18-22)

176. -- 199. (RESERVED)

200. CAMPING.

01. Occupancy and Capacity. (3-18-22)

a. Occupancy. Camping is permitted only in designated campsites, areas, or facilities. A campsite or facility will be determined occupied only after all required fees have been paid, registration information completed, and all permits properly displayed. Unique circumstances may arise, and specific sites or facilities by virtue of design may require exceptions to the capacity limits. (3-18-22)

b. Campsite Capacity. Maximum capacity limits on each campsite are subject to each site's design and size. Unless otherwise specified, and provided the combined equipment and people fit within the designated camping area of the site selected, the maximum capacity will be one (1) family unit or a party of no more than eight (8) persons, two (2) tents and two (2) motor vehicles. No more than one (1) RV may occupy a site. Two (2) motorcycles are the equivalent of one (1) motor vehicle when determining campsite capacity. Each motorcycle will be subject to the MVEF. In general, companion campsites have double the capacity listed above. (3-18-22)

c. **Facility Capacity.** Maximum capacity limits on each facility are based on facility design, size, and applicable occupancy code. (3-18-22)

02. Self Registration. In those areas so posted, campers must register themselves for the use of campsites and facilities, paying all required fees as provided for herein and in accordance with all posted instructions. (3-18-22)

03. Length of Stay. Except as provided herein, no person, party or organization may be permitted to camp on any lands administered by the department for more than fifteen (15) days in any thirty (30) consecutive day period. This applies to both reservation and “first come first served” customers. The department operations division administrator may authorize shorter or longer periods for any individual area. (3-18-22)

04. Registration. All required fees must be paid, registration information completed, and all permits properly displayed prior to occupying a campsite or facility. Saving or holding campsites or facilities for individuals not physically present at the time of registration for “first come first served” camping is prohibited. (3-18-22)

05. Condition of Campsite. Campers must keep their individual or group campsite or facility and other use areas clean. (3-18-22)

06. Liquid Waste Disposal. All gray water and sewage wastes must be held in self-contained units or collected in water-tight receptacles in compliance with state adopted standards and dumped in sanitary facilities provided for the disposal of such wastes. (3-18-22)

07. Motorized Equipment. No generators or other motorized equipment emitting sound and exhaust are permitted to be operated during quiet hours. (3-18-22)

08. Campsite Parking. All motor vehicles and trailers, must fit entirely within the campsite parking pad/area provided with the assigned individual or group campsite or facility. All equipment that does not fit entirely within the designated campsite parking area must be parked at another location within the campground, or outside the campground, as may be designated by the park or program manager. If no outside parking is available, the park or program manager may require the party to register on a second campsite, if available. (3-18-22)

09. Equipment. All camping equipment and personal belongings of a camper must be maintained within the assigned individual or group campsite or facility perimeter. (3-18-22)

10. Check Out. Customers are required to clean, vacate, and check out of registered campsites or facilities as follows: (3-18-22)

a. Individual or group campsite by 1 p.m. of the day following the last paid night of camping. (3-18-22)

b. Individual or group facility by ~~12 noon~~ 11 a.m. of the day following the last paid night of camping. ~~(3-18-22)~~ ()

11. Visitors. Individuals visiting campers must park in designated areas, except with permission of the park or program manager. Visitors must conform to established day use hours and day use fee requirements. (3-18-22)

12. Responsible Party. The individual reserving or registering to use an individual or group campsite or facility is responsible for ensuring compliance with the rules within this chapter. (3-18-22)

13. Camping. Camping in individual or group facility sites is prohibited unless in areas specifically designated for camping or by authorization of the park or program manager. (3-18-22)

~~**14. ADA Designated Campsites.** Although the department offers campsites that are designated and built to meet ADA accessibility requirements, these campsites are not managed exclusively for ADA use. (3-18-22)~~

~~15. **ADA Accessible Facilities.** Although the department offers facilities that provide for ADA accessibility, these facilities are not managed exclusively for ADA use. (3-18-22)~~

(BREAK IN CONTINUITY OF SECTIONS)

225. FEES AND SERVICES.

01. Authority. (3-18-22)

a. All fees in this chapter are maximum fees unless otherwise stated. The board has the authority to set actual fees by board policy. (3-18-22)

b. Park and program managers have the authority to set fees for goods available for resale, equipment rentals, and services provided by employees to enhance the users experience unique to the individual park or program. (3-18-22)

02. Payment. Visitors must pay all required fees. (3-18-22)

03. Camping. Camping fees include the right to use designated campsites and facilities for the period camp fees are paid. Utilities and facilities may be restricted by weather or other factors. (3-18-22)

04. Group Use. (3-18-22)

a. Groups of twenty-five (25) persons or more, or any group needing special considerations or deviations from these rules must obtain a permit. Permits may be issued after arrangements have been made for proper sanitation, population density limitations, safety of persons and property, and regulation of traffic. (3-18-22)

b. Permits for groups of up to two hundred fifty (250) people may be approved by the park manager with thirty (30) days advance notice. Permits for groups of two hundred fifty (250) or more people may be approved by the director with forty-five (45) days advance notice. (3-18-22)

c. Group use fees for day use facilities, general use areas, and events may be negotiated by the park or program manager and will generally not fall below the cost of providing services. MVEF is required unless specifically waived by the park or program manager. (3-18-22)

05. Fees and Deposits. Fees and deposits, including cleaning fees or damage/cleaning deposits, may be required for certain uses or the reservation of certain facilities unique to an individual park. Where deposits are required, they are to be paid prior to check-in (3-18-22)

06. Fee Collection Surcharge. A surcharge may be added to all established fees when the operator of a motor vehicle or responsible party of a camping unit fails to pay all required fees or fails to properly display proof of payment for required fees prior to entering a park area or occupying a campsite. If the surcharge is assessed, and the operator of the vehicle or responsible party is not present, all required fees in addition to the surcharge will be assessed against the registered owner of the motor vehicle or camping unit. (3-18-22)

07. Admission Fees. An admission fee may be charged for ~~internal~~ park facilities, areas, programs, or recreational activities which provide an educational opportunity, ~~or~~ require special accommodations or special services. Admission fees are set by the park or program manager and will generally not fall below the cost of providing services. (3-18-22)()

08. Cooperative Fee Programs. The department may collect and disperse fees in cooperation with fee programs of other state and federal agencies. (3-18-22)

09. Encroachment Permit Application Fee. The department may assess an encroachment application

fee as set by the board to cover administrative costs incurred by the department in reviewing the application and the site, and in preparing the appropriate document(s). (3-18-22)

~~10. Sales Tax. Applicable sales tax may be added to all sales. (3-18-22)~~

~~140. Returned Checks.~~ The cost to the agency for returned checks will be passed on to the issuer of the insufficient funds check. (3-18-22)

226. -- 244. (RESERVED)

245. FEE SCHEDULE: FEE COLLECTION SURCHARGE.

Category	Fee
Fee Collection Surcharge	\$ 25 35/day

(3-18-22)()

246. (RESERVED)

247. FEE SCHEDULE: ENTRANCE.

Category	Fee
Daily MVEF	\$ 72 0/day/vehicle
Annual MVEF	\$ 80 120/year/vehicle
Annual MVEF Replacement	\$5/vehicle
Commercial Motor Vehicle Entrance	\$ 50 100/day/vehicle
Admission, <u>Day</u>	\$20/person
<u>Admission, Month</u>	\$100/Person
<u>Admission, Season</u>	\$500/Person

(3-18-22)()

248. -- 249. (RESERVED)

250. FEE SCHEDULE: INDIVIDUAL CAMPSITE OR FACILITY.

Category	Fee
Basic Campsite: site may have water	\$ 34 72/day
Electric Campsite: site has electricity and may have water	\$ 42 90/day
Full Hook-up Campsite: site has electricity, water, and sewer	\$ 46 96/day
Companion Campsite: site has electricity and may have water	\$ 84 192/day
Hike-in/Bike-in Campsite	\$ 12 36/person/day
Extra Vehicle	\$8/day
Overnight Use of Parking Areas	\$20/night/vehicle, trailer, or vehicle with attached trailer

Category	Fee
Use of Campground Showers by Non-campers	\$ 3 10/person/day
Camping Cabins and Yurts	\$500/night
Each additional person above the base occupancy of camping cabin or yurt	\$12/person/night
Pets	\$15/pet/night
Cleaning	\$ 50 500

(3-18-22)()

251. -- 253. (RESERVED)

254. FEE SCHEDULE: GROUP CAMPSITE OR FACILITY.

Group Facility Fees. Reservation service fee, designated group campground or facility.

(3-18-22)

Category	Fee
Reservation Service Charge (non-transferable, non-refundable)	\$ 25 50
Group use of day use facility, overnight facility, or group camp (set by park or program manager)	Varies
Each additional person above the base occupancy of the overnight facility	\$12/person/night

(3-18-22)()

255. (RESERVED)

256. FEE SCHEDULE: BOATING FACILITIES.

Boating Facilities:

Category	Fee
Vessel Launching	MVEF or \$ 7 20/day/vessel
Overnight moorage at dock or buoy, person staying at campsite or facility and not staying on the vessel	\$ 9 30/night
Overnight moorage at dock, person staying on vessel	\$ 10 40/night
Overnight moorage at buoy, person staying on vessel	\$ 9 30/night

(3-18-22)()

257. -- 258. (RESERVED)

259. FEE SCHEDULE: WINTER RECREATION PROGRAMS.

Category	Fee
Winter Access Daily Pass, individual	\$6/person/day
Winter Access Daily Pass, family	\$100/family/season
Winter Access Season Pass, individual	\$50/person/season

Category	Fee
Winter Access Season Pass, couple	\$75/couple/season
Winter Recreation Parking, temporary three day permit	\$10/three days
Winter Recreation Parking, annual permit	\$30/year

(3-18-22)

~~260.~~—274. (RESERVED)

275. CRITERIA FOR RESERVATIONS.

01. Responsible Party. (3-18-22)

a. The person booking reservations for an individual campsite or facility is responsible for ensuring compliance with the rules within this chapter. (3-18-22)

b. The person booking reservations for multiple individual campsites is designated the group leader and is responsible for ensuring compliance with the rules within this chapter. The group leader may approve another person to register for a campsite as the primary occupant prior to check-in or at the park. Once the primary occupant registers for the campsite, the primary occupant becomes the responsible party. (3-18-22)

c. The person booking reservations for a group campsite or facility is designated the group leader and is responsible for ensuring compliance with the rules within this chapter. (3-18-22)

02. Reservation Service Charges, Individual or Group Campsite or Facility. Reservations are non-transferable (from one party to another). Reservation fees are non-refundable. (3-18-22)

a. A reservation service charge may be assessed for each individual or group campsite or facility reserved. (3-18-22)

b. The service charge for an individual campsite or facility will be waived for campers with a current Idaho RV registration sticker and reimbursed to the department by the RV Program. (3-18-22)

03. Cleaning Fee. A cleaning fee or a damage/cleaning deposit may be required by the park or program manager as a condition of reservation. (3-18-22)

04. Confirmation Requirements. (3-18-22)

a. Confirmation of an individual campsite or facility reservation. Full payment of all required fees must be made before a reservation is confirmed. (3-18-22)

b. Confirmation of a designated group campground, group campsite, or group facility reservation. Before a reservation is confirmed, the group leader must: (3-18-22)

i. Supply primary occupant (point of contact) name, address, and phone number for multiple bookings of individual campsites for a group. (3-18-22)

ii. Pay all required fees for each campsite or facility reserved. (3-18-22)

05. Reservation Modifications. A reservation service fee will be assessed for any modification to a previously made reservation that involves reducing the planned length of stay, or to change the reservation dates where part of the new stay includes part of the original stay booked (rolling window). Modifications that change the original stay so that no part of the new stay includes part of the original stay are to be considered a cancellation and re-book will be mandatory to keep a reservation. With the exception of the reservation service charge as defined in Section 276, any overpaid fees will be reimbursed at the time the reservation is modified. (3-18-22)

06. Reservation Cancellations. (3-18-22)

a. Individual Campsite or Facility. A reservation service fee will be assessed for the cancellation of a reservation. This service fee will be assessed for each campsite or facility involved. If the customer cancels after the scheduled arrival date the customer forfeits all usage fees for the time period already expired. Cancellations received after check-out-in time will result in the forfeiture of that day’s usage fees for the campsite or facility. At no time will the customer be charged a cancellation fee that exceeds the amount originally paid. The IDPR or its reservation service provider may cancel a customer’s reservation for insufficient payment of fees due. With the exception of the reservation service fees, all fees paid will be reimbursed at the time the reservation is cancelled. (3-18-22)()

b. Park Board Designated Special Use Campsites and Facilities. A reservation service fee will be assessed for the cancellation of a reservation. If a cancellation for a group facility occurs twenty-one (21) or fewer calendar days prior to arrival, the customer forfeits the first night or daily facility usage fees (base rate). If a cancellation for a group facility occurs more than twenty-one (21) calendar days prior to arrival, a cancellation charge will be assessed. If the customer cancels after the arrival date the customer forfeits all usage fees for the time period already expired. Cancellations received after checkout time will result in the forfeiture of that day’s usage fees for the campsite or facility. At no time will the customer be charged a cancellation fee that exceeds the amount originally paid. The department or its reservation service provider may cancel a customer’s reservation for insufficient payment of fees due. An individual site cancellation fee applies to each campsite in a group campground. With the exception of the reservation service fees, all fees paid will be reimbursed at the time the reservation is cancelled. (3-18-22)

07. Insufficient Payment. The department may cancel a customer’s reservation for insufficient payment of fees due. (3-18-22)

276. FEE SCHEDULE: RESERVATIONS.

Category	Fee
Reservation Service Charge, individual campsite or facility	Current RV sticker or \$10/campsite or facility
Reservation Service Charge, group reservation for campsite or facility	\$2550
Modification, individual campsite or facility	\$10/campsite or facility
Modification, special use campsite, or facility	First night’s fee or daily usage fee
Cancellation, individual campsite or facility, prior to check-in time	\$10/campsite or facility
Cancellation, individual campsite or facility, after check-in time	First night’s fee
Cancellation, special use campsite or facility, more than 21 days in advance	First night’s fee plus \$50/facility
Cancellation, individual special use campsite or facility, 21 days or less in advance	First night’s or daily usage fee

(3-18-22)()

(BREAK IN CONTINUITY OF SECTIONS)

676. NONDISCRIMINATION.

~~No person may discriminate in any manner against any person or persons because of race, color, national origin, religion, gender, age or disability within lands administered by the department. Facilities constructed or maintained with, and programs supported by the cross-country skiing recreation account must be available for public use without discrimination and must comply with requirements as set out in the Americans with Disabilities Act. (3-18-22)~~

6776 -- 999. (RESERVED)

IDAPA 31 – IDAHO PUBLIC UTILITIES COMMISSION

31.12.01 – SYSTEMS OF ACCOUNTS FOR PUBLIC UTILITIES REGULATED BY THE IDAHO PUBLIC UTILITIES COMMISSION

DOCKET NO. 31-1201-2301 (ZBR CHAPTER REWRITE)

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 the general legal authority of the Public Utilities Law, Chapters 1 through 7, Title 61, Idaho Code, and the specific legal authority of Section 61-524, 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 18, 2023.

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

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

The Idaho Public Utilities Commission initiated this rulemaking in compliance with [Executive Order No. 2020-01: Zero-Based Regulation](#), issued by Governor Little on January 16, 2020. Pursuant to Executive Order No. 2020-01, each rule chapter effective on June 30, 2020, shall be reviewed by the agency that promulgated the rule. The review will be conducted according to a schedule established by the Division of Financial Management, Office of the Governor (DFM), posted at https://adminrules.idaho.gov/rulemaking_templates/index.html. This is the Idaho Public Utilities Commission's rule chapter up for review in 2023.

The goal of the rulemaking is to perform a critical and comprehensive review of the entire chapter in an attempt to reduce overall regulatory burden, streamline various provisions, and increase clarity and ease of use.

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

No fee associated with these Rules.

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

No fee associated with these Rules.

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 Idaho Administrative Bulletin, [Volume 23-6, Pages 77-78](#).

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

Systems of Accounts for [electric](#), [gas](#), [telecommunication](#), and [water](#) utilities. Incorporation of its text in the agency rules would be unduly cumbersome, expensive, or otherwise inexpedient.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Stephen Goodson at (208) 334-0323.

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 25, 2023.

DATED this 21st day of August, 2023.

Jan Noriyuki, Commission Secretary
Idaho Public Utilities Commission
11331 W. Chinden Blvd., Bldg. 8, Ste 201-A
Boise, ID 83714
P.O. Box 83720
(208) 334-0323 Office
(208) 334-4045 Fax

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 31-1201-2301
(ZBR Chapter Rewrite)

31.12.01 – SYSTEMS OF ACCOUNTS FOR PUBLIC UTILITIES
REGULATED BY THE IDAHO PUBLIC UTILITIES COMMISSION

000. LEGAL AUTHORITY (RULE 0).

~~These rules are adopted under the general legal authority of the Public Utilities Law, Chapters 1 through 7, Title 61, Idaho Code, and the specific legal authority of Section 61-524, Idaho Code.~~ (3-31-22)()

001. ~~TITLE AND SCOPE (RULE 1).~~

~~The name of this chapter is “Systems of Accounts for Public Utilities Regulated by the Idaho Public Utilities Commission.” This chapter has the following scope: All Class A and B electric, gas, telephone, and water public utilities are required to maintain their books and records according to the systems of accounts adopted by this rule.~~ (3-31-22)()

002. ~~WRITTEN INTERPRETATIONS – AGENCY GUIDELINES (RULE 2).~~

~~Written interpretations to these rules can be obtained from the Secretary of the Idaho Public Utilities Commission and are available from the office of the Commission Secretary.~~ (3-31-22)

003. ~~ADMINISTRATIVE APPEALS (RULE 3).~~

~~Any person requesting a waiver from any provision of the Uniform Systems of Accounts pay petition the Idaho Public Utilities Commission for a waiver pursuant to the Commission’s Rules of Procedure, IDAPA 31.01.01.000 et seq.~~ (3-31-22)

004. (RESERVED)

005. DEFINITIONS (RULE 5).

~~The terms “electrical corporation,” “gas corporation,” “telephone corporation,” and “water corporation” have the meanings given to them by statute in Chapter 1, Title 61, Idaho Code and orders of the Idaho Public Utilities Commission and decisions of the Supreme Court of Idaho construing those statutes.~~ (3-31-22)

006. — 007. (RESERVED)

008. INCORPORATION BY REFERENCE (RULE 8).

~~Rule 101, 102, 103 and 104 incorporate by reference various federal accounting regulations and accounting standards issued by the National Association of Regulatory Utility Commissioners. Each applicable rule identifies the issuing entity for each regulation or standard and indicates where the incorporated materials may be obtained. Incorporated materials are also available for inspection and copying at the offices of the Idaho Public Utilities Commission and the Idaho State Law Library.~~ (3-31-22)

01. Uniform System of Accounts for Electric Utilities. Available at eCFR :: 18 CFR Part 101 --

Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act, as adopted April 1, 2007. ()

02. Uniform System of Accounts for Gas Utilities. Available at eCFR :: 18 CFR Part 201 -- Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act, as adopted April 1, 2007. ()

03. Uniform System of Accounts for Telephone Utilities. Available at eCFR :: 47 CFR Part 32 -- Uniform System of Accounts for Telecommunications Companies, as adopted April 1, 2007. ()

04. Uniform System of Accounts for Water Utilities. 1996 Version: Available at <https://maxxwww.naruc.org/forms/store/ProductFormPublic/uniform-system-of-accounts-for-class-a-b-water-utilities>. ()

~~0093.~~ -- ~~100999.~~ (RESERVED)

UNIFORM SYSTEMS OF ACCOUNTS
Rules 101 through 200

~~101. UNIFORM SYSTEM OF ACCOUNTS FOR ELECTRIC UTILITIES (RULE 101).~~

~~The Commission adopts by reference the Uniform System of Accounts for Major (previously Class A and B) Electric Utilities contained in the Code of Federal Regulations, Title 18, Part 101 (April 1, 2007), viewable online at www.govinfo.gov/app/collection/cfr/2007. For payment by credit card, call toll free 866-512-1800. The accounts adopted by reference are adopted for convenience of establishing uniform systems of accounts only for accounting and reporting and do not bind the Commission in any manner to any particular ratemaking treatment of items in those accounts. All Major electrical corporations subject to the regulatory authority of the Idaho Public Utilities Commission are required to maintain their regulatory books according to the system of accounts adopted by this rule.~~ (3-31-22)

~~102. UNIFORM SYSTEM OF ACCOUNTS FOR GAS UTILITIES (RULE 102).~~

~~The Commission adopts by reference the Uniform System of Accounts for Major (previously Class A and B) Natural Gas Companies contained in the Code of Federal Regulations, Title 18, Part 201 (April 1, 2007), viewable online at www.govinfo.gov/app/collection/cfr/2007. For payment by credit card, call toll free 866-512-1800. The accounts adopted by reference are adopted for convenience of establishing uniform systems of accounts only for accounting and reporting and do not bind the Commission in any manner to any particular ratemaking treatment of items in those accounts. All Major gas corporations subject to the regulatory authority of the Idaho Public Utilities Commission are required to maintain their regulatory books according to the system of accounts adopted by this rule.~~ (3-31-22)

~~103. UNIFORM SYSTEM OF ACCOUNTS FOR TELEPHONE UTILITIES (RULE 103).~~

~~The Commission adopts by reference the Uniform System of Accounts for Class A and B Telephone Utilities contained in the Code of Federal Regulations, Title 47, Part 32 (October 1, 2007), viewable online at www.govinfo.gov/app/collection/cfr/2007. For payment by credit card, call toll free 866-512-1800. The accounts adopted by reference are adopted for convenience of establishing uniform systems of accounts only and do not bind the Commission in any manner to any particular ratemaking treatment of items in those accounts. All Class A and B telephone corporations subject to the regulatory authority of the Idaho Public Utilities Commission are required to maintain their regulatory books according to the system of accounts adopted by this rule.~~ (3-31-22)

~~104. UNIFORM SYSTEM OF ACCOUNTS FOR WATER UTILITIES (RULE 104).~~

~~The Commission adopts by reference the Uniform System of Accounts for Class A and B Water Utilities, 1996 Edition, published by the National Association of Regulatory Utility Commissioners (NARUC), available at www.naruc.org/store. The accounts adopted by reference are adopted for the convenience of establishing uniform systems of accounts only and do not bind the Commission in any manner to any particular ratemaking treatment of items in these accounts. All Class A and B water corporations subject to the regulatory authority of the Idaho Public Utilities Commission are required to maintain their regulatory books according to the system of accounts adopted by this rule.~~ (3-31-22)

~~105.— 999.~~ (RESERVED)

IDAPA 31 – IDAHO PUBLIC UTILITIES COMMISSION

31.21.01 – CUSTOMER RELATIONS RULES FOR GAS, ELECTRIC, AND WATER PUBLIC UTILITIES (THE UTILITY CUSTOMER RELATIONS RULES)

DOCKET NO. 31-2101-2301 (ZBR CHAPTER REWRITE)

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 the general legal authority of the Public Utilities Law, Chapters 1 through 7, Title 61, Idaho Code, and the specific legal authority of Sections 61-301, 61-302, 61-303, 61-315, 61-503, 61-507, and 61-520, 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 18, 2023.

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

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

The Idaho Public Utilities Commission initiated this rulemaking in compliance with [Executive Order No. 2020-01: Zero-Based Regulation](#), issued by Governor Little on January 16, 2020. Pursuant to Executive Order No. 2020-01, each rule chapter effective on June 30, 2020, shall be reviewed by the agency that promulgated the rule. The review will be conducted according to a schedule established by the Division of Financial Management, Office of the Governor (DFM), posted at https://adminrules.idaho.gov/rulemaking_templates/index.html. This is the Idaho Public Utilities Commission's rule chapters up for review in 2023.

The goal of the rulemaking is to perform a critical and comprehensive review of the entire chapter in an attempt to reduce overall regulatory burden, streamline various provisions, and increase clarity and ease of use.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:
No fee associated with these Rules.

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

No fee associated with these Rules.

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 Idaho Administrative Bulletin, [Volume 23-6, Pages 77-78](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: None.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Stephen Goodson at (208) 880-1849. 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 25, 2023.

DATED this 21st day of August, 2023.

Jan Noriyuki, Commission Secretary
Idaho Public Utilities Commission
11331 W. Chinden Blvd., Bldg. 8, Ste 201-A
Boise, ID 83714
P.O. Box 83720
(208) 334-0323 Office
(208) 334-4045 Fax

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 31-2101-2301
(ZBR Chapter Rewrite)

**31.21.01 – CUSTOMER RELATIONS RULES FOR GAS,
ELECTRIC, AND WATER PUBLIC UTILITIES**
(THE UTILITY CUSTOMER RELATIONS RULES)

000. LEGAL AUTHORITY (RULE 0).

~~These rules are adopted under the general legal authority of the Public Utilities Law, Chapters 1 through 7, Idaho Code, and the specific legal authority of Sections 61-301, 61-302, 61-303, 61-315, 61-503, 61-507, and 61-520, Idaho Code.~~ (3-31-22)()

001. TITLE AND SCOPE (RULE 1).

~~The name of this chapter is “Customer Relations Rules for Gas, Electric, and Water Public Utilities (the Utility Customer Relations Rules).” This chapter has the following scope: These rules provide a set of fair, just, reasonable, and non-discriminatory rules with regard to deposits, guarantees, billing, application for service, denial of service, termination of service and complaints to utilities.~~ (3-31-22)()

~~**002. WRITTEN INTERPRETATIONS — AGENCY GUIDELINES (RULE 2).**~~

~~Written interpretations to these rules can be obtained from the Secretary of the Idaho Public Utilities Commission and are available from the office of the Commission Secretary.~~ (3-31-22)

002. (RESERVED)

003. ADMINISTRATIVE APPEALS (RULE 3).

~~This rule governs formal complaints and requests for exemption under these rules.~~ Any person requesting and receiving an informal staff determination with regard to a complaint may formally request the Commission to review the staff’s determination. If unusual hardships result from the application of any of these rules, any person may apply to the Commission for, or the Commission on its own motion may order, a permanent or temporary exemption. A formal complaint or request for exemption must be filed with the Commission pursuant to the Commission's Rules of Procedure, IDAPA 31.01.01.000 et seq. (3-31-22)()

004. (RESERVED)

005. DEFINITIONS (RULE 5).

The following definitions are used in this title and chapter: ()

01. Applicant. Unless restricted by definition within a rule or group of rules to a particular class of service, “applicant” means any potential customer who applies for service from a utility. Utilities may require an adult or minor competent to contract to join a minor not competent to contract as an applicant. ()

02. Customer. Unless restricted by definition within a rule or group of rules to a particular class of customer, “customer” means any person who has applied for, has been accepted by the utility, and is: ()

a. Receiving service from a utility; or ()

b. Has received service within the past ten (10) calendar days prior to termination by the utility; or ()

c. Has assumed responsibility for payment of service provided to another or others. If the person receiving service is not the same person as the person assuming responsibility for payment of service, the latter is the customer for purposes of obtaining or terminating service, receiving refunds, or making changes to the account.

()

~~03. Utility. Unless restricted by definition within a rule or group of rules, “utility” means any public utility providing gas, electric or water service subject by law to the Commission’s jurisdiction, whether previously certified or not.~~ (3-31-22)

~~006. -- 0078. (RESERVED)~~

~~008. EXERCISE OF RIGHTS BY CUSTOMER (RULE 8). Utilities will not discriminate against or penalize a customer for exercising any right granted by these rules.~~ (3-31-22)

009. INFORMAL COMPLAINTS AND INTERPRETATION OF RULES (RULE 9).
Commission staff may informally interpret these rules and utility tariffs and investigate complaints filed with this Commission. The Commission reserves the authority to issue orders interpreting these rules and utility tariffs, and resolving formal complaints. ()

010. CONFLICT WITH UTILITY TARIFFS (RULE 140).
If a utility’s tariff denies or restricts customer rights protected by these rules, these rules ~~supereede~~ supersede the conflicting tariff provisions. (3-31-22)()

~~011. -- 099. (RESERVED)~~

RESIDENTIAL AND SMALL COMMERCIAL; DEPOSITS
Rules 100 through 199

100. FURTHER DEFINITIONS (RULE 100).
As used in Rules 101 through 109: ()

01. Applicant. “Applicant” is restricted from its general definition to refer only to applicants for residential or small commercial service, unless further restricted by the rule. ()

02. Customer. “Customer” is restricted from its general definition to refer to a residential or small commercial customer, unless further restricted by the rule. ()

03. Deposit. “Deposit” means any payment held as security for future payment or performance that is reimbursable after the customer establishes good credit. ()

~~04. Residential and Small Commercial Classes. The Commission will maintain on file a list of which customer classes of a given utility are residential and which are small commercial.~~ (3-31-22)

101. DEPOSIT REQUIREMENTS (RULE 101).

01. Residential Customers. Utilities will not demand or hold a deposit from any current residential customer or applicant for residential service without proof that the customer or applicant is likely to be a credit risk or to damage the utility’s ~~property of the utility~~. A lack of previous history with the utility does not, in itself, constitute such proof. Utilities will not demand or hold a deposit under this rule as a condition of service from a residential customer or applicant unless one or more of the following criteria applies: (3-31-22)()

a. The customer or applicant has outstanding a prior residential service account with the utility that accrued within the last four (4) years and at the time of application for service remains unpaid and not in dispute. ()

b. The customer’s or applicant’s service from the utility has been terminated within the last four (4) years for one (1) or more of the following reasons: ()

i. Nonpayment of any undisputed delinquent bill; ()

- ii. Obtaining, diverting or using service without the ~~utilities~~ utility's authorization or knowledge. (3-31-22)()
- c. The utility has determined that information provided by the applicant upon application for service is materially false or materially misrepresents the applicant's true status. ()
- d. The applicant has not had service with the utility for a period of at least twelve (12) consecutive months during the last four (4) years, and does not pass an objective credit screen. ()
- e. The applicant requests service at a residence where a former customer who owes a past due balance for service incurred at that location still resides. ()
- f. The utility has given the customer two (2) or more written final notices of termination within the last twelve (12) consecutive months. ()

02. Small Commercial Customers. Utilities will not demand or hold a deposit as a condition of service from any current small commercial customer or applicant for small commercial service unless one or more of the following criteria apply: ()

- a. Any ~~of the~~ criteria listed in Rule Subsection 101.01 ~~of this rule~~ are present. (3-31-22)()
- b. The applicant has not had previous service with that utility. ()

03. Bankrupt Customers. If an applicant ~~for service~~ or a customer, ~~either residential or small commercial~~, has sought any form of relief under the Federal Bankruptcy Laws, has been brought within the jurisdiction of the bankruptcy court for any reason in an involuntary manner, or has had a receiver appointed in a state court proceeding, then deposit may be demanded as allowed by the Federal Bankruptcy Laws. (3-31-22)()

102. OTHER DEPOSIT STANDARDS PROHIBITED -- RESIDENTIAL CUSTOMERS (RULE 102). Utilities will not require a deposit or other guarantee as a condition of new or continued residential utility service based upon residential ownership or location, income level, source of income, employment tenure, nature of occupation, race, creed, sex, age, national origin, marital status, number of dependents, or any other criterion not authorized by these rules. Rules governing deposits will be applied uniformly. (3-31-22)()

103. (RESERVED)

104. EXPLANATION FOR REQUIREMENT OF DEPOSIT (RULE 104). If the utility requires a cash deposit as a condition of providing service, then it will immediately notify the applicant or customer verbally or in writing why a deposit is required. The applicant or customer will have an opportunity to rebut those reasons. The notice will also advise the applicant or customer that if there is a dispute, an informal or formal complaint may be filed with the Commission. ()

105. AMOUNT OF DEPOSIT (RULE 105).

01. Amount of Deposit. A deposit allowed pursuant to Rule 101 as a condition of service will not exceed one-sixth (1/6) the amount of reasonably estimated billing for one (1) year at rates then in effect. Where gas service is used for space heating purposes only, the deposit will not exceed the total of the two (2) highest months' bills during the previous twelve (12) consecutive months, adjusted for currently effective rates. Deposit amounts will be based upon the use of service at the premises during the prior year or upon the type and size of equipment using the utility's service. ()

02. Installment Payments of Deposit. The utility will advise the applicant or customer that the deposit may be paid in two (2) installments. One-half (1/2) of the deposit amount is due immediately with the remaining installment payable in one (1) month. ()

106. INTEREST ON DEPOSITS (RULE 106).

01. Interest Payable. Interest will be payable on all deposited amounts at the rate provided by Subsection 106.02 of this rule. Interest will accrue from the date the deposit or deposit installment is made until the deposit is refunded or applied to the customer's utility bill; however, interest will not accrue on a deposit or deposit installment if: ()

a. Service is terminated temporarily at the request of a customer who leaves the deposit with the utility for future use as a deposit; or ()

b. Service has been permanently terminated and the utility has been unsuccessful in its attempt to refund a deposit. ()

02. Interest Rate. On or before November 15 of each year, the Commission will determine the twelve month average interest rate for one-year Treasury Bills for the previous November 1 through October 31, round that rate to the nearest whole percent, and notify the utilities of its determination of this interest rate. That rate will be in effect for the following calendar year for all deposits described in Rule Subsection 106.01 of this rule. ()

107. RETURN OF DEPOSIT (RULE 107).

01. Former Customers. Upon termination of service, the utility will credit the deposit (with accrued interest) to the final bill and promptly return any remaining balance to the customer. ()

02. Existing Customers. If the customer has paid all undisputed bills and has no more than one (1) late payment during the past twelve (12) consecutive months of service, the utility will promptly return the deposit (with accrued interest) by either crediting the customer's current account or issuing a refund. ()

03. Retention During Dispute. The utility may retain the deposit pending the resolution of a dispute over termination of service. If the deposit is later returned to the customer, the utility will pay interest at the annual rates established in Rule 106 for the entire period over which the deposit was held. ()

04. Early Return of Deposit. A utility may refund a deposit plus accrued interest in whole or in part at any time before the time prescribed in this rule. ()

108. TRANSFER OF DEPOSIT (RULE 108).

Deposits will not be transferred from one customer to another customer or between classes of service, except at the customer's request. When a customer with a deposit on file transfers service to a new location within the same utility's service area, the deposit (with accrued interest) will be either transferred to the account for the new location or credited to the customer's current account. ()

109. RECORDS OF DEPOSIT (RULE 109).

01. Records of Deposit. Each customer paying a deposit or the initial installment on a deposit must be provided the following information in writing: ()

a. Name of customer and service address for which deposit is held; ()

b. Date of payment(s); ()

c. Amount of payment(s); and ()

d. Terms and conditions governing the return of deposits. ()

02. Retention of Records. Each utility will maintain records that will enable a customer entitled to a return of a deposit to obtain a refund even though the customer may be unable to produce a record of the deposit. The utility will maintain a detailed record of all deposits received from customers, showing the name of each customer, the location of the premises occupied by the customer when the deposit is made and each successive location occupied by the customer while the deposit is retained, and the date(s) and amount(s) of the deposits or installments.

The utility will retain records of deposits that have been refunded to customers for a period of three (3) years after the date of refund. The utility shall retain records of unclaimed deposits for seven (7) years as required by Section 14-531, Idaho Code. ()

03. Transfer of Records. Upon the sale or transfer of any utility or any of its operating units, the seller will certify to the Commission that it has a list showing the names of all customers whose service is transferred and who have a deposit on file, the date the deposit was made, and the amount of the deposit. ()

~~**110. UNCLAIMED DEPOSITS AND ADVANCE PAYMENTS (RULE 110).**~~

~~**01. Presumption of Abandonment.** Pursuant to Section 14-508, Idaho Code, any deposit or advance payment made to obtain or maintain utility service that is unclaimed by the owner for more than one (1) year after termination of service is presumed abandoned. (3-31-22)~~

~~**02. Financial Assistance Program.** A utility may apply to the Commission for approval to pay unclaimed deposits and advance payments presumed to be abandoned to a financial assistance program which assists the utility's low income and disadvantaged customers with payment of utility bills. The utility will file its report of such abandoned property as required by Section 14-517, Idaho Code, and retain records as required by Section 14-531, Idaho Code. (3-31-22)~~

~~**110. -- 199. (RESERVED)**~~

BILLING
Rules 200 through 299

200. FURTHER DEFINITION (RULE 200).

As used in Rules 201 through 207, "bill" or "billing statement" refers to a written request for payment listing charges for services provided. An electronic billing statement may be provided upon customer request. Oral notice of the amount of charges pending is not a bill. ()

201. ISSUANCE OF BILLS -- CONTENTS OF BILLS (RULE 201).

01. Billing Statements. Billing statements will be issued regularly and will contain the following information: ()

- a.** The date the billing statement was issued. ()
- b.** The time period covered by the billing statement. ()
- c.** The beginning and ending meter readings and the quantity of service provided, if service is metered. The billing statement must be clearly marked as estimated if meter data is unavailable. ()
- d.** The due date of the bill and, if automatic payment is authorized by the customer, the date funds will be withdrawn or the credit card charged. ()
- e.** An itemization of all charges, both recurring and nonrecurring. ()
- f.** Any amount transferred from another account. ()
- g.** Any amount past due. ()
- h.** Any payments or credits applied to the customer's account since the last billing statement. ()
- i.** The total amount due. ()
- j.** Contact information for the utility, including the toll-free telephone number(s) available to customers for answering billing inquiries. ()

02. Comparison of Consumption Data. Billing statements for customers of gas, electric, and certain water utilities will also include the following information: ()

a. Each gas and electric utility will compare on each customer's regular billing the customer's actual consumption of gas or electricity with the customer's actual consumption of gas or electricity for the corresponding billing period in the previous year. If the billing periods being compared contain a different number of days, the utility will adjust the data to take into account the different length of the billing periods and show the comparison as an absolute change in therm use or kilowatt hour use per day. Upon request, the utility must make degree day adjusted data available to be provided to customers for comparison. ()

b. Each water utility with more than five thousand (5,000) customers will compare on each customer's regular billing the customer's actual consumption of water with the customer's actual consumption of water for the corresponding billing period in the previous year. The usage comparison will be expressed in gallons or cubic feet based upon total consumption for each billing period or average consumption per day during each billing period. ()

202. DUE DATE OF BILLS -- DELINQUENT BILLS (RULE 202).

01. Ordinary Due Date. The utility may require that bills for service be paid within a specified time after the billing date. The minimum specified time after the billing date is fifteen (15) days (or twelve (12) days after mailing or delivery, if bills are mailed or delivered more than three (3) days after the billing date.) Upon the expiration of this time without payment, the bill may be considered delinquent. ()

02. Hardship Exemption. When a residential customer certifies in writing to the utility that payment by the ordinary due date creates a hardship due to the particular date when the customer receives funds, the utility will either extend the due date up to an additional fifteen (15) days or bill the customer in a cycle that corresponds to the customer's receipt of funds. ()

203. BILLING ERRORS, BILLING UNDER INCORRECT RATES, OR FAILURE TO BILL FOR SERVICE (RULE 203).

01. Billing Errors -- Failure to Bill. Whenever the billing for utility service was not accurately determined for reasons such as a meter malfunction or failure, incorrect installation or programming of metering equipment, or errors in preparation of bills, the utility will prepare a corrected billing. If the utility has failed to bill a customer for service provided, the utility will prepare a bill for the period during which service was provided and the customer was not billed. At its discretion, the utility may waive rebilling for undercharges. ()

02. Billing Under Incorrect Rates. A customer has been billed under an incorrect rate if the customer was billed under a rate for which the customer was not eligible or the customer, who is eligible for billing under more than one (1) rate, was billed under a rate contrary to the customer's election or the election was made based upon erroneous information provided by the utility. If a customer is billed under an incorrect rate, the utility must recalculate the customer's past bills and correctly calculate future bills based on the appropriate rate. The utility is not required to adjust bills when it has acted in good faith based upon information provided by the customer. ()

03. Rebilling Time Period. ()

a. If the time when the billing error, billing under incorrect rates, or failure to bill (collectively referred to as "billing problem") began cannot be reasonably determined to have occurred within a specific period, the corrected billings will not exceed the most recent six (6) months before the discovery of the billing problem. ()

b. If the time when the billing problem began can be reasonably determined and the utility determines the customer was overcharged, the corrected billings will go back to that time, but not to exceed three (3) years from the time the billing problem occurred as provided by Section 61-642, Idaho Code. ()

c. If the time when the billing problem can be reasonably determined and the utility determines the

customer was undercharged, the utility may rebill for a period of six (6) months unless a reasonable person should have known of the inaccurate billing, in which case the rebilling may be extended for a period not to exceed three (3) years. Utilities must implement procedures designed to monitor and identify customers who have not been billed or who have been inaccurately billed. ()

04. Refunds. The utility will promptly recalculate the refund amounts overpaid by the customer and issue a credit within two (2) billing cycles. Any remaining credit balance will be credited against future bills unless the customer, after notice from the utility, requests a refund. The utility will advise the customer of the option to have any remaining credit balance exceeding twenty-five dollars (\$25) refunded. ()

05. Additional Payments. The utility will promptly prepare a corrected billing for a customer who has been undercharged indicating the amount owed to the utility. An unbilled or undercharged customer must be given the opportunity to make payment arrangements under Rule 313 on the amount due. At the customer's option, the term of the payment arrangement may extend for the length of time that the underbilling accrued or the customer was not billed. ()

204. -- 205. (RESERVED)

206. RESPONSIBILITY FOR PAYMENT OF BILLS -- RESIDENTIAL CUSTOMERS (RULE 206).

01. Customer Defined. For purposes of this rule, "customer" means a customer whose name appears on the utility's regular bill for residential service or who signed a written application for service or other document informing the customer that he or she was assuming an obligation for payment for service. ()

02. Customer's Responsibility. A utility will not hold a customer responsible for paying an amount owed by anyone who resides at the customer's premises or is a member of the customer's household, but whose name does not appear on the current bill or application for service, unless: ()

a. The customer signs a written agreement to pay or otherwise expressly accepts responsibility for payment of the other person's bill; or ()

b. The customer has a legal obligation to pay the other person's bill. ()

03. Customer Notice. The utility will provide written notice of its intent to add to the customer's bill for current service an amount owed for. The notice may be provided in an electronic format with the customer's consent: ()

a. Another person's bill; or ()

b. Service rendered at a former service location, provided that the lapse in service exceeds sixty (60) calendar days. ()

04. Contents of Notice. The notice must include: ()

a. The name of the customer of record who owes the bill amount; ()

b. The service location involved; ()

c. The time over which the bill amount was accumulated; ()

d. The amount owed; ()

e. The reason(s) for adding the bill amount to the customer's bill statement; ()

f. A statement that payment arrangements may be made on the amount owed; ()

g. A statement that the customer has the right to contest the utility's proposed action with the utility or ()

the Commission; and ()

- h.** The response deadline after which the bill amount will be added to the customer’s bill statement. ()

05. Opportunity to Respond. The utility will give the customer at least seven (7) calendar days from the date of the proposed action to respond to the utility’s notice. ()

207. BILLING PROHIBITED (RULE 207).

Utilities will not bill for non-utility service(s) or merchandise not ordered or otherwise authorized by the customer of record. Any charges for these services that appear on a customer’s bill will be removed from the customer’s bill within two (2) billing cycles after the customer notifies the utility. A utility that unknowingly submits a bill containing charges for non-utility service(s) or merchandise not ordered or otherwise authorized by the customer of record will not have violated this rule if the disputed amounts are removed from the customer’s bill. ()

208. -- 299. (RESERVED)

**DENIAL AND TERMINATION OF SERVICE AND PAYMENT ARRANGEMENT RULES
FOR RESIDENTIAL AND SMALL COMMERCIAL CUSTOMERS
Rules 300 through 399**

300. FURTHER DEFINITIONS (RULE 300).

As used in Rules 301 through 313: ()

01. Applicant. “Applicant” is restricted from its general definition to refer only to applicants for residential or small commercial service, unless further restricted by the rule. ()

02. Customer. “Customer” is restricted from its general definition to refer only to residential or small commercial customers, unless further restricted by the rule. ()

03. Non-Utility Service. “Non-utility service” means: ()

a. Service for which the Commission does not regulate rates, charges, or availability of service; ()

b. Service for which no rate or charge is contained in the utility’s tariffs; or ()

c. Merchandise or equipment or charges for merchandise or equipment not required as a condition of receiving utility service. ()

04. Written Notice. “Written notice” of the utility’s intent to deny or terminate service may be mailed or otherwise delivered to the applicant, resident, occupant, or customer. Written notice may be provided by electronic mail (i.e., e-mail) if the customer is billed electronically and separately consents in writing to “opt-in” to receiving electronic notification. ()

301. EXPLANATION FOR DENIAL OF SERVICE TO APPLICANT (RULE 301).

01. Explanation to Applicant. If the utility intends to deny service to an applicant under Rule 302, the utility will notify the applicant verbally or in writing why the utility will deny service. The utility will advise the applicant what action(s) the applicant will take to receive service, and that if there is a dispute, the applicant may file an informal or formal complaint with the Commission. ()

02. Written Notice. If service is currently being provided to the premises occupied by an applicant, the utility will provide written notice of its refusal to serve pursuant to Rule 312. ()

302. GROUNDS FOR DENIAL OR TERMINATION OF SERVICE WITH PRIOR NOTICE (RULE 302).

01. Reasons for Denial or Termination of Service. A utility may deny or terminate service to a customer or applicant without the customer's or applicant's permission, but only after adequate notice has been given in accordance with these rules, for one (1) or more of the following reasons: ()

a. With respect to undisputed past due bills the customer or applicant: ()

i. Failed to pay; ()

ii. Paid with a dishonored check; or ()

iii. Made an electronic payment drawn on an account with insufficient funds. ()

b. The customer or applicant failed to make a security deposit or an installment payment on a deposit where it is required. ()

c. The customer or applicant failed to abide by the terms of a payment arrangement. ()

d. The utility has determined that information provided by the customer or applicant is materially false or materially misrepresents the customer's or applicant's true status. ()

e. The customer or applicant denied or willfully prevented the utility's access to the meter. ()

f. The utility determines that the customer is willfully wasting or interfering with service to the customer or other customers through improper equipment or otherwise. ()

g. The applicant or customer is a minor not competent to contract as described in Sections 29-101 and 32-101, Idaho Code. ()

02. No Obligation to Connect Service. Nothing in this rule requires the utility to connect service for a customer or applicant who owes money on an existing account or from a previous account if the unpaid bill is for service provided within the past four (4) years. ()

303. GROUNDS FOR DENIAL OR TERMINATION OF SERVICE WITHOUT PRIOR NOTICE (RULE 303).

A utility may deny or terminate service without prior notice to the customer or applicant and without the customer's or applicant's permission for one (1) or more of the following reasons: ()

01. Dangerous Conditions. A condition immediately dangerous or hazardous to life, physical safety, or property exists, or if necessary to prevent a violation of federal, state or local safety or health codes. ()

02. Order to Terminate Service. The utility is ordered to terminate service by any court, the Commission, or any other duly authorized public authority. ()

03. Illegal Use of Service. The service is obtained, diverted or used without the authorization or knowledge of the utility. ()

04. Unable to Contact Customer. The utility has tried diligently to meet the notice requirements of Rule 304, but has been unsuccessful in its attempts to contact the customer affected. ()

304. REQUIREMENTS FOR NOTICE TO CUSTOMERS BEFORE TERMINATION OF SERVICE (RULE 304).

01. Initial Notice. If the utility intends to terminate service to a customer under Rule 302, the utility will send to the customer written notice of termination mailed at least seven (7) calendar days before the proposed date of termination. Written notice may be provided by electronic mail (i.e. e-mail) if the customer is billed electronically and separately consents in writing to receiving electronic notification. This written notice will contain

the information required by Rule 305. ()

02. Final Notice. The utility may mail a final written notice to the customer at least three (3) calendar days, excluding weekends and holidays, before the proposed date of termination. Regardless of whether the utility elects to mail a written notice, at least twenty-four (24) hours before the proposed date of termination, the utility must diligently attempt to contact the customer affected, either in person or by telephone, to advise the customer of the proposed action and steps to take to avoid or delay termination. This final notice will contain the same information required by Rule 305. ()

03. Additional Notice. If service is not terminated within twenty-one (21) calendar days after the proposed termination date as specified in a written notice the utility will again provide notice under Subsections 304.01 and 304.02 if it still intends to terminate service. ()

04. Failure to Pay. No additional notice of termination is required if, upon receipt of a termination notice, the customer: ()

- a. Makes a payment arrangement and subsequently fails to keep that arrangement; ()
- b. Tenders payment with a dishonored check; or ()
- c. Makes an electronic payment drawn on an account with insufficient funds. ()

305. CONTENTS OF NOTICE OF INTENT TO TERMINATE SERVICE (RULE 305).

01. Contents of Notice. The written or oral notice of intent to terminate service required by Rule 304 will state: ()

- a. The reason(s), citing these rules, why service will be terminated and the proposed date of termination; ()
- b. Actions the customer may take to avoid termination of service; ()
- c. That a certificate notifying the utility of a serious illness or medical emergency in the household may delay termination as prescribed by Rule 308; ()
- d. That an informal or formal complaint concerning termination may be filed with the utility or the Commission, and that service will not be terminated on the ground relating to the dispute between the customer and the utility before resolution of the complaint (the Commission's address and telephone number will be given to the customer); and ()
- e. That the utility is willing to make payment arrangements (this statement will be in bold print on written notices). ()
- f. That for purposes of termination, partial payments will be applied toward utility service charges first, unless the customer requests otherwise, and that charges for non-utility services cannot be used as a basis for termination. ()

02. Additional Requirements for Gas and Electric Utilities. During the months of November, December, January and February, oral and written notices provided by gas and electric utilities to residential customers will include or be accompanied by an explanation of restrictions on termination of service and the availability of the Winter Payment Plan described in Rule 306. ()

306. TERMINATION OF RESIDENTIAL GAS AND ELECTRIC SERVICE -- WINTER PAYMENT PLAN (RULE 306).

01. Restrictions on Termination of Service to Households with Children, Elderly, or Infirm. Except as provided in Rule 303, no gas or electric utility may terminate service or threaten to terminate service during

the months of December through ~~February~~ March to any residential customer who declares that he or she is unable to pay in full for utility service at the primary household and whose primary household includes children, elderly or infirm persons. ~~(3-31-22)~~ ()

02. Definitions for This Rule. For purposes of this rule: ()

a. “Children” means persons eighteen (18) years of age or younger, but customers who are emancipated minors are not children under this rule. ()

b. “Elderly” means persons sixty two (62) years of age or older. ()

c. “Infirm” means persons whose physical health or safety would be seriously impaired by termination of utility service. ()

03. Opportunity to Participate in Winter Payment Plan. Any residential customer who declares that he or she is unable to pay in full for utility service and whose household includes children, elderly or infirm persons will be offered the opportunity to establish a Winter Payment Plan. However, no customer may be required to establish such a plan. Except as provided in Rule 303, no gas or electric utility may terminate service during the months of November through March to any customer who establishes a Winter Payment Plan before November 1. A customer may establish a Winter Payment Plan after November 1, but the extended protection from termination of service offered under such a plan will not begin until the date the plan is established. Failure of a participating customer to make payments as required will result in cancellation of the plan and elimination of the extended protection from termination of service offered under the plan. The customer may use any source of funds to satisfy the payment requirements of Winter Payment Plan. ()

04. Amount of Payments Under Winter Payment Plan. Monthly payments under a Winter Payment Plan are equal to one-half (1/2) of the Level Pay Plan amount for that customer. The Level Payment Plan amount will be calculated according to Rule 313.06. ()

05. Payment Arrangements Following Winter Payment Plan. If a customer who received the protection of this rule has an outstanding balance owed to the utility, the customer will either pay this balance or negotiate a new payment arrangement: ()

a. On or after March 1, if the customer has not established a Winter Payment Plan; or ()

b. On or after April 1, if the customer has established a Winter Payment plan. Failure of a customer to pay or make payment arrangements on or after these dates may result in termination of service. ()

06. Successive Participation in Winter Payment Plan. A residential customer who participates in a Winter Payment Plan one (1) year will be allowed to participate in the succeeding year if the customer has honored the payment arrangements and the balance owing as of November 1 does not exceed seventy-five dollars (\$75) or the customer’s utility bill for the previous thirty (30) days, whichever is greater. ()

07. Unoccupied Residences -- Failure or Refusal to Apply for Service. Nothing in this rule prevents a gas or electric utility from terminating service to unoccupied residences or residences where the occupants have failed or refused to apply for utility service. ()

08. Customers Who Move. During the months of December, January and February, a gas or electric utility will continue to provide service to any residential customer who made a declaration as provided for in Subsection 306.01 and subsequently moves to a new residence served by the same utility, regardless of any outstanding balance owed by the customer. If service is not connected at the new residence, service will be connected as soon as possible after the customer requests service at the new residence. ()

09. Applicants Previously Served. During the months of December, January and February, a gas or electric utility will provide service to any residential applicant who made a declaration as provided for in Subsection 306.01 and within thirty (30) days of discontinuing service, subsequently applies for service at a new residence served by the same utility, regardless of any outstanding balance owed by the applicant. If service is not connected at

the new residence, service will be connected as soon as possible after the applicant requests service at the new residence. ()

307. THIRD-PARTY NOTIFICATION -- RESIDENTIAL SERVICE (RULE 307).

Each gas and electric utility must provide a program for its residential customers known as Third-Party Notification. Under this program, the utility will, at the request of the customer, notify orally or in writing a third-party designated by the customer of the utility's intention to terminate service. The third-party will be under no obligation to pay the bill, but as provided in Rule 313.08, no customer can be considered to have refused to enter a payment arrangement unless either the customer or the designated third-party has been given notice of the proposed termination of service and of the customer's opportunity to make payment arrangements. ()

308. SERIOUS ILLNESS OR MEDICAL EMERGENCY (RULE 308).

01. Medical Certificate -- Postponement of Termination of Service. A utility will postpone termination of utility service to a residential customer for thirty (30) calendar days from the date of receipt of a written certificate signed by a licensed physician or public health official with medical training. The certificate must contain the following information: ()

a. A statement that the customer, a member of the customer's family, or other permanent resident of the premises where service is rendered is seriously ill or has a medical emergency or will become seriously ill or have a medical emergency because of termination of service, and that termination of utility service would adversely affect the health of that customer, member of the customer's family, or resident of the household. ()

b. The name of the person whose serious illness or medical emergency would be adversely affected by termination and the relationship to the customer, and ()

c. The name, title, and signature of the person certifying the serious illness or medical emergency. ()

02. Restoration of Service. If service has already been terminated when the medical certificate is received, service will be restored as soon as possible, but no later than twenty-four (24) hours after receipt. The customer will receive service for thirty (30) calendar days from the utility's receipt of the certificate. ()

03. Second Postponement. The utility may postpone termination of service upon receipt of a second certificate stating that the serious illness or medical emergency still exists. ()

04. Verification of Medical Certificate. The utility may verify the authenticity of the certificate and may refuse to delay termination of service if it is determined that the certificate is a forgery or is otherwise fraudulent. ()

05. Obligation to Pay. Nothing in this rule relieves the customer of the obligation to pay any undisputed bill. ()

309. MEDICAL FACILITIES -- SHELTER CARE (RULE 309).

Where service is provided to a customer known to the utility to be or identifying itself as a medical care facility, including a hospital, medical clinic with resident patients, nursing home, intermediate care facility or shelter care facility, a final notice of pending termination will be provided to the Commission as well as to the customer. Upon request from the Commission, a delay in termination of no less than seven (7) calendar days from the date of notice will be allowed so that action may be taken to protect the interests of the facility's residents. ()

310. INSUFFICIENT GROUNDS FOR TERMINATION OR DENIAL OF SERVICE (RULE 310).

01. Termination of Service. Utilities will not terminate service or provide notice of intent to terminate service if the unpaid bill cited as grounds for termination is: ()

a. Less than fifty dollars (\$50) or two (2) months' charges for service, whichever is less. ()

- b. For utility service to any other customer (unless that customer has a legal obligation to pay the other customer's bill) or for any other class of service. ()
- c. For the purchase of non-utility goods or services. ()
- d. For service provided four (4) or more years ago unless the customer has promised in writing to pay or made a payment on the bill within the last four (4) years. ()
- e. The subject of an informal or formal complaint filed with the Commission, except as provided for under Rule 401. ()
- f. At issue in a case pending before a court in the state of Idaho unless termination is authorized by court order. ()

02. Denial of Service. A utility will not deny service; or notify an applicant that the utility will deny the applicant service if any of the criteria listed in Subsection 310.01.b. through 310.01.f. apply to the unpaid bill cited as grounds for denial of service. (3-31-22)()

311. TIMES WHEN SERVICE MAY BE TERMINATED -- OPPORTUNITY TO AVOID TERMINATION OF SERVICE (RULE 311).

01. When Termination of Service Is Prohibited. Except as authorized by Rule 303 or this rule, service provided to a customer, applicant, resident or occupant shall not be terminated: ()

- a. On any Friday, Saturday, Sunday, legal holidays recognized by the state of Idaho, or on any day immediately preceding any legal holiday; or ()
- b. At any time when the utility is not open for business. ()

02. Times When Service May Be Terminated. Service may be terminated: ()

- a. At any time when there is a dangerous condition pursuant to Rule 303.01 or the utility is ordered to do so pursuant to Rule 303.02; ()
- b. Between the hours of 8 a.m. and 5 p.m., Monday through Thursday, for any reason authorized by Rules 302 and 303; ()
- c. Between the hours of 8 a.m. and 5 p.m. on Friday for illegal use of service pursuant to Rule 303.03 or if the premises are unoccupied and service has been abandoned; or ()
- d. Between the hours of 5 p.m. and 9 p.m., Monday through Thursday, if the utility is unable to gain access to the meter during normal business hours or for illegal use of service pursuant to Rule 303.03. ()

03. Personnel to Authorize Reconnection. Each utility shall have personnel available who are authorized to reconnect service if the conditions cited as grounds for termination are corrected to the utility's satisfaction. Service shall be reconnected as soon as possible, but no later than twenty-four (24) hours after the utility's conditions are satisfied and reconnection is requested. ()

04. Opportunity to Prevent Termination of Service During Premise Visit. If a utility needs to visit a customer's premise to terminate service, the utility's employee may identify himself or herself to the customer or other responsible adult upon the premises and announce the purpose of the employee's visit. The employee may be authorized by the utility to accept full or partial payment and, in such case, the employee will not terminate service. Nothing in this rule prevents a utility from proceeding with termination of service if the customer or other responsible adult is not on the premises. ()

05. Notice of Procedure for Reconnecting Service. During a premise visit the utility employee designated to terminate service may give to the customer or leave in a conspicuous location at the affected service

address, a notice showing the time of and grounds for termination, steps to be taken to secure reconnection, and the telephone numbers of utility personnel or other authorized representatives who are available to authorize reconnection. ()

06. Applicant Without Service - Customer Requested Termination. Nothing in this rule prohibits a utility from terminating service at any time pursuant to a customer's request. ()

312. DENIAL OR TERMINATION OF SERVICE TO MASTER-METERED ACCOUNTS AND RESIDENTS OR OCCUPANTS WHO ARE NOT CUSTOMERS (RULE 312).

01. Notice to Occupants or Residents Not Customers. Except as provided in Rules 303.01 and 303.02, utilities will not deny or terminate service without providing written notice to the residents or occupants of: ()

- a. A building or mobile home court where service is master-metered; ()
- b. A residence where the customer billed for service is not a resident or occupant of the premises being served; or ()
- c. Premises where service is being provided on an interim basis to a resident or occupant following a customer's request to terminate service. ()

02. Delivery and Contents of Notice. The utility must notify the residents or occupants of its intent to deny or terminate service at least two (2) calendar days, excluding weekends and holidays, before the proposed date of termination. The notice should be delivered to the premises or, in the case of multi-occupant buildings or mobile home parks, posted in common areas or a conspicuous location. The notice will state: ()

- a. The date of the notice; ()
- b. The proposed denial or termination date; ()
- c. The reason for denial or termination; ()
- d. What action(s) the resident(s) or occupant(s) must take in order to obtain or retain service in the resident's(s') or occupant's(s') own name(s); and ()
- e. That an informal or formal complaint concerning denial or termination of service may be filed with this Commission. ()

313. PAYMENT ARRANGEMENTS (RULE 313).

01. Arrangements Allowed. When a customer cannot pay a bill in full, the utility will continue to serve the customer if the customer and the utility agree on a reasonable portion of the outstanding bill to be paid immediately, and the manner in which the balance of the outstanding bill will be paid. For customers who are unable to come to the utility's local office to make payment arrangements, a gas or electric utility must, upon request by the customer, make payment arrangements over the telephone, by mail or at the customer's home. ()

02. Reasonableness. ~~In deciding on~~ When deciding the reasonableness of a particular agreement, the utility will take into account the customer's ability to pay, the size of the unpaid balance, the customer's payment history, and the amount of time and reasons why the debt is outstanding. (3-31-22)()

03. Application of Payment. Unless the customer designates otherwise, payments are to be first applied to the undisputed balance owed by the customer for utility services and associated installation charges, taxes, franchise fees and surcharges. ()

04. Second Arrangement. If a customer fails to make the payment agreed upon by the date that it is due, the utility may, but is not obligated to, enter into a second such agreement. ()

05. When Arrangement Not Binding. No payment arrangement binds a customer if it requires the customer to forego any right provided for in these rules. ()

06. Level Pay Plans Acceptable Payment Arrangement. Payment arrangements may be in the form of a Level Pay Plan that will equalize monthly payments of all arrears, if any, and anticipated future bill amounts over a period of not less than one (1) year. No customer agreeing to a reasonable payment arrangement is required to choose this plan. ()

07. Third-Party Contact. If a utility has been unable to contact a customer concerning termination, but has contacted the customer's third-party designated under Rule 307 and has failed to receive a response from the customer within seven (7) days after the third-party was contacted, the utility may treat the customer as one who has been contacted and has declined to enter into a reasonable payment arrangement. ()

314. -- 399. (RESERVED)

COMPLAINT PROCEDURE
Rules 400 through 599

400. COMPLAINT TO UTILITY (RULE 400).

01. Complaint. A customer or applicant for service may complain at any time to the utility about any deposit or written guarantee required as a condition of service, billing, termination of service, quality or availability of service, or any other matter regarding utility services, policies and practices. The customer or applicant may request a conference with the utility, but this provision does not affect any statute of limitation that might otherwise apply. Complaints to the utility may be made orally or in writing. A complaint is considered filed upon receipt by the utility. In making a complaint or request for conference, the customer or applicant will state the customer's or applicant's name, service address, and the general nature of the complaint. ()

02. Investigation by Utility. The utility will promptly, thoroughly and completely investigate the complaint, notify the customer or applicant of the results of the investigation, and make a good-faith attempt to resolve the complaint. The oral or written notification will advise the customer or applicant that the customer or applicant may request the Commission to review the utility's proposed disposition of the complaint. ()

03. Service Maintained. The utility will not terminate service based upon the subject matter of the complaint while investigating the complaint or making a good-faith attempt to resolve the complaint. ()

401. COMPLAINT TO COMMISSION (RULE 401).

01. Informal Complaint. If a customer or applicant who has complained to a utility is dissatisfied with a utility's proposed disposition of the complaint, the customer or applicant may file an informal complaint with request the Commission. Customers and applicants are encouraged, but not required, to contact the utility before filing an informal complaint. ()

02. Termination of Service - Undisputed Bills. Utility service must not be terminated nor termination threatened by notice or otherwise while the complaint is pending before the Commission. The utility may continue to issue bills and request payment from the customer of any undisputed amounts. ()

03. Customer's Rights Protected. No customer or applicant will be denied the opportunity to file an informal or formal complaint with the Commission. ()

402. RECORD OF COMPLAINTS (RULE 402).

01. Recordkeeping. Each utility must keep a written record of complaints made under Rules 400 and 401. These records must be retained for a minimum of one (1) year by the utility. These written records are to be readily available upon request by the concerned customer, the customer's agent possessing written authorization, or the Commission. ()

02. Reporting. Each utility must, at the Commission’s request, submit a report to the Commission that states and classifies the number of complaints made to the utility pursuant to Rules 400 and 401, and the general subject matter of the complaints. ()

403. UTILITY RESPONSE TO INFORMAL COMPLAINTS (RULE 403).

01. Response to Commission. Within ten (10) business days of receiving notification that an informal complaint involving the utility has been filed with the Commission, the utility must respond verbally or in writing to the Commission. A utility will be granted an extension of time to prepare its response if it represents that it is making a good faith effort to resolve the matter in dispute. A full and complete response should be submitted to the Commission no later than thirty (30) days after receipt of notification from the Commission. ()

404. -- 599. (RESERVED)

**RULES FOR DEPOSIT, DENIAL, AND TERMINATION OF SERVICE
FOR INDUSTRIAL, LARGE COMMERCIAL, AND IRRIGATION CUSTOMERS
Rules 600 through 699**

600. DEFINITIONS (RULE 600).

As used in Rules 601 through 605. ()

01. Advance Payment. “Advance payment” means a payment made prior to receiving service that will be credited to the customer’s account at a later date. ()

02. Applicant. “Applicant” means an applicant for industrial, large commercial or irrigation service. ()

03. Customer. “Customer” means an industrial, large commercial or irrigation customer, unless further restricted by the rule. The Commission will maintain on file a list of which customer classes of a given utility are industrial, large commercial, and irrigation. ()

04. Deposit. “Deposit” means any payment held as security for future payment or performance that is reimbursable. ()

05. Written Notice. “Written notice” of the utility’s intent to deny or terminate service may be mailed or otherwise delivered to the applicant, occupant or customer. Written notice may be provided by electronic mail (i.e., e-mail) if the customer is billed electronically and separately consents in writing to “opt-in” to receiving electronic notification. ()

601. DEPOSIT REQUIREMENTS AND ADVANCE PAYMENTS (RULE 601).

An applicant or customer may be required to pay a deposit or make an advance payment in accordance with the utility’s tariff filed with the Commission. If an applicant or customer has sought any form of relief under the Federal Bankruptcy Laws, has been brought within the jurisdiction of the bankruptcy court for any reason in an involuntary manner, or has had a receiver appointed in a state court proceeding, then a deposit may be demanded as allowed by the Federal Bankruptcy Laws, or as directed by the state court. ()

602. GROUNDS FOR DENIAL OR TERMINATION OF SERVICE WITH PRIOR NOTICE (RULE 602).

A utility may deny or terminate service to an industrial, large commercial or irrigation customer without its permission, but only after adequate notice has been given in accordance with these rules, for one (1) or more of the following reasons: ()

01. Any Reason Listed in Rule 302.01.a. Through 302.01.f. ()

02. Failure to Make Advance Payment or Provide Guarantee. The customer or applicant failed to make a required advance payment, pay a deposit or provide an acceptable guarantee, when required by the applicable

tariff or contract. ()

03. Failure to Apply for Service. The customer or applicant failed to apply for service with the utility. ()

603. REQUIREMENTS FOR AND CONTENTS OF NOTICE BEFORE TERMINATION OF SERVICE (RULE 603).

01. Initial Notice. If the utility intends to terminate service under Rule 602, the utility will mail the customer written notice of termination at least seven (7) calendar days before the proposed termination date. The written notice of termination will state: ()

02. Final Notice. The utility may mail a final written notice to customers at least three (3) calendar days, excluding weekends and holidays, before the proposed date of termination. ~~Regardless of whether the utility elects to mail a written notice, at least twenty-four (24) hours prior to actual termination, the~~ At least twenty-four (24) hours prior to actual termination the utility will diligently attempt to contact the customer affected, either in person or by telephone, to apprise the customer of the proposed action. This final notice will contain the same information required above for written notice. Each utility will maintain clear, written records of oral notices, showing dates and the utility employee giving the notices. (3-31-22)()

604. GROUNDS FOR TERMINATION OF SERVICE WITHOUT PRIOR NOTICE (RULE 604).
A utility may terminate service without prior notice to the customer as specified in Rule 602 only: ()

01. Dangerous Conditions. If a condition immediately dangerous or hazardous to life, physical safety, or property exists, or if necessary to prevent a violation of federal, state or local safety or health codes. ()

02. Order to Terminate. Upon order by any court, the Commission, or any other duly authorized public authority. ()

03. Illegal Use of Utility. If such service is obtained, diverted or used without the authorization or knowledge of the utility; or ()

04. Unable to Contact Customer. If the utility has tried diligently to meet the notice requirements of Rule 602, but has been unsuccessful in its attempt to contact the customer. ()

605. NOTICE TO COMMISSION PRIOR TO TERMINATION (RULE 605).
A utility will provide written notice to the Commission of its intent to terminate service to an industrial or large commercial customer at least seven (7) days before the scheduled termination date. The Commission may stay termination if it finds that the public interest requires service to be maintained to the customer. ()

606. -- 699. (RESERVED)

SUMMARY OF CUSTOMER RULES
Rules 700 through 799

700. INFORMATION TO CUSTOMERS (RULE 700).

01. Required Information. Each utility will provide the following information to its customers: ()

a. A summary of the terms and conditions under which service is provided, including the conditions under which the utility may request a deposit or deny or terminate service; ()

b. A statement that: ()

i. The utility is willing to make reasonable payment arrangements; ()

ii. The customer may file a complaint with the utility and the Commission and that termination of service is prohibited while a complaint is pending with the Commission or with a court in the state of Idaho; ()

iii. Termination of service may be postponed due to serious illness or medical emergency (residential customers only). ()

c. A clear and concise explanation of rate schedule(s) applicable to the customer's class of service. ()

02. Information for Gas and Electric Customers. Each gas or electric utility also will include an explanation of: ()

a. Restrictions on termination of service and the availability of the Winter Payment Plan described in Rule 306 (residential customers only). ()

b. The Third Party Notification Program described in Rule 307 (residential customers only); and ()

c. The availability of the Level Pay Plan described in Rule 313. ()

03. When and How Information Provided. Utilities will provide information to customers in writing annually and to new customers upon initiation of service. Information provided upon initiation of service may be separately mailed or included with a paper or electronic billing statement. Annual notices may be made by separate mailing, included with the paper or electronic billing statement or, with the customer's consent, by electronic notice with reference to information contained on the utility's website. ()

701. -- 999. (RESERVED)

IDAPA 31 – IDAHO PUBLIC UTILITIES COMMISSION

31.26.01 – MASTER-METERING RULES FOR ELECTRIC UTILITIES

DOCKET NO. 31-2601-2301 (ZBR CHAPTER REWRITE)

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 the general legal authority of the Public Utilities Law, chapters 1 through 7, Title 61, Idaho Code, and the specific authority of Sections 61-301, 61-302, 61-303, 61-315, 61-503, 61-507, and 61-520, Idaho Code, with regards to service.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 18, 2023.

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

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

The Idaho Public Utilities Commission initiated this rulemaking in compliance with [Executive Order No. 2020-01: Zero-Based Regulation](#), issued by Governor Little on January 16, 2020. Pursuant to Executive Order No. 2020-01, each rule chapter effective on June 30, 2020, shall be reviewed by the agency that promulgated the rule. The review will be conducted according to a schedule established by the Division of Financial Management, Office of the Governor (DFM), posted at https://adminrules.idaho.gov/rulemaking_templates/index.html. This is the Idaho Public Utilities Commission’s rule chapters up for review in 2023.

The goal of the rulemaking is to perform a critical and comprehensive review of the entire chapter in an attempt to reduce overall regulatory burden, streamline various provisions, and increase clarity and ease of use.

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

No fee associated with these Rules.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:
No fee associated with these Rules.

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 Idaho Administrative Bulletin, [Volume 23-6, Pages 77-78](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: None.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Stephen Goodson at (208) 880-1849. 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 25, 2023.

DATED this 21st day of August, 2023.

Jan Noriyuki, Commission Secretary
Idaho Public Utilities Commission
11331 W. Chinden Blvd., Bldg. 8, Ste 201-A
Boise, ID 83714
P.O. Box 83720
(208) 334-0323 Office
(208) 334-4045 Fax

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 31-2601-2301
(ZBR Chapter Rewrite)

31.26.01 – MASTER-METERING RULES FOR ELECTRIC UTILITIES

000. LEGAL AUTHORITY (RULE 0).

~~These rules are adopted under the general legal authority of the Public Utilities Law, e~~ Chapters 1 through 7, Title 61, Idaho Code, and ~~the specific authority of~~ Sections 61-301, 61-302, 61-303, 61-315, 61-503, 61-507, and 61-520, Idaho Code, ~~with regard to service.~~ (3-31-22)()

001. TITLE AND SCOPE (RULE 1).

~~The name of this chapter is “Master Metering Rules for Electric Utilities.” This chapter has the following scope:~~ applied to All a electric utilities ~~are required to abide by these rules~~ defining when and under what circumstances their customers may master-meter tenants of the customer. (3-31-22)()

~~**002. WRITTEN INTERPRETATIONS – AGENCY GUIDELINES (RULE 2).**~~

~~Written interpretations to these rules can be obtained from the Secretary of the Idaho Public Utilities Commission and are available from the office of the Commission Secretary.~~ (3-31-22)

~~**003. ADMINISTRATIVE APPEALS (RULE 3).**~~

~~There are no administrative appeals under these rules because they are not procedural rules. If an issue should arise calling for a proceeding to apply these rules, that proceeding would be conducted under the Commission’s Rules of Procedure, IDAPA 31.01.01.000 et seq.~~ (3-31-22)

002. --004. (RESERVED)

005. DEFINITIONS (RULE 5).

As used in these rules: ()

~~**01. Electric Utility.** Electric utility or utility means an “electrical corporation” as defined by statute in Chapter 1, Title 61, Idaho Code, and orders of the Idaho Public Utilities Commission and decisions of the Supreme Court of Idaho construing those statutes.~~ (3-31-22)

021. Tenant -- Mobile Home Park. A tenant of a mobile home park is a person defined as a resident and not a transient by the Manufactured Home Residency Act, Section 55-2001 et seq., Idaho Code, and in particular by Section 55-2003(164) and 55-2003(195), Idaho Code. ()

032. Tenant -- Multi-Unit Residential or Commercial Building. A tenant of a multi-unit residential building is a person who is not a transient and who intends to reside in or be a commercial tenant in one (1) of the building’s units for a period not less than one (1) month. ()

043. Master-Metering. Provision of service to multiple tenants through one meter, which measures the aggregate usage of all tenants. Typically, the utility bills the property owner or landlord based on measurement by the master meter. ()

006. -- 099. (RESERVED)

MASTER-METERING RULES FOR ELECTRIC UTILITIES
Rules 100 through 199

100. MASTER-METERING AND INDIVIDUAL METERING IN MOBILE HOME PARKS (RULE 100).

01. Master Metering Prohibited. Master-metering, whether or not in conjunction with sub-metering of electric service by the park operator, is prohibited for any mobile home park connected for service by the utility after July 1, 1980. After that date, tenants (excluding transients) of mobile home parks must be individually metered and billed by the electric utility. ()

02. Exception for Sub-Metered Parks. Any mobile home park connected for service on or before July 1, 1980 whose spaces for non-transient tenants are been fully sub-metered for electricity by the park owners need not be individually metered by the electric utility supplying the park. A mobile home park sub-metered by the park operator must charge each of their tenants the same rate for electric service that a residential customer of the utility serving the park would charge the tenant if the tenant were directly metered and billed by the utility. Upon request, the utility will provide written instruction on how to calculate bills for sub-metered tenants in conformance with the utility's applicable rate schedule. ()

101. MASTER-METERING AND INDIVIDUAL METERING IN MULTI-OCCUPANT RESIDENTIAL BUILDINGS (RULE 101).

~~Non-transient tenants living in M~~multi-occupant residential buildings connected for electric service after July 1, 1980, ~~if the dwelling units for nontransient tenants~~ containing an electric space heating, water heating, or air-conditioning (space cooling) unit that is not centrally controlled and for which the dwelling unit's tenants individually control electric usage. ~~In such case, non-transient tenants~~ will be individually metered and billed by the electric utility. (3-31-22)()

102. MASTER-METERING AND INDIVIDUAL METERING IN COMMERCIAL BUILDINGS AND SHOPPING CENTERS (RULE 102).

Commercial buildings and shopping centers connected for electric service after July 1, 1980, may not be master metered if the units for non-transient tenants contain an electric space heating, water heating, or air-conditioning (space cooling) unit that is not centrally controlled and for which the unit's tenants individually control electric usage. Any non-transient tenants in otherwise master-metered buildings will be individually metered and billed by the utility if the tenant's electric load is significantly greater than that of other tenants in the building or shopping center or exceeds the individual metering threshold found in the utility's tariffs. ()

103. -- 999. (RESERVED)

IDAPA 31 – IDAHO PUBLIC UTILITIES COMMISSION

31.31.01 – GAS SERVICE RULES

DOCKET NO. 31-3101-2301 (ZBR CHAPTER REWRITE)

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 the general legal authority of the Public Utilities Law, chapters 1 through 7, Title 61, Idaho Code, and the specific authority of Sections 61-301, 61-302, 61-303, 61-315, 61-503, 61-507, 61-515, and 61-520, Idaho Code, with regard to safety and service.

PUBLIC HEARING SCHEDULE: Public hearing(s) 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 18, 2023.

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

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

The Idaho Public Utilities Commission initiated this rulemaking in compliance with [Executive Order No. 2020-01: Zero-Based Regulation](#), issued by Governor Little on January 16, 2020. Pursuant to Executive Order No. 2020-01, each rule chapter effective on June 30, 2020, shall be reviewed by the agency that promulgated the rule. The review will be conducted according to a schedule established by the Division of Financial Management, Office of the Governor (DFM), posted at https://adminrules.idaho.gov/rulemaking_templates/index.html. This is the Idaho Public Utilities Commission's rule chapters up for review in 2023.

The goal of the rulemaking is to perform a critical and comprehensive review of the entire chapter in an attempt to reduce overall regulatory burden, streamline various provisions, and increase clarity and ease of use.

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

No fee associated with these Rules.

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

No fee associated with these Rules.

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 Idaho Administrative Bulletin, [Volume 23-6, Pages 77-78](#).

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

Testing of Smaller Capacity Meters. Available at: [ANSI/ASQ Z1.4 and Z1.9 - Sampling Procedures and Tables Package](#). Incorporation of its text in the agency rules would be unduly cumbersome, expensive, or otherwise inexpedient.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Stephen Goodson at (208) 880-1849. 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 25, 2023.

DATED this 21st day of August, 2023.

Jan Noriyuki, Commission Secretary
Idaho Public Utilities Commission
11331 W. Chinden Blvd., Bldg. 8, Ste 201-A
Boise, ID 83714
P.O. Box 83720
(208) 334-0323 Office
(208) 334-4045 Fax

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 31-3101-2301
(ZBR Chapter Rewrite)

31.31.01 – GAS SERVICE RULES

000. LEGAL AUTHORITY (RULE 0).

~~These rules are adopted under the general legal authority of the Public Utilities Law, e~~ Chapters 1 through 7, Title 61, Idaho Code, and ~~the specific authority of Sections 61-301, 61-302, 61-303, 61-315, 61-503, 61-507, 61-515, and 61-520, Idaho Code, with regard to safety and service.~~ (3-31-22)()

001. TITLE AND SCOPE (RULE 1).

~~The name of this chapter is the “Gas Service Rules.” This chapter has the following scope: applies to A~~ all gas utilities are required to abide by these rules in their provision of gas service. (3-31-22)()

002. WRITTEN INTERPRETATIONS — AGENCY GUIDELINES (RULE 2).

~~Written interpretations to these rules can be obtained from the Secretary of the Idaho Public Utilities Commission and are available from the office of the Commission Secretary.~~ (3-31-22)

003. ADMINISTRATIVE APPEALS (RULE 3).

~~There are no administrative appeals under these rules because they are not procedural rules. If an issue should arise calling for a proceeding to apply these rules, that proceeding would be conducted under the Commission’s Rules of Procedure, IDAPA 31.01.01.000 et seq.~~ (3-31-22)

004. (RESERVED)

005. DEFINITIONS (RULE 5).

~~As used in these rules, gas utility or gas corporation means a “gas corporation” as defined by statute in Chapter 1, Title 61, Idaho Code, and orders of the Idaho Public Utilities Commission and decisions of the Supreme Court of Idaho construing those statutes.~~ (3-31-22)

002. INCORPORATION BY REFERENCE (RULE 2).

01. Testing of Smaller Capacity Meters. Available at: ANSI/ASQ Z1.4 and Z1.9 - Sampling Procedures and Tables Package. ()

0063. -- 100. (RESERVED)

CONSTRUCTION, OPERATION, AND MAINTENANCE OF FACILITIES FOR
TRANSMISSION AND DISTRIBUTION OF GAS
Rules 101 through 200

PRELIMINARIES FOR SERVICE
Rules 101 through 150

101. MAPS OF FACILITIES (RULE 101).

01. **Maps, Plans, and Records.** Gas corporations must maintain maps, plans, and records as prescribed by this rule. The gas corporation will keep in the principal office of each of its division or district a map or maps and information about the distribution system that will enable the local representatives to furnish information about the gas corporation regarding rendering of service to existing and prospective customers of the gas corporation. The maps will show the size, character, and location of each street main, district regulator, street valve and drip, and when practicable, each service connection in the corresponding territory served. In lieu of showing date of installation and service locations on maps, a card record or other suitable means may be used. ()

02. **Maps of Manufacturing, Mixing, Compressor, and Storage Facilities.** Each gas manufacturing or mixing plant and each compressor station and storage facility shall be provided with an accurate ground plan drawn to a suitable scale, showing the entire layout of the plant or station, the location, size, and character of plant, equipment, major pipelines, connections, valves, and other facilities used for the production and delivery of gas, all properly identified. ()

~~03. **Inspection of Facilities.** In determining whether these rules are being complied with, the Commission may inspect facilities and records as necessary, as provided in Section 61-521, Idaho Code. (3-31-22)~~

~~102. INSPECTION OF CUSTOMER'S FACILITIES (RULE 102).~~

~~The gas corporation shall inspect the customer's installation before the connection of a meter to ascertain that the installation conforms to the provisions contained in the National Fuel Gas Code and the Uniform Mechanical Code, as adopted by the Commission. If the installation on the customer's premises does not meet these requirements, the Company shall refuse to connect the meter and shall advise the customer in writing the reasons for such refusal. See Customer Relations Rule 301, IDAPA 31.21.01.301; see Safety and Accident Reporting Rules 201, IDAPA 31.11.01.201. (3-31-22)~~

103~~2~~. -- 150. (RESERVED)

STANDARDS FOR SERVICE
Rules 151 through 200

151. STANDARD FOR SERVICE (RULE 151).

Service to the customer shall assure the customer of adequate pressure, a definite heat content, and accurate measurement of gas. ()

152. PERIODIC TESTS OF CUSTOMER METERS (RULE 152).

01. **Testing of Smaller Capacity Meters.** ~~All m~~Meters with capacities up to and including ~~four hundred (400)~~ one thousand (1000) cubic feet per hour (cfh) to three thousand (3000) cfh that have been in service ten (10) or more years as established by last set date shall be tested within a prescribed sample size as determined in accordance with ANSI/ASQ Z1.4 and Z1.9 2003 (R2018), which are incorporated by reference ~~into these rules, which can be found at <https://webstore.ansi.org/Standards/ASQ/ANSIASQZ1SamplingProcedures>.~~ (3-31-22)()

02. **Testing of Larger Capacity Meters.** ~~All m~~Meters from ~~four hundred one (401)~~ one thousand one (1001) to three thousand (3,000) cfh that have been in service ten (10) years as established by last set date shall be replaced or field tested. (3-31-22)()

153. METER PROVING (RULE 153).

01. **Meter Provers.** Each gas corporation shall own at least one (1) meter prover of a type approved by the Commission and shall maintain such equipment in proper adjustment and so calibrated that the error of indication shall not exceed one-half percent. No meter prover shall be so placed as to subject it to excessive temperature

variation and each meter prover shall be equipped with suitable thermometers and other necessary accessories. Additional meter proving station shall be installed when and where found necessary by the Commission. ()

02. Testing Apparatus for Large Capacity Meters. Each gas utility using orifice meters, high pressure meters, proportional meters, or other large capacity meters shall own and maintain testing apparatus of a type approved by the Commission. ()

03. Accuracy of Meter Provers and Testers. The accuracy of all provers and methods of operation may be established from time to time by a representative of the Commission. Any alterations, accidents, or repairs that might affect the accuracy of any meter prover, or the method of operating it, shall be promptly reported in writing to the Commission. ()

154. CUSTOMER METER ACCURACY REQUIREMENTS (RULE 154).

01. Accuracy of Meters. A ~~new~~ gas meter installed for the use of any customer shall not be more than two percent (2%) slow ~~and not more than one percent (1%) or~~ fast. ~~Every meter removed from service when opened for repairs shall be adjusted to be not more than two percent (2%) slow and not more than one percent (1%) fast before being reset; and if not opened for repairs may be reset without adjustment if found to be not more than two percent (2%) in error fast or slow, when passing as in both instances at the test rates provided for in Rule 155 (Customer Meter Test Loads).~~ (3-31-22)()

02. Removal of Defective Meters From Service. No meter that is mechanically defective shall be placed in service or allowed to remain in service after the defect has been discovered. When any gas meter is not connected in service, the inlet and outlet shall be capped to prevent the drying out of the diagrams. ()

155. CUSTOMER METER TEST LOADS (RULE 155).

01. Testing of Meters. All tests to determine the accuracy of registrations of gas service meters shall be made with a suitable meter prover or testing equipment. Unless exempted by order of the Commission, at least two (2) test runs shall be made on each bellows type displacement meter, the results of which shall agree with each other within ~~one half of one percent (.5%)~~ one percent (1%). (3-31-22)()

02. Gas Flows During Testing. The rate of flow to be used in testing all capacity meters ~~having capacities up to and including three thousand (3,000) cubic feet per hour~~ shall be twenty percent (20%) (Check) and eighty percent (80%) to one hundred percent (100%) (Open) of the rated capacity. ~~The one hundred percent (100%) capacity or open run test shall not be taken into consideration in arriving at the accuracy of these meters. Meters having capacities of above three thousand (3,000) cubic feet per hour, except orifice meters, shall be tested both at twenty percent (20%) and one hundred percent (100%) of their capacity. For the purpose of determining the accuracy of these meters, the average of twenty percent (20%) and one hundred percent (100%) tests shall be used~~ For purpose of determining accuracy of these meters, the testing equipment, the maximum capacity of the testing equipment shall be used of the Open test. (3-31-22)()

156. CUSTOMER METER TEST RECORDS (RULE 156).

01. Records of Meter Tests. Annually each gas utility will make tabulations of the results of all meter accuracy tests required by these rules and keep records of tests of the accuracy of each of its meters, until superseded by a later test, but not less than two (2) years. These records shall give: ()

- a. Sufficient information to identify the meter; ()
- b. The reason for the test; ()
- c. The date of the test and reading of the meter; ()
- d. The name of the person making the test; and ()
- e. The accuracy as found and as left, ~~together with enough of the~~ with enough data taken at the time of ()

the test to permit the convenient checking of the methods employed and the calculations.

~~(3-31-22)~~()

157. -- 999. (RESERVED)

IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES

37.03.08 – WATER APPROPRIATION RULES

DOCKET NO. 37-0308-2301 (ZBR CHAPTER REWRITE, FEE RULE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section § 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section § 42-1805(8), 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 18, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 Water Resources (IDWR) initiated this rulemaking in compliance with [Executive Order No. 2020-01](#), Zero-Based Regulation (ZBR) (EO 2020-01), issued by Governor Little on January 16, 2020. Pursuant to EO 2020-01, each rule chapter effective on June 30, 2020, must be reviewed by the promulgating agency over a five-year period. This review is being conducted according to a schedule established by the Division of Financial Management, Office of the Governor (DFM), posted at <https://adminrules.idaho.gov>. This rule chapter was scheduled for review in 2023.

With this Notice, IDWR proposes a new chapter of water appropriation rules. The new chapter is approximately 10% shorter than the existing water appropriation rule chapter due to both internal agency analysis and external stakeholder negotiation, commentary, and editing. Changes to the rule come through a combination of (a) removal of obsolete provisions (such as the reprocessing of applications and permits in the Swan Falls Trust Water Area), (b) removal of unnecessary provisions (such as the definition and use of the term “legal subdivision”), and (c) modifications to existing rules regulating the processing and evaluation of applications to obtain a water right to divert and use public water in the state of Idaho.

The development of the proposed rule text through two publicly-released preliminary rule draft iterations may be viewed at: <https://idwr.idaho.gov/legal-actions/rules/idwr-rulemaking-2023-2024/water-appropriation-rules/>. On the same website, IDWR also developed and published rulemaking support documents, which provide IDWR’s recommendations on rulemaking, rulemaking analysis, and responses to substantive comments received through the negotiated rulemaking process.

Citizens of the state of Idaho, water users, governmental agencies, and environmental groups may be interested in commenting on the proposed rule text. After consideration of public comments received in response to this Proposed Rule, IDWR will present the final rule text to the Idaho Legislature in the late fall of 2023.

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

IDAPA 37.03.08 sets the procedures for obtaining a permit to divert and use unappropriated public waters or a permit for a reallocation of trust water within the Swan Falls Trust Water Area. The rule governs the filing and processing of applications for permit to appropriate water. The rule also establishes the collection of fee(s) to file or republish notice of an application set forth in Idaho Code §§ 42-221A and 42-221F.

FISCAL IMPACT: The following is a specific 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 5, 2023, Idaho Administrative Bulletin, [Vol. 23-4, pages 70-71](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 Mathew Weaver at Mathew.weaver@idwr.idaho.gov, (208) 287-4800.

Anyone may submit written comments regarding this proposed rulemaking by mail to the address below or by email to rulesinfo@idwr.idaho.gov. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2023.

DATED this 1st day of September, 2023.

Mathew Weaver, Director
Idaho Department of Water Resources
322 E. Front Street
PO Box 83720
Boise, ID 83720-0098
Phone: (208) 287-4800

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 37-0308-2301
(ZBR Chapter Rewrite)

37.03.08 – WATER APPROPRIATION RULES

000. LEGAL AUTHORITY ~~(RULE 0)~~.

The Director of the Idaho Department of Water Resources adopts these rules under the authority ~~provided by~~ o-Sf ~~Section 42-1805(8), Idaho Code.~~ (3-18-22)()

001. TITLE AND SCOPE ~~(RULE 1)~~.

01. Title. These rules are titled IDAPA 37.03.08, “Water Appropriation Rules.” ()

02. Scope. (3-18-22)

~~**a. Background and Purpose.** The 1985 Idaho Legislature authorized reallocation of certain hydropower water rights to new upstream beneficial uses. The reallocation is to be accomplished using statutes designed to provide for the appropriation of unappropriated public water supplemented by a public interest review of those reallocations which significantly reduce existing hydropower generation. These rules provide set the procedures for obtaining the right a permit to divert and use unappropriated public waters as well as water previously appropriated for hydropower use which has been placed in or a permit for reallocation of trust with the State of Idaho and is subject to reallocation water within the Swan Falls Trust Water Area. Guidelines are provided for These rules govern the filing and processing of applications, and criteria are established for determining the actions to be taken by the Director for permits to appropriate water pending on or filed after the adoption of these rules. (3-18-22)()~~

~~**b. Scope and Applicability.** These rules are applicable to appropriations from all sources of unappropriated public water in the state of Idaho under the authority of Chapter 2, Title 42, Idaho Code. Sources of public water include rivers, streams, springs, lakes and groundwater. The rules are also applicable to the reallocation~~

~~of hydropower water rights held in trust by the state of Idaho. The rules are applicable to all applications to appropriate water filed with the Department of Water Resources prior to the effective date of these rules upon which an action to approve or deny the application is pending and to all applications filed subsequent to adoption of the rules and regulations. In addition, the rules are applicable to existing permits to appropriate water required to be reviewed under the provisions of Section 42-203D, Idaho Code.~~ (3-18-22)

002. -- 009. (RESERVED)

010. DEFINITIONS ~~(RULE 10).~~

~~Unless the context otherwise requires, the following definitions govern these rules:~~ The terms “consumptive use,” “digital boundary,” “local public interest,” “municipality,” “municipal provider,” “municipal purposes,” “planning horizon,” “reasonably anticipated future needs,” and “service area” have the meaning given for those terms in Section 42-202B, Idaho Code. The terms “ground water” and “low temperature geothermal resource” have the meaning given for those terms in Section 42-230, Idaho Code. The term “critical ground water area” has the meaning given for that term in Section 42-233a, Idaho Code. (3-18-22)(____)

01. **Acre-Foot (A~~F~~af).** A volume of water sufficient to cover one (1) acre of land one (1) foot deep and is equal to ~~forty-three thousand~~ hundred twenty-five thousand, eight hundred sixty (43,560) cubic feet fifty (325,850) gallons. (3-18-22)(____)

~~02. **Advertisement.** The action taken by the Director to provide notice, usually by publication of a legal notice in one (1) or more newspapers, of a proposed appropriation or other notice required in administration of his duties and responsibilities.~~ (3-18-22)

~~03. **Applicant.** The person, corporation, association, firm, governmental entity or agency, or other entity, or the holder of a permit being reprocessed pursuant to Section 42-203D, Idaho Code, who initiates an appropriation of water or related applies to divert and beneficially use public waters ~~matter for the Director's consideration.~~ (3-18-22)(____)~~

~~04. **Application for Permit.** The written request to the department on forms furnished by the department proposing to appropriate the public waters or trust waters of the state~~ An application for permit to appropriate water filed with the Department. (3-18-22)(____)

~~05. **Board.** The Idaho Water Resource Board.~~ ()

~~06. **Beneficial Use.** One (1) or more of the recognized beneficial uses of water including but not limited to, domestic, municipal, irrigation, hydropower generation, industrial, commercial, recreation, stockwatering and fish propagation uses for which permits to appropriate water can be issued as well as other uses which provide a benefit to the user of the water as determined by the Director. Industrial use as used for purposes of these rules includes, but is not limited to, manufacturing, mining and processing uses of water.~~ (3-18-22)

~~07. **Cubic Foot Per Second (CFS~~cs~~cfs).** A rate of flow approximately equal to four hundred forty-eight and eight-tenths (448.8) gallons per minute and also equals fifty (50) Idaho miner's inches.~~ (3-18-22)(____)

~~08. **DCMI.** An acronym for domestic, commercial, municipal and industrial. In these rules it designates certain classes of these uses presumed to satisfy public interest requirements. Domestic use, for purposes of this definition, is water for one or more households and water used for all other purposes including irrigation of a residential lot in connection with each of the households where the diversion to each household does not exceed thirteen thousand (13,000) gallons per day. Also for purposes of this definition, commercial, municipal and industrial uses are any such uses which do not deplete the system containing the trust water more than two (2) acre feet per day.~~ (3-18-22)

~~09. **Department.** The Idaho Department of Water Resources.~~ ()

~~10. **Director.** The Director of the Idaho Department of Water Resources.~~ Per Section 42-1701(3), Idaho Code, the Director may delegate authority to perform duties imposed upon the Director by law, including duties described herein, to a Department employee. (3-18-22)(____)

08. Generally Described Place of Use. A place of use authorized by an existing water right or permit pursuant to Sections 42-202, 42-219, 42-222, or 42-1411, Idaho Code, consisting of a general area or boundary within which water diverted under the water right or permit is used. ()

11. Legal Subdivision. A tract of land described by the government land survey and usually is described by government lot or quarter-quarter, section, township and range. A lot and block of a subdivision plat recorded with the county recorder may be used in addition to the quarter-quarter, section, township and range description. (3-18-22)

09. Idaho State Water Plan. The current comprehensive state water plan formally adopted by the Idaho Water Resource Board pursuant to Sections 42-1734A and 42-1734B, Idaho Code. ()

10. Murphy Gage. The United States Geological Survey stream gage station (site identification number 13172500) located on the right bank of the Snake River at river mile 456.8, approximately eight point five (8.5) miles east-northeast of Murphy, Idaho and zero point nine (0.9) miles downstream from the Swan Falls power plant at latitude 43° 15' 17.33" N, longitude 116° 23' 26.30" W, North American Datum of 1983, in the NW ¼ of the NW ¼ of Section 18, T.2S., R.1E., Boise Meridian, Hydrologic Unit 17050103. ()

121. Permit or Water Right Permit. The water right document issued by the Director authorizing the diversion and use of unappropriated public waters ~~of the state or water held in~~ or reallocated trust ~~by the state water.~~ (3-18-22)()

132. Priority, or Priority of Appropriation, or Priority Date. The date of appropriation established in the development of a water right. The priority of a water right for public water or trust water is used to determine the order of water delivery from a source during times of shortage. The earlier or prior date being the better right. when an application is filed in acceptable form, including the applicable filing fee, unless a later date is set in accordance with applicable law. (3-18-22)()

143. Project Works. A general term ~~which that~~ includes diversion works, conveyance ~~works~~ infrastructure, and any devices ~~which may be~~ used to apply the water to the intended use. ~~Improvements which have been made as a result of application of water, such as land preparation for cultivation, are not a part of the project works.~~ (3-18-22)()

15. Single Family Domestic Purposes. Water for household use or livestock and water used for all other purposes including irrigation of up to one half (1/2) acre of land in connection with said household where total use is not in excess of thirteen thousand (13,000) gallons per day. (3-18-22)

14. Public Interest. The interests that the people of the state of Idaho have in the effects of a proposed reallocation of trust water pursuant to Section 42-203C(2), Idaho Code. For the definition of "local public interest," see Section 42-202B, Idaho Code. ()

15. Reallocation of Trust Water. Appropriation of trust water for a use other than hydropower generation to the extent the water rights held in trust are subordinated to permits issued for such other uses of water pursuant to Section 42-203C, Idaho Code. ()

16. Subordinated Water Right. A water right used for hydropower generation purposes that is ~~subject~~ Subject to diminishment or depletion without compensation by ~~upstream~~ water rights ~~which are~~ initiated later in time ~~and which are for a purpose other than hydropower generation purposes.~~ (3-18-22)()

17. Swan Falls Trust Water Area. The reach of the Snake River extending downstream from Milner Dam (located in Sections 28 and 29, Township 10 South, Range 21 East, Boise Meridian) to Swan Falls Dam (located in Section 18, Township 2 South, Range 1 East, Boise Meridian) and all surface and ground water sources tributary to that reach of the Snake River. The area within which ground water is presently designated tributary to the reach of the Snake River extending downstream from Milner Dam to Swan Falls Dam is depicted in APPENDIX A. The Swan Falls Trust Water Area excludes any reach of the Snake River upstream of Milner Dam, any surface or ground water tributary to the Snake River upstream of Milner Dam, the Snake River downstream of Swan Falls Dam, and any

surface or ground water tributary to the Snake River downstream of Swan Falls Dam. ()

178. Trust Water. ~~That portion of an unsubordinated water right used~~ Water in excess of the state established minimum stream flow at the Murphy Gage that was originally appropriated for hydropower generation purposes ~~which is in excess of a minimum stream flow established pursuant to the water rights now held in trust by the state action either with agreement of the holder of the~~ of Idaho and that is made available for reallocation to uses other than hydropower ~~right as provided by~~ generation to the extent the water rights held in trust are subordinated to permits issued for such other uses pursuant to Section 42-203B(5)C, Idaho Code ~~or without an agreement as provided by Section 42-203B(3), Idaho Code.~~ (3-18-22)()

189. Unappropriated Water. The public waters of the state of Idaho in streams, rivers, lakes, springs, ~~or other natural surface water bodies, ground water in excess of that, or low temperature geothermal resources exceeding the amount~~ necessary to satisfy ~~prior existing water~~ rights ~~including prior rights reserved by federal law.~~ (3-18-22)()

20. Water Right Held in Trust. A water right used for hydropower generation purposes that is in excess of a minimum stream flow established by state action and is held in trust by the state of Idaho pursuant to Subsections (2) or (3) of Section 42-203B, Idaho Code. The water rights held in trust for the Swan Falls Trust Water Area are numbered 02-02001A, 02-02001B, 02-02032B, 02-02036, 02-02056, 02-02057, 02-02059, 02-02060, 02-02064, 02-02065, 02-04000B, 02-04001B, 02-10135, 36-02013, 36-02018, 36-02026, 37-02128, 37-02471, 37-02472, 37-20709, and 37-20710. ()

011. -- 024. (RESERVED)

025. GENERAL DESCRIPTION OF THE PROCEDURE ~~TO BE USED FOR ALLOCATION (RULE 25)~~ APPLICATION REVIEW.

01. Applications to Appropriate Unappropriated Water ~~and Water Held in Trust.~~ Applications The Department will process an application to appropriate unappropriated public waters ~~and water held in trust as provided by Section 42-203B(3), Idaho Code, under Section 040, and will be evaluated the application under Subsection 045.01, using the criteria of Section 42-203A(5), Idaho Code, ~~which requires an assessment to be made of the impact of the proposed use on water availability for existing water rights, the adequacy of the water supply for the proposed use, whether the application is filed for speculative purposes, the financial ability of the applicant to complete the project, and the effect of the proposed use on the local public interest~~ and, for a low temperature geothermal resource, the criteria of Section 42-233, Idaho Code. (3-18-22)()~~

02. Applications to Appropriate Water from ~~Sources Held by State in the Swan Falls Trust Water Area.~~ The Department will process an application to appropriate water from ~~sources on which the state holds water in trust, pursuant to Section 203B(5), Idaho Code, will be processed in a three-step analysis. Evaluation will consider the purposes of "trust water" established in Section 42-203B, Idaho Code~~ Swan Falls Trust Water Area under Section 040 and will evaluate the application as follows:- (3-18-22)()

a. First, ~~the proposed use must be evaluated using the procedures and the Director will evaluate the application under Subsection 045.01 using the~~ criteria of Section 42-203A(5), Idaho Code. ()

i. If the application is seeking to appropriate unappropriated water within the Swan Falls Trust Water Area rather than a reallocation of trust water and it satisfies all criteria of Section 42-203A(5), Idaho Code, ~~are satisfied,~~ the Director may approve the application ~~may be approved~~ for unappropriated water. An application for unappropriated water within the Swan Falls Trust Water Area must demonstrate the public waters sought for appropriation exceed the amount necessary to satisfy all existing water rights, including the water rights held in trust. ()

ii. If the application does not satisfy the criteria of Section 42-203A(5) ~~(b, c, d, and e) through (g),~~ Idaho Code, or is found to reduce the water available to an existing water rights other than ~~those a water right~~ held in trust ~~by the state,~~ the Director may deny the application ~~will be denied.~~ ()

iii. If the application satisfies all criteria of Section 42-203A(5), Idaho Code, except ~~Section 42-~~

~~203A(5)a, Idaho Code, but it is found to reduce the amount of water available to a water right held in trust by the state, the application will be reviewed under criteria of Section 42-203C, Idaho Code it is seeking a reallocation of trust water and the Director will review the application under Paragraph 025.02.b. (3-18-22)()~~

~~b. Second, Section 42-203C, Idaho Code, requires a determination of whether the proposed use will significantly reduce, individually or cumulatively with existing uses and other uses reasonably likely to exist within twelve months of the proposed use, the amount of if the application is seeking a reallocation of trust water available to the holder of the Director will evaluate the application under Subsection 045.02 to determine whether it will cause a significant reduction to a water right used for power production that is defined by agreement held in trust pursuant to subsection (5) of Section 42-203C(1), Idaho Code (hereinafter termed "significant reduction"). ()~~

~~i. If a the application will not cause a significant reduction will not occur to a water right held in trust pursuant to Section 42-203C(1), Idaho Code, the Director may approve the application may be approved without an additional evaluation of the public interest criteria of Section 42-203C(2), Idaho Code. ()~~

~~ii. If the application will cause a significant reduction to a water right held in trust pursuant to Section 42-203C(1), Idaho Code, the Director will review the application under Paragraph 025.02.c. (3-18-22)()~~

~~c. Third, based upon a finding of if the application is seeking a reallocation of trust water and will cause a significant reduction to a water right held in trust, the Director will evaluate the application under Subsection 045.03 to determine if the proposed use will be evaluated reduction is in terms of the public interest criteria of pursuant to Section 42-203C(2), Idaho Code. (3-18-22)()~~

~~i. If the application is in the public interest, the Director may approve the application. ()~~

~~ii. If the application is not in the public interest, the Director may deny the application. ()~~

~~026.—029. (RESERVED)~~

~~030. LOCATION AND NATURE OF TRUST WATER (RULE 30):~~

~~01. Snake River Water Rights Agreement. The legislation ratifying the Snake River water rights agreement between the state of Idaho and Idaho Power Company places in trust a part of the flows available to Idaho Power Company under its hydropower water rights in the Snake River Basin between Swan Falls Dam and Milner Dam. The flows subject to the trust water provisions and reallocation under Section 42-203C(2), Idaho Code, are as follows: (3-18-22)~~

~~a. Trust water flows under the Snake River water rights agreement are located in the Snake River between Swan Falls Dam located in Section 18, Township 2 South, Range 1 East, Boise Meridian (B.M.) and Milner Dam located in Sections 28 and 29, Township 10 South, Range 21 East, Boise Meridian (B.M.) and all surface and groundwater sources tributary to the Snake River in that reach. (3-18-22)~~

~~b. Surface water and groundwater tributary to the Snake River upstream from Milner Dam is not trust water. After giving notice and considering public comment, the Director will designate the area in which groundwater is presumed to be tributary to the Snake River upstream from Milner Dam. Modification or changes in the designated boundary may be made only after providing notice and considering public comment. The area presently designated as tributary to the Snake River in the Milner Dam to Swan Falls Dam reach is appended to these rules (See Attachment A in APPENDIX A located at the end of this chapter), for information purposes only. (3-18-22)~~

~~e. Trust water flows under the Snake River water rights agreement are those occurring in the Snake River and tributaries in the geographic area designated in Subsection 030.01.a. that exceed the established minimum stream flows but are less than the water rights for hydropower generating facilities in the Swan Falls Dam to Milner Dam reach of Snake River, to the extent such rights were unsubordinated prior to the Snake River water rights agreement. Minimum average daily flows have been established by action of the Board and legislature at the U.S. Geological Survey gauging station located near Murphy (Section 35, Township 1 South, Range 1 West B.M.) in the amount of three thousand nine hundred (3900) cfs from April 1 to October 31 and five thousand six hundred (5600) cfs from November 1 to March 31, and at Milner gauging station located in Section 29, Township 10 South, Range 21~~

~~East, B.M. in the amount of zero (0) cfs from January 1 to December 31. (3-18-22)~~

~~**02. Trust Water Created by State Action.** Section 42-203B(3), Idaho Code, provides that trust water can be created by state action establishing a minimum flow without an agreement with the holder of the hydropower water right. Allocation of trust water so established will be pursuant to state law except the criteria of Section 42-203C, Idaho Code, will not be considered. (3-18-22)~~

~~**03. Sources of Public Water Not Trust Water.** The following sources of public water are not trust water and are not subject to the public interest provisions of Section 42-203C, Idaho Code: (3-18-22)~~

~~**a.** Sources or tributaries to sources upon which no hydropower generating facilities are located downstream within the state of Idaho. (3-18-22)~~

~~**b.** Sources or tributaries to sources which have a state hydropower water right permit or license or Federal Energy Regulatory Commission license which have not been subordinated, and the state of Idaho has not entered into an agreement with the holder of the hydropower water right pursuant to Section 42-203B(2), Idaho Code, and the State of Idaho has not established a minimum stream flow for purposes of protecting hydropower generation. (3-18-22)~~

~~**c.** Sources or tributaries to sources for which a state hydropower water right permit or license, or the Federal Energy Regulatory Commission license included a subordination condition. Such flows are considered to be public waters subject to appropriation under the provisions of Section 42-203A, Idaho Code. (3-18-22)~~

~~**d.** Flows in excess of established rights including rights used for hydropower purposes. Such flows are unappropriated waters subject to allocation under Section 42-203A, Idaho Code. (3-18-22)~~

~~**e.** Flows in the Snake River upstream from Milner Dam and all surface and groundwater tributaries to that reach. Such flows are subject to allocation under Section 42-203A, Idaho Code, without consideration of water rights existing downstream from Milner Dam (Reference: 42-203B(2), Idaho Code). (3-18-22)~~

~~03126. -- 034. (RESERVED)~~

035. APPLICATION REQUIREMENTS (RULE 35).

01. General Provisions. ()

~~**a.** No person shall commence the construction of any project works or commence the diversion of the public water or trust water of the state of Idaho from any source without first having filed an application for permit to appropriate the water or other appropriate form with the department and received approval from the Director, unless exempted by these rules or by statute. (3-18-22)~~

~~**b.** Any person proposing to commence a diversion of the public water or the trust water of the state of Idaho from a groundwater source for single family domestic purposes is exempt from the application and permit requirements of Subsection 035.01.a. (3-18-22)~~

~~**c.** Any person watering livestock directly from a natural stream or natural lake without the use of a constructed diversion works is exempt from Subsection 035.01.a. (3-18-22)~~

~~**da.** All applications for permit to appropriate public water or trust water of the state of Idaho shall An application must be filed: ()~~

~~**i.** On the Department form provided by the department en titled "Application for Permit to Appropriate the Public Waters of the State of Idaho," and include all necessary information as described in with any application attachments: ()~~

~~**ii.** In accordance with IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources," Section 053, either on paper, digitally in PDF format, or through the Department's online filing process;~~

- ()
- iii. With the applicable filing fee prescribed in Section 42-221A, Idaho Code; and ()
- iv. With all necessary information under Subsection 035.03.~~An application for permit that is not complete as described in~~ ()
- b. The filing fee in Section 42-221A, Idaho Code, is based on the total rate (in cfs) or the total storage volume (in af) to be appropriated. Whenever the application diversion rate and storage volume elements lead to a different filing fee, the higher amount is the applicable filing fee. ()
- c. The Department will determine whether an application is acceptable for filing under Subsection 035.03 or if it requires clarification or correction. ()
- d. ~~When an application is not acceptable for filing under Subsection 035.03, the Department will not be accepted for filing and will be returned along with any~~ accept the application and will proceed as directed in Section 42-204, Idaho Code. Filing fees submitted for an unacceptable application will be refunded to the person submitting the application applicant if the application is not timely clarified or corrected. No~~An unacceptable application does not establish a priority~~will be established by an incomplete application date. Applications meeting the requirements of ()
- e. ~~When an application is accepted for filing but requires clarification or correction of the information required by Subsection 035.03, the Department will be accepted for filing and will be endorsed by the department as to the time and date received. The acceptability of applications requiring clarification or corrections shall be determined by the Director~~ proceed as directed in Section 42-204, Idaho Code. (3-18-22)()
- e. ~~The department will correspond with the applicant concerning applications which have been accepted for filing by the department which require clarification or correction of the information required by Subsection 035.03. If the additional or corrected information is supplied after thirty (30) days, the priority date of the application will be determined by the date the additional or corrected information is received by the department unless the applicant has requested within the thirty (30) day period additional time to provide the information, has shown good reasons for needing additional time, and the Director has granted additional time.~~ (3-18-22)
- f. ~~Failure to submit the additional or corrected information is cause for the Director to void the department's records of the application.~~ (3-18-22)
- 02. Effect of an Application.** ()
- a. ~~Any application that seeks to appropriate water from a source upon which the state holds trust water shall be considered an application for appropriation of unappropriated water. If the Director determines unappropriated water is not available, the application, if otherwise approvable, will be reviewed for compliance with provisions of Section 42-203C, Idaho Code.~~ (3-18-22)
- ba. ~~The priority date of an application for unappropriated or trust water is established as of the time and date the Department receives the application is received in complete a form along~~ acceptable for filing with the statutory filing fee in any official office of the department. The priority date of the application remains fixed unless changed by an action of the Director in accordance with applicable law. (3-18-22)()
- eb. ~~An application for permit to appropriate water is not a water right and does not authorize diversion or use of water until approved by the Director in accordance with~~ statutes the laws in effect at the time the application is approved. (3-18-22)()
- dc. ~~An applicant's interest in an application for permit to appropriate water is personal property. An assignment of applicant may convey (assign) its interest in an application to another party or entity. The person or entity to whom the application is conveyed must include evidence satisfactory to notify the Director that Department of the application was not filed for speculative purposes~~ assignment, in writing, within thirty (30) days after the assignment and notify other parties in the contested case pursuant to IDAPA 37.01.01, "Rules of Procedure of the

Idaho Department of Water Resources,” Section 202. (3-18-22)()

03. Requirements for Applications ~~to Be~~ Acceptable for Filing. (3-18-22)()

~~a.~~ The following information shall be shown on a ~~An application is acceptable for filing if it is filed in a manner stated in Paragraph 035.01.a. and includes the following information: for permit form and submitted together with the statutory fee to an office of the department before the application for permit may be accepted for filing by the department.~~ (3-18-22)()

~~ia.~~ The Applicant’s name and post office mailing address of the applicant shall be listed. ()

~~i.~~ If the application applicant is in the name of a corporation, also include the names and addresses of its all directors and officers shall be provided. ()

~~ii.~~ If the application applicant is filed by or on behalf of a partnership, limited liability company, or joint venture, the application shall provide also include the names and addresses of all partners or members and designate the name of the managing partner or member, if any. (3-18-22)()

~~ib.~~ The name of the Source of water source sought to be appropriated shall be listed. ()

~~i.~~ Identify only one (1) water source unless the application is for a single interconnected system that will divert water from more than one (1) source. ()

~~ii.~~ For a surface water sources, the source of water shall be identified by include the official geographic name listed on the U.S. United States Geological Survey (USGS) Quadrangle map. If the surface water source has is not been named on the USGS Quadrangle map, it can be described describe it as an unnamed water body, such as “unnamed stream.” but For surface water sources, also identify the system first named stream or river to which it the source is tributary shall be identified. If the water source sinks into the ground prior to reaching a stream named on the USGS Quadrangle map, describe the “tributary to” stream as “sinks.” If the water source flows into a stream named on the USGS Quadrangle map for part of the year and sinks into the ground for the other part of the year, identify the “tributary to” stream as the named stream on the USGS Quadrangle map. ()

~~iii.~~ For groundwater sources a water source under the ground surface, identify the source shall be listed as “ground water.” Only one source shall be listed on an application unless the application is for a single system which will have more than one source. (3-18-22)()

~~iv.~~ For a low temperature geothermal resource, state how the source will be used primarily for its heat value and secondarily for its value as water or how the use qualifies for an exemption pursuant to Section 42-233(1), Idaho Code. ()

~~v.~~ For an application within the Swan Falls Trust Water Area, state if the application is seeking unappropriated water or a reallocation of trust water. ()

~~ic.~~ The Legal description of the point of diversion and place of use shall be listed. ()

~~i.~~ Describe the location of the point(s) of diversion and the place of use shall be described to the nearest forty (40) acre subdivision or U.S. United States Government Lot of the Public Land Survey System. The location of springs shall be described to the nearest ten (10) acre tract. ()

~~ii.~~ Subdivision names, lot and block numbers, and any name in local common usage for the point of diversion, or place of use shall may be included in the comments section of the application form. ()

~~iii.~~ If irrigation is listed as a purpose of use is proposed, state the number of acres to be irrigated to the nearest whole acre in each forty (40) acre subdivision of the place of use shall be listed. For an application proposing irrigation of less than ten (10) acres, acreage shall be shown to the nearest one-tenth (0.1) acre. The number of acres per forty (40) acre subdivision is not required when the place of use is a generally described place of use for an

existing water right or permit. If the proposed place of use is a generally described place of use with an established digital boundary authorized by a water right or permit, state the name of the generally described place of use, list the water right number serving the generally described place of use, attach a map depicting the generally described place of use boundary, and state the total number of acres to be irrigated. (3-18-22)()

iv. If the application proposes water use for municipal purposes or fire protection by a municipal provider within a service area, the service area need not be described by legal description. Describe the service area in terms sufficient to identify the general location where water will be used and attach a map depicting the service area. ()

iv.d. The quantity of water to be diverted shall be listed as a ()

i. Include the rate of flow in cubic feet per second cfs and/ or as a the volume of water to be stored in acre feet af per year for each purpose of beneficial use requested proposed, using values with a maximum of three (3) significant figures with no more precision than hundredths for rate and tenths for volume. (3-18-22)()

vii. Impoundment (storage) applications shall show For an application to store water, the maximum acre feet requirement af per year which shall may not exceed the storage facility capacity of the impoundment structure unless the application describes includes a plan of operation for filling the reservoir facility more than once per year. The refill plan may include refills for seepage, evaporation, use from storage, and other purposes the applicant intends to replace in the storage facility throughout the year. (3-18-22)()

viii. Every For an application to store water in an off-stream storage impoundment application shall show facility include a maximum rate of diversion to storage as well as and the total storage volume. (3-18-22)()

vii.e. The nature of the proposed beneficial Beneficial use or uses of the water shall be listed. ()

i. While the purpose may be described Describe the proposed use of water. When a narrative or other application material describes details of the proposed use, the description used in the purpose of use field may be in general terms such as irrigation, industrial, or municipal, a description sufficient to identify the proposed use or uses of the water shall also be included. (3-18-22)()

ii. For a municipal purposes application, attach a complete "Municipal Water Right Application Checklist." The "Municipal Water Right Application Checklist" is a form available on the Department's website or from the Department upon request. ()

iii. For a municipal purposes application that proposes to appropriate water for reasonably anticipated future needs, include justification for the planning horizon, the anticipated service area at the end of the planning horizon, the anticipated population within the anticipated service area at the end of the planning horizon, and the anticipated water demand within the anticipated service area at the end of the planning horizon. Also include a gap analysis showing the extent to which an existing water right will not be sufficient to meet the anticipated water demand at the end of the planning horizon. ()

iv. For a municipal purposes application that does not propose to appropriate water for reasonably anticipated future needs, include a water requirement narrative with a map of the service area, current water needs, water needs after five (5) years, and any existing plan for conveying ownership of the water right to a subdivision homeowner's association or entity other than individual land parcel owners. ()

v. For an application proposing multi-home domestic use where the applicant intends to convey a portion of the place of use land to an individual parcel or lot owner, describe the applicant's plan, if any, to keep the permit in single ownership by conveying the permit to a homeowner's association, water system operator, or other entity prior to conveying an individual parcel or lot with an appurtenant portion of the permit. ()

viii.f. The period of each year during which water will be diverted, stored and beneficially used shall be listed use. ()

- i. A period of use must be listed for each beneficial use proposed in the application. ()
- ii. The period of use for irrigation purposes shall use, the period must coincide with the annual periods season of use shown in Figure 1 in APPENDIX B (located at the end of this chapter), unless it can be shown to the satisfaction of the Director established by the Department. The Department established irrigation season of use is available on the Department's website or from the Department upon request. If a longer season of use is proposed, the application must justify that a different period the longer season of use is necessary. (3-18-22)()
- ix.g. The proposed method of diversion, conveyance system and system for distributing and using the water shall be described Description of the project works. (3-18-22)()
- h. Any other water right used at the place of use for the same purpose. Include the water right number or name of the delivery organization, such as a municipal provider, canal company, irrigation district, or other delivery entity that supplies water for the proposed use at the proposed place of use. Also state if the applicant is entitled to distribution of water from a water delivery entity, but the entity's distribution system is not capable of delivering water to the proposed place of use. ()
- i. Ownership or other legal access to the point of diversion, place of use, and conveyance system. If a person or entity other than the applicant owns the land at the point of diversion, place of use, or where the conveyance system will be established, include a description of the arrangement enabling the applicant to access the land for the purpose proposed in the application. ()
- x.i. The period of time required for completion of the to complete project works and application of apply water to the proposed beneficial use shall be listed. This While a permit holder may request a permit development period extension pursuant to Section 42-204, Idaho Code, the period of time shall stated on an application may not exceed the time required to diligently and uninterruptedly apply the water to beneficial use and shall not exceed five (5) years unless the application proposes municipal purposes for reasonably anticipated future needs. (3-18-22)()
- xi.k. A Map or plat of sufficient scale (not less than two (2) inches equal to one (1) mile) to show the proposed project proposed shall be included. The map or plat shall agree with the legal descriptions and other information shown on the application. (3-18-22)()
- xii.l. The application form shall be signed by the applicant listed on the application Applicant's signature or evidence must be submitted to show that the signatory has authority to sign the application on behalf of the applicant. ()
- i. For an application in more than one (1) name shall be signed by, each applicant must sign the application unless the names are joined by "or" or "and/or" connects the applicant names. (3-18-22)()
- xiii.i. Applications For an application by corporations, companies or municipalities a corporation, company, municipality, governmental entity or organization, or other organizations shall be signed organization, include the signature and title of by an officer of the corporation or company or an elected official of the municipality or an individual authorized by the governmental entity or agency or other organization to sign the application. The signator's title shall be shown with the signature. Alternatively, the application may be signed by an authorized agent of the applicant in accordance with Subparagraph 035.03.l.iii. (3-18-22)()
- xiv.iii. Applications may be signed by a person having a current "If the signatory is an authorized agent of the applicant, include a power of attorney" or other documentation demonstrating the signatory has authority to sign on behalf of authorized by the applicant. A copy of the "If the signatory is a licensed attorney, power of attorney" shall be included with the application or other documentation is not required. (3-18-22)()
- xv. Applications to appropriate water in connection with Carey Act or Desert Land Entry proposals shall include evidence that appropriate applications have been filed for the lands involved in the proposed project. (3-18-22)
- xvi. The application form shall be accompanied with a fee in the amount required by Section 42-221A;

Idaho Code: (3-18-22)

04. Amended Applications. ()

a. ~~Applications for permit shall be amended whenever significant changes~~An applicant or the applicant's agent must amend an application if the applicant intends to change the place purpose of use, period or nature of the intended use, method or location of diversion or proposed use of the water amount of diversion, point of diversion, place of use, or make other substantial changes, from that shown on the pending application are intended. An application shall be amended if the proposed change will result in a greater rate of diversion or depletion (see Subsection 035.04.e.), if the point of diversion, place of use, or point of discharge of the return flow are to be altered, if the period of the year that water will be used is to be changed, or if the nature of the use is to be changed. The Department may clarify a source or tributary name or the irrigation period of use that do not meet Paragraphs 035.03.b. and 035.03.f. requirements by documenting the official record without requiring the applicant to amend the application. (3-18-22)()

b. An applicant or the applicant's agent may amend an application ~~can be amended~~ to clarify the name of the source of water but may not ~~be amended~~ amend an application to change the source of water. (3-18-22)()

c. An applicant or the applicant's agent may not amend a municipal purposes application not originally seeking water for reasonably anticipated future needs to seek water for reasonably anticipated future needs. ()

d. An amendment ~~which that~~ increases the rate of diversion, increases the volume of water diverted per year ~~or the volume of water depleted~~, lengthens the period of use, or adds an additional ~~purpose of~~ beneficial use ~~shall will~~ result in the Department changing the priority ~~of the application for permit being changed~~ date to the date the Department received the amended application ~~is received by the department.~~ (3-18-22)()

e. An ~~application for permit~~ applicant or the applicant's agent may ~~be amended~~ amend an application by: ()

i. ~~endorsement by the applicant or his agent~~ Striking each item to be changed on the original application ~~for permit form which endorsement shall be initialed and dated, and initialing and dating each change;~~ ()

ii. If the changes required to the information on the application are, in the judgment of the Director, substantial enough to cause confusion in interpreting the application form, the Filing a new application form designated as an amended application ~~shall be submitted on a new application for permit form to be designated as an amended application; or~~ (3-18-22)()

iii. Changing an application electronically via the Department's online filing process. ()

f. An amended application shall be accompanied by the additional fee required by Section 42-221A, Idaho Code, ~~if an amendment increases~~ the total rate of diversion rate or total volume of storage volume requested ~~is increased and by the fee required by Section 42-221F, Idaho Code, for readvertising if notice of the original application has been published,~~ the amended application must include any additional filing fee required by Section 42-221A, Idaho Code. (3-18-22)()

g. If the applicant's name or mailing address changes, the applicant ~~shall~~ or the applicant's agent must notify the Department of the change in writing ~~notify the department of the change.~~ (3-18-22)()

036. DELAYED PROCESSING.

An applicant may request in writing that the Department delay commencement or interrupt processing of the applicant's application for a period not to exceed one (1) year. The Department may approve the request unless the delay will injure existing water rights, the applicant seeks the delay for speculative purposes, or the delay does not serve the interest of the people of Idaho. The Department may approve a request for delay for a shorter period or upon conditions. Upon written request, the Department may renew the authorized delay successive times as long as the delay meets the requirements stated above. ()

0376. -- 039. (RESERVED)

040. PROCESSING APPLICATIONS FOR PERMIT ~~AND REPROCESSING PERMITS (RULE 40).~~

- ~~01. General. (3-18-22)~~
- ~~a. Unprotested applications, whether for unappropriated water or trust water, will be processed using the following general steps: (3-18-22)~~
- ~~i. Advertisement and protest period; (3-18-22)~~
 - ~~ii. Department review of applications and additional information, including department field review if determined to be necessary by the Director; (3-18-22)~~
 - ~~iii. Fact finding hearing if determined to be necessary by the Director; (3-18-22)~~
 - ~~iv. Director's decision; (3-18-22)~~
 - ~~v. Section 42-1701A, Idaho Code, hearing, if requested; and (3-18-22)~~
 - ~~vi. Director's decision affirmed or modified. (3-18-22)~~
- ~~b. Protested applications, whether for unappropriated water or trust water, will be processed using the following general steps: (3-18-22)~~
- ~~i. Advertisement and protest period; (3-18-22)~~
 - ~~ii. Hearing and/or conference; (3-18-22)~~
 - ~~iii. Department review of applications, hearing record and additional information including department field review if determined to be necessary by the Director. (3-18-22)~~
 - ~~iv. Proposed decision (unless waived by parties); (3-18-22)~~
 - ~~v. Briefing or oral argument in accordance with the department's adopted Rules of Procedure. (3-18-22)~~
 - ~~vi. Director's decision accepting or modifying the proposed decision. (3-18-22)~~
- ~~c. The Director's decision rejecting and denying approval of an application for permit filed for diversion from a source previously designated as a critical groundwater area or upon which a moratorium has previously been entered may be issued without advertisement of the application. (3-18-22)~~
- ~~d. An applicant may request in writing that commencement of processing of his or her application be delayed for a period not to exceed one (1) year or that processing be interrupted for a period not to exceed six (6) months. The Director at his discretion may approve the request unless he determines that others will be injured by the delay or that the applicant seeks the delay for the purpose of speculation, or that the public interest of the people of Idaho will not be served by the delay. The Director may approve a request for delay for a shorter period of time or upon conditions, and may renew the approval upon written request. (3-18-22)~~
- 021. Public Notice Requirement. (3-18-22)()**
- a. Applications for permit which have not been advertised Publication of an application will be pursuant to Section 42-203A, Idaho Code. (3-18-22)()**
- i.b. Advertisement of applications for permit proposing a rate of For an application that propose ds**

diversion ~~in excess~~ of ten (10) cfs ~~or less~~ or storage of one thousand (1,000) ~~AF or less shall comply with Section 42-203A, Idaho Code. The first required advertisement will be published on the first or third Thursday of a month when published in daily newspapers and on the first or third publishing day of the month for weekly newspapers. (3-18-22)~~

~~ii. Advertisement of applications for permit in excess of the amounts in Subsection 040.02.a.i. shall comply with Subsection 040.02.a.i. and shall also be published in a newspaper or newspapers to achieve statewide circulation. (3-18-22)~~

~~iii. Statewide circulation with respect af, the Department will accomplish statewide circulation pursuant to Section 42-203A(2), Idaho Code, ~~shall be obtained~~ by publication of a legal notice at least once each week for two (2) successive weeks in: ()~~

~~i. a newspaper, as defined in Section 60-106, Idaho Code, of general circulation in the county in which the point of diversion is located; and ()~~

~~ii. by publication of a legal notice at least once each week for two (2) successive weeks in a At least one (1) daily newspaper, as defined in Section 60-107, Idaho Code, ~~published in each of the department's four (4) administrative regions and determined by that~~ the Director ~~to be determines is~~ of general circulation within ~~each of the department's four (4) administrative regions, within which it is published. The administrative regions of the department are identified on Figure 2 in APPENDIX C (located at the end of this chapter). The names of newspapers used for statewide publication are available from any department office. (3-18-22)()~~~~

~~b. Applications for permit which have been advertised. (3-18-22)~~

~~i. Notice of applications for permit for water from the Snake River between Swan Falls Dam and Milner Dam or surface and groundwater tributaries to that reach of Snake River which were advertised prior to July 1, 1985 and have been held without final action by the department due to the Swan Falls controversy shall be readvertised by the Director in accordance with Subsection 040.02.a. as appropriate to allow opportunity for protests to be entered with respect to the public interest criteria of Section 42-203C(2), Idaho Code. (3-18-22)~~

~~ii. Applications for permit from the Snake River or surface and groundwater sources upstream from Milner Dam which have been held without action due to the Swan Falls controversy may be processed without readvertisement. (3-18-22)~~

~~iii. The applicant shall pay the readvertisement fee provided in Section 42-221F, Idaho Code, prior to the readvertisement. (3-18-22)~~

~~iv. Failure to pay the readvertising fee within thirty (30) days after the applicant is notified to do so is cause for the Director to void the application. (3-18-22)~~

~~e. Notice of existing permits. (3-18-22)~~

~~i. Existing permits appropriating water held in trust by the state of Idaho issued prior to July 1, 1985, unless exempted by Subsection 040.02.c.ii. shall be subject to the review requirements of Section 42-203D, Idaho Code, and shall be readvertised in accordance with Subsection 040.02.a. as appropriate. The review is limited to the criteria described in Section 42-203C(2), Idaho Code. (3-18-22)~~

~~ii. Permits exempt from the provisions of Section 42-203D, Idaho Code, include: (3-18-22)~~

~~(1) Permits appropriating water not held in trust by the state of Idaho; (3-18-22)~~

~~(2) Permits for DCMI uses, stockwater uses and other essentially non-consumptive uses as determined by the Director; and (3-18-22)~~

~~(3) Permits for which an acceptable proof of beneficial use submittal was received by the department prior to July 1, 1985, or permits for which an acceptable proof of beneficial use was submitted after July 1, 1985, if evidence satisfactory to the Director has been received to show that the permit was fully developed prior to July 1,~~

~~1985 to the extent claimed on the proof of beneficial use.~~ (3-18-22)

c. The Department shall make an application accepted for filing available on the Department's website pursuant to Section 42-203A(3), Idaho Code. ()

d. Publication in the newspaper pursuant to Section 42-203A(2), Idaho Code, constitutes the official notice of the application. ()

~~iii.e.~~ Holders of permits subject to the review requirement of Section 42-203D, Idaho Code, shall pay in advance, upon the request of the Director, the readvertising An application amended under Paragraph 035.04.a. after publication requires republication. The applicant must file the amended application with the republication fee required by Section 42-221F, Idaho Code. (3-18-22)()

f. If a moratorium order is amended or repealed allowing the Director to continue processing an application previously held without final action, the Department will republish an application that was published prior to being held for the moratorium. Before republication, the applicant must pay the republication fee required by Section 42-221F, Idaho Code. ()

~~iv.g.~~ Failure to pay ~~the readvertising~~ a required republication fee within thirty (30) days after the applicant is notified to do so is cause for the Director to ~~cancel the permit~~ void the application, unless a processing delay is approved under Section 036. (3-18-22)()

h. The Director may deny approval of an application filed for diversion of ground water in a designated critical ground water area without publication of the application if the Director believes that there is insufficient water available for the proposed water use. An application that includes a mitigation plan proposing to offset injury to existing water rights will be published prior to the Director's evaluation of the application under Subsection 045.01. ()

032. Protests, Intervention, Hearings, and Appeals. ()

a. ~~Protests.~~ (3-18-22)

~~i.~~ Protests Section 42-203A, Idaho Code, governs protests against ~~the application~~ approval of an application for permit or against a permit being reprocessed ~~shall comply with the requirements for pleadings as described in the department's adopted. The Department will treat a protest as a pleading filed pursuant to IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources."~~ (3-18-22)()

~~ii.~~ Protests against the approval of an application for permit or against a permit being reprocessed will only be considered if received by the department after receipt of the application by the department and prior to the expiration of the protest period announced in the advertisement unless the protestant successfully intervenes in the proceeding. (3-18-22)

b. A protest may be filed on a form supplied by the Department or in any other format that includes the same information as the Department's form. ()

c. If a single protest names more than one (1) individual protestant and does not identify a representative, the Department will consider the first person listed to be the spokesperson and primary contact for service of documents for the group of individuals named as protestants. ()

~~iii.d.~~ General statements of The Department will not consider a general protest (blanket protests) against appropriations an application for a particular class of use or from a particular source of water ~~will not be considered as a valid protests by the Director. A protest must identify the specific application being protested.~~ (3-18-22)()

e. The Department will not accept a protest or petition to intervene unless the protest or petition to intervene is filed with the statutory filing fee required by Section 42-221L, Idaho Code, except any subdivision of the state, as defined in Section 67-2301, Idaho Code, is exempt from paying filing fees. ()

~~bf.~~ Intervention Requests/Petitions to intervene in a proceeding pending before the department shall protected application matter must comply with the Department's adopted IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources." (3-18-22)()

~~eg.~~ Hearings will be scheduled and held in accordance with the department's adopted pursuant to IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources." (3-18-22)()

~~dh.~~ Appeals. Any final decision of the Director Department may be appealed in accordance with Section 42-1701A, Idaho Code pursuant to IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources." (3-18-22)()

043. Burden of Proof. ()

a. Burden of proof is divided into has two (2) parts: first, the burden of coming forward with producing evidence to present a prima facie case, and second, the ultimate burden of persuasion. (3-18-22)()

b. The burden of coming forward with evidence is divided between the applicant and the protestant as follows For evaluation of Section 42-203A(5), Idaho Code, criteria for a protested application: (3-18-22)()

i. The applicant shall bear has the initial burden of coming forward with producing evidence for the evaluation of Section 42-203A(5)(a) through (d) and (f) through (g), Idaho Code, criteria (a) through (d) of and of producing evidence of which the applicant is knowledgeable for the evaluation of Section 42-203A(5)(e), Idaho Code; criteria. (3-18-22)()

ii. The applicant shall bear the initial burden of coming forward with evidence for the evaluation of criterion (e) of Section 42-203A(5), Idaho Code, as to any factor affecting local public interest of which he is knowledgeable or reasonably can be expected to be knowledgeable. The protestant shall bear has the initial burden of coming forward with producing evidence of which the protestant can reasonably be expected to be more cognizant than the applicant for those factors relevant to criterion (e) of Section 42-203A(5)(e), Idaho Code, of which the protestant can reasonably be expected to be more cognizant than the applicant criteria. (3-18-22)()

iii. The protestant shall bear the initial burden of coming forward with evidence for the evaluation of the public interest criteria of Section 42-203C(2), Idaho Code, and of demonstrating a significant reduction, except that the applicant shall provide details of the proposed design, construction, and operation of the project and directly associated operations to allow the impact of the project to be evaluated. (3-18-22)

~~e-iii.~~ The applicant has the ultimate burden of persuasion for the criteria of Section 42-203A(5)(a) through (g), Idaho Code, and the protestant has the ultimate burden of persuasion for the criteria of Section 42-203C, Idaho Code. criteria. (3-18-22)()

c. For evaluation of Section 42-203C, Idaho Code, criteria for a protested application: ()

i. The protestant has the initial burden of producing evidence under Subsection 045.02, that the application will cause a significant reduction, except that the applicant has the initial burden of producing evidence of the proposed project design, construction, operation, and directly associated operations of which the applicant is knowledgeable or can reasonably be expected to be knowledgeable. ()

ii. The protestant has the ultimate burden of persuasion on whether the application causes a significant reduction under Subsection 045.02 and whether it meets the public interest criteria in Section 42-203C(2), Idaho Code, under Subsection 045.03. ()

d. For an unprotected applications or permits to be reprocessed application or an application for which all protests have been resolved, the Director will evaluate the application, any information submitted pursuant to Subsections ~~040.05-e~~ 040.04, 045.01, 045.02, and 045.03, and information in the Department's files and records of the department, and the results of any studies the department may conduct to determine compliance with the appropriate Sections 42-203A(5) and 42-203C, Idaho Code. For an unprotected application or an application for which all protests have been resolved, the applicant has the burden of producing evidence and the ultimate burden of

~~persuasion on whether the application satisfies the applicable statutory~~ criteria. (3-18-22)()

~~e. In protested matters the Director will take official notice of information as described in the department's adopted Rules of Procedure, and will, prior to considering, circulate to the parties information from department studies and field examinations concerning the protested application or permit being reprocessed, if such information has not otherwise been made a part of the hearing record.~~ (3-18-22)

~~054. Additional Information Requirements.~~ ()

~~a. The Department may require the applicant to file any of the additional information under Paragraph 040.04.c. or 040.04.d. if the official record for the application does not contain sufficient information to evaluate the applicable criteria in Section 045 and other statutory criteria. The Department will notify the applicant of the additional information required.~~ ()

~~ab. For unprotested applications and permits being reprocessed, Unless the Department extends the time for filing, the additional information required by Subsection 040.05.e. shall be submitted must be filed within thirty (30) days after the Director Department notifies the applicant that the application or permit is being reviewed for decision of the additional information requirements.~~ ()

~~i. The Director Department may extend the grant an extension of time within which to submit file the required additional information upon if the applicant files a written request by the applicant and upon a showing of good cause.~~ ()

~~ii. Failure to submit If the required additional information is not filed within the time period allowed will be cause for, including any extensions granted, the Director to Department may void an the application, or to advance the priority of a permit being reprocessed by the number of days that the information submittal is late. The Director will provide opportunity for hearing as provided in Section 42-1701A, Idaho Code.~~ (3-18-22)()

~~b. For protested applications or protested permits being reprocessed, the information required by Subsection 040.05.e. may be requested by the Director to be submitted within thirty (30) days after notification by the Director, may be made a part of the record of the hearing held to consider the protest, or may be made available in accordance with any pre-hearing discovery procedures. Failure to submit the required information within the time period allowed will be cause for the Director to void an application or to advance the priority of a permit being reprocessed by the number of days that the information submittal is late.~~ (3-18-22)

~~c. The following information shall be submitted for applications to appropriate unappropriated water or trust water and for permits being reprocessed for trust water. The additional information submittal requirements of this rule are waived for filings which seek to appropriate five (5) cfs or less or storage of five hundred acre feet (500 AF) or less and for filings seeking reallocation of trust water which the Director determines will reduce the flow of the Snake River measured at Murphy Gauge by not more than two (2) acre-feet per day. For filings proposing irrigation as a purpose of use, the additional information is required if more than two hundred (200) acres will be irrigated. However, the Director may specifically request submittal of any of the following information for any filing, as he determines necessary. Information relative to the effect on existing water rights, Section 42-203A(5)(a), Idaho Code, shall be submitted as follows For purposes of evaluating the application under Subsection 045.01, the Department may request additional information, including but not limited to the following:~~ (3-18-22)()

~~i. For applications appropriating springs or surface streams with five (5) or fewer existing users, either the identification number, or the name and address of the user, and the location of the point of diversion and nature of use for each existing water right shall be submitted.~~ (3-18-22)

~~ii. For applications appropriating groundwater, a plat shall be submitted locating the proposed well relative to all existing wells and springs and permitted wells within a one-half mile radius of the proposed well.~~ (3-18-22)

~~iii. Information shall be submitted concerning any Project design, construction, or operation techniques which, or mitigation measures that the applicant will be employed to eliminate or reduce the impact on other water rights.~~ (3-18-22)()

~~d.~~ Information relative to sufficiency of water supply, Section 42-203A(5)(b), Idaho Code, shall be submitted as follows: (3-18-22)

~~ii.~~ Information shall be submitted on the The proposed project water requirements of the proposed project, including, but not limited to, the required diversion rate during the peak use period and the average use period, the volume to be diverted per year, the period of year that water is required, and the volume of water that will be consumptively used per year. (3-18-22)()

~~iii.~~ Information shall be submitted on The quantity of water available from the source applied for, including, but not limited to, information concerning the flow rates for surface water sources available during periods of peak and average project water demand, information concerning the properties of the aquifers that from which water is to be taken from for ground water sources, and information on other sources of supply that may be used to supplement the applied for water source proposed in the application. (3-18-22)()

~~e.~~ Information relative to good faith, delay, or speculative purposes of the applicant, Section 42-203A(5)(c), Idaho Code, shall be submitted as follows: (3-18-22)

~~iv.~~ The applicant shall submit Evidence documenting an interest in the lands necessary for all project works and the place of use including, but not limited to, copies of deeds, leases, easements, or applications for rights-of-way from federal or state agencies documenting a possessory interest in the lands necessary for all project facilities and the place of use or if such interest can be obtained by well sharing agreements. In the instance the land necessary to construct and operate the proposed project is privately-owned land not in the applicant's ownership, the applicant must submit evidence documenting that the applicant has an interest in the land, has authority to exercise eminent domain proceedings the applicant must show that appropriate actions are being taken to obtain the interest, or has another arrangement with the landowner establishing an interest. In the instance of a project diverting water from or conveying water across federally owned land, the applicant must submit evidence documenting that the applicant filed the appropriate form to request or initiate access and that access is authorized or a decision is pending. ()

~~v.~~ Applicants ~~F~~For hydropower uses shall also submit information required to demonstrate, evidence demonstrating compliance with Sections 42-205 and 42-206, Idaho Code. (3-18-22)()

~~vi.~~ The applicant shall submit copies of applications Requests for other needed permits, licenses, and approvals, ~~and~~ The applicant must keep the ~~d~~Department apprised of the status of the ~~applications~~ requests and any subsequent approvals or denials. (3-18-22)()

~~f.~~ Information Relative to Financial Resources, Section 42-203A(5)(d), Idaho Code, shall be submitted as follows: (3-18-22)

~~vii.~~ The applicant shall submit a current financial statement certified to show the accuracy of the information contained therein, or a financial commitment letter along with the financial statement of the lender or other evidence Evidence to show that it is reasonably probable that financing will be available to appropriate the water and ~~apply put~~ it to the beneficial use proposed. (3-18-22)()

~~viii.~~ If the applicant is a governmental entity proposing to use taxing, bonding, or contracting authority to raise the funds needed to commence and pursue project construction, a proposed project construction schedule and a plan describing how the applicant intends to utilize its taxing, bonding, or contracting authority in connection with the proposed project construction schedule. ()

~~ix.~~ The applicant shall submit plans and Plans, specifications, ~~along with and~~ estimated construction costs for the project works. ~~The plans shall be~~ definite enough to allow for determination of project impacts and implications. (3-18-22)()

~~x.~~ Information Relative to Conflict with the Local Public Interest, Section 42-203A(5)(e), Idaho Code, shall be submitted as follows: ~~The applicant shall seek comment and shall submit all letters of~~ Letters requesting comment and any responding comment on the proposed project construction and operation effects of the construction and operation of the proposed project from the governing body of the city ~~and/or~~ county ~~and/or~~ tribal

reservation within which the point of diversion and place of use are located, ~~the Idaho Department of Fish and Game, the Idaho Department of Environmental Quality, and;~~ any irrigation district ~~or~~ canal company, or other water delivery entity within which the proposed project is located; and from other people, entities, or agencies with interests in the local area that may be affected by the proposed water use as determined by the ~~Director~~ Department. (3-18-22)(____)

xi. Design, construction, operation techniques, or mechanical equipment that will be employed to achieve efficiency in conveyance or use of water and to minimize waste. (____)

xii. Evidence demonstrating compliance with the Idaho State Water Plan. (____)

~~hd.~~ The following information relative to the Public Interest Criteria of Section 42-203C(2), Idaho Code, shall be submitted by an applicant seeking reallocation of trust water for a project which the Director determines will reduce the flow of the Snake River by more than two (2) acre feet per day. For filings proposing irrigation as a purpose of use, the additional information is required if more than two hundred (200) acres will be irrigated. The Director may request any or all of the following information for any filing seeking the reallocation of trust water. For purposes of evaluating the application under Subsections 045.02 and 045.03, the Department may request additional information including, but not limited to, the following: (3-18-22)(____)

i. A project design and estimate of cost of development shall be submitted. For applications appropriating more than twenty-five (25) cfs, or ten thousand (10,000) AF of storage, or generating more than five (5) megawatts, the information shall be prepared and submitted by a qualified engineer licensed under the provisions of Chapter 12, Title 54, Idaho Code, unless waived by the Director. The design shall be definite enough to reflect the project's impacts and implications as required in subsequent rules. (3-18-22)

ii. If the project proposes development for irrigation purposes use, information shall be submitted on the crop rotation, including acreages acres under each crop type, for lands when newly developed land. Also the kinship, if any, of the operator of the land to be irrigated by the project to the applicant; the location and acreage of other irrigated land owned, leased, or rented by the applicant; a soil survey prepared in accordance with the Natural Resources Conservation Service irrigable land classification system; a schedule for bringing into production the project land; the name, address, and number of shares held by each shareholder if the applicant is a corporation; and evidence of tax-exempt status if the applicant is a corporation so claiming. (3-18-22)(____)

iii. Information shall be submitted concerning tThe number and kinds of jobs ~~that will be~~ created or eliminated as a direct result of project development including both the construction and operating phases of the project. If jobs are seasonal, the estimated number of months per year of employment ~~shall be submitted.~~ (3-18-22)(____)

iviii. For ~~applications or permits being reprocessed for~~ an application that proposes appropriating more than twenty-five (25) cfs, or more than ten thousand (10,000) ~~AF~~ af of storage, or generating more than five (5) megawatts of power, ~~information shall be submitted concerning~~ the changes to community services ~~that will be~~ required during the construction and operation phases of the project including, but not limited to, changes to schools, roads, housing, public utilities, and public health and safety facilities, if any. (3-18-22)(____)

iv. ~~Information shall be submitted concerning t~~The source of energy for diverting and using water for the project, the estimated instantaneous demand and total amount of energy that will be used, the efficiency of use, and energy conservation methods. (3-18-22)(____)

vi. ~~Information shall be submitted concerning t~~The location, amount, and quality of return flow water, and any water conservation features of the ~~proposed~~ project. (3-18-22)(____)

vii. ~~If the project proposes irrigation as a use, information shall be submitted concerning the kinship, if any, of the operator of the land to be irrigated by the project to the applicant, the location and acreage of other irrigated lands owned, leased, or rented by the applicant, the names, addresses and number of shares held by each shareholder if the applicant is a corporation, evidence of tax-exempt status if a corporation is so claiming, a soil survey prepared in accordance with the U.S. Soil Conservation Service irrigable land classification system, and a schedule for bringing into production the project lands.~~ (3-18-22)

vi. The availability, foreseeability, and cost of alternative energy sources to ameliorate the economic impact the proposed use will have on electric utility rates in the state of Idaho. ()

e. Unless the Director determines otherwise, information under Paragraph 040.04.c. or 040.04.d. is not required for: ()

i. An application that seeks to appropriate five (5) cfs or less, or store five hundred (500) af or less of unappropriated water. ()

ii. An application that proposes to use water from a source in the Swan Falls Trust Water Area to irrigate two hundred (200) acres or less or any other use that the Director determines will reduce the flow of the Snake River measured at the Murphy Gage by two (2) af per day or less. ()

f. Unless the Director determines otherwise, information under Paragraph 040.04.d. is required for an application that proposes to use water from a source in the Swan Falls Trust Water Area to irrigate more than two hundred (200) acres or any other use that the Director determines will reduce the flow of the Snake River measured at the Murphy Gage by more than two (2) af per day. ()

041. -- 044. (RESERVED)

045. EVALUATION CRITERIA ~~(RULE 45).~~

01. **Criteria for Evaluating All Applications to Appropriate Water.** The Director will use the following criteria in evaluating whether an application ~~to appropriate unappropriated water or trust water~~ should be approved, denied, approved for a smaller amount of water, or approved with conditions. (3-18-22)()

a. ~~Criteria for determining whether the proposed use will reduce the quantity~~ Reduction of water available under an existing water rights (injury) criteria. A proposed use will be determined to reduce the quantity of water under an existing water right ~~(i.e., injure another water right)~~ if: (3-18-22)()

i. The amount of water available under an existing water right will be reduced below the amount recorded by permit, license, decree, ~~or valid claim,~~ or the historical amount beneficially used by the water right holder under such recorded rights of such permit, license, decree, or claim, whichever is less; (3-18-22)()

ii. The holder of an existing water right will be forced to an unreasonable effort or expense to divert ~~his water for an~~ existing water right. ~~Protection~~ The reasonable pumping level provisions of Section 42-226, Idaho Code, govern protection of existing ground water rights ~~are subject to reasonable pumping level provisions of Section 42-226, Idaho Code;~~ or (3-18-22)()

iii. The proposed use would make the quality of the water available ~~to the holder of~~ unusable by an existing water right ~~is made unusable for the purposes of the existing user's right, and the water cannot~~ and could not ~~be~~ restored to usable quality without unreasonable effort or expense. (3-18-22)()

iv. An application that would otherwise be denied because of injury to another water right may be approved upon conditions ~~which will that~~ mitigate losses of water ~~to the holder of~~ for an existing water right, as determined by the Director. (3-18-22)()

v. ~~The provisions of Subsection 045.01.a.v. are not intended to require compensation or mitigation for loss of flow to holders of~~ If an existing water right is subordinated ~~hydropower rights or those from which trust water is reallocated to future beneficial uses which include the application's proposed use, the existing subordinated water right cannot be injured.~~ (3-18-22)()

b. ~~Criteria for determining whether the~~ Sufficiency of water supply ~~is insufficient for the proposed use.~~ The water supply will be determined to be insufficient for the proposed use if water is not available for an adequate time interval in quantities sufficient ~~to make the project economically feasible (direct benefits to applicant must exceed direct costs to applicant), unless there are noneconomic factors that justify application approval. In assessing~~

~~such noneconomic factors, the Director will also consider the impact on other water rights if the project is abandoned during construction or after completion, the impact on public resource values, and the cost to local, state and federal governments of such an abandonment~~ accomplish the proposed beneficial use. (3-18-22)(____)

~~c. Criteria for determining whether the application is made in good faith~~ criteria. The ~~criteria requiring that the Director evaluate~~ evaluation of whether an application is not made in good faith or whether it is made for delay or speculative purposes requires an analysis of the ~~intentions of the applicant with respect to the filing and diligent pursuit of applicant's intent to follow~~ application requirements and diligently pursue permit development. The judgment of another person's intent can only be based upon the substantive actions that encompass ~~the proposed project.~~ Speculation for ~~the purpose of~~ this rule is an intention to obtain a water right permit to ~~appropriate water~~ without the intention of applying putting the water to beneficial use with reasonable diligence. Speculation does not prevent an applicant from subsequently selling the ~~developed~~ project for a profit or from making a profit from the use of the water. An application will be found to have not been made in good faith if: (3-18-22)(____)

~~i. The applicant shall have legal access to the property~~ In the instance the land necessary to construct and operate the proposed project is privately owned and not in the applicant's ownership, has the applicant does not have an interest in the land at the time of the application filing or the authority to exercise eminent domain ~~authority to obtain such access;~~ or (____)

~~ii. In the instance of a project diverting water from or conveying water across~~ federally owned land ~~in state or federal ownership, has filed all applications for a right-of-way. Approval of applications involving Desert Land Entry or Carey Act filings will not be issued until the United States Department of Interior, Bureau of Land Management has issued a notice classifying the lands suitable for entry.~~ the applicant has not filed the appropriate form to request access; and or (3-18-22)(____)

~~iii. The applicant is not in the process of obtaining other permits,~~ licenses, and approvals needed to construct and operate the project; ~~and or~~ (3-18-22)(____)

~~iiiiv. There are no obvious impediments that prevent the successful completion of the project.~~ (3-18-22)(____)

~~d. Criteria for determining whether the applicant has sufficient financial resources to complete the project~~ criteria. The Director will find an applicant does not (3-18-22)

~~i. An applicant will be found to have sufficient financial resources;~~ (3-18-22)(____)

~~i. Upon a showing that it is not reasonably probable that funding is or will be available for project construction or upon a financial commitment letter acceptable to the Director. This showing is required as described in Subsection 040.05.c. or at the time the hearing provided by Subsection 040.05.c. is conducted;~~ or (3-18-22)(____)

~~ii. If the applicant is a governmental entity will be determined to have satisfied this requirement if it has the without~~ taxing, bonding, or contracting authority necessary to raise the funds needed to commence and pursue project construction in accordance consistent with the proposed project construction schedule. (3-18-22)(____)

~~e. Criteria for determining whether the project conflicts with the local public interest~~ criteria. The Director will consider the following, ~~along with any other factors he finds to be appropriate,~~ in determining whether the project will conflict with the local public interest: (3-18-22)(____)

~~i. The direct effect the project will have on the economy of public water resources that are of interest to people in the local area directly affected by the proposed water use as determined by the employment opportunities, both short and long term, revenue changes to various sectors of the economy, short and long term, and the stability of revenue and employment gains;~~ (3-18-22)

~~ii. The effect the project will have on recreation, including, but not limited to, fish and wildlife resources in the local area affected by the proposed use~~ habitat, aquatic life, recreation, aesthetic beauty,

~~transportation, navigation, water quality, and the effect of such use on the availability of water for alternative water uses that might be made within a reasonable time; and~~ (3-18-22)()

~~ii. Whether the proposed water use is consistent with Idaho's policy of securing the maximum use and benefit from the public water resources.~~ ()

~~iii. Although the Director has independent responsibility for the overall assessment and balancing of factors weighing on the local public interest, the Director will give due regard to expertise of other state and federal regulatory agencies charged with assessing individual issues under Subparagraphs 045.01.e.i. and ii., recognizing that it is not the primary job of the Department to protect all aspects of the health and welfare of Idaho's citizens and visitors.~~ ()

~~iv. The Director may condition approval of an application on compliance with orders, rules, requirements, and authorizations issued or to be issued by state and federal regulatory agencies with jurisdiction over subject matter relevant to the local public interest.~~ ()

~~iii.v. AnThe Director will deny an application which the Director determines will conflict that conflicts with the local public interest will be denied unless the Director determines that an over riding state or national need exists for the project or that the project can be approved with conditions to resolve the local public interest conflict with the local public interest.~~ (3-18-22)()

~~f. Conservation of water resources within the state of Idaho criteria. The application will be determined contrary to the conservation of water resources if:~~ ()

~~i. A diversion rate greater than two hundredths (0.02) cfs per acre is proposed, but is not necessary for irrigation use;~~ ()

~~ii. Design, construction, operation techniques, or mechanical equipment will not be employed to achieve a water use efficiency consistent with contemporary engineering, industry, and regulatory standards;~~ ()

~~iii. A proposed storage facility will exceed a seepage rate of zero point two (0.2) feet per day. This criterion does not apply if the proposed storage facility will be used as an infiltration basin for ground water recharge, an excavated pond filled by intercepting ground water, or an impoundment for irrigation use not exceeding five (5) af of stored water per acre of irrigation; or~~ ()

~~iv. The proposed irrigation use is not consistent with the requirements of Section 42-204A, Idaho Code.~~ ()

~~g. In the case where the place of use is outside the watershed or local area where the source of water originates, the project effect on the local economy or local area criteria. The Director will consider the extent of adverse effect on the local economy of the watershed or local area within which the source of water for the proposed use originates.~~ ()

~~h. Idaho State Water Plan criteria. The Director will consider whether the proposed diversion and use of water complies with the Idaho State Water Plan, including plans developed for specific geographic areas.~~ ()

02. Criteria for Evaluating Whether a Proposed Use an Application for Reallocation of Trust Water in the Swan Falls Trust Water Area Will Cause a Significant Reduction. ~~Reference: Under Section 42-203C(1), Idaho Code, and Subsection 025.02.b. For purposes of reallocating trust water made available by the Snake River water rights agreement, The Director will find an application for a reallocation of trust water within the Swan Falls Trust Water Area will cause a significant reduction when the proposed use, individually or cumulatively with other existing uses and uses reasonably likely to exist within twelve months of the proposed use, would significantly reduce the amount of trust water available to the user for hydropower generation purposes under a water right held in trust. The Director will presume an application for permit or a permit being reprocessed, a reallocation of trust water within the Swan Falls Trust Water Area will be presumed to not cause a significant reduction if the Director determines that it complies with the application meets both the individual and cumulative tests for evaluating significant reduction as provided in Subsections under Paragraphs 045.02.a. and 045.02.b.~~ (3-18-22)()

- a. Individual test ~~for evaluating significant reduction.~~ The Director will presume: ()
- i. A proposed use ~~will be presumed to not cause a significant reduction if~~ when fully developed and its impact is fully felt, ~~the use will that~~ individually does not reduce the flow of the Snake River ~~measured at the~~ Murphy ~~Gauge~~ Gage by ~~not~~ more than two (2) acre-feet per day: does not cause a significant reduction; and ()
- ii. An irrigation project of two hundred (200) acres or less diverting water from a source other than the Snake River or springs directly tributary to the Snake River located ~~anywhere~~ in the ~~Snake River Basin above~~ ~~Murphy Gauge~~ Gage ~~proposing to use trust water is presumed to~~ Swan Falls Trust Water Area will not reduce the flow at Murphy ~~Gauge~~ Gage by more than two (2) acre-feet per day and does not cause a significant reduction. ~~The~~ However, ~~this~~ presumption of this section is not applicable to ~~applications or permits to be reprocessed which~~ an application the Director determines to be part of a larger development. (3-18-22)()
- b. Cumulative test ~~for evaluating significant reduction.~~ A. The Director will presume a proposed use ~~will be presumed to not cause a significant reduction;~~ meets the cumulative test if the use, when fully developed and its impact is fully felt and when considered cumulatively with other existing uses and other uses reasonably likely to exist within twelve (12) months of the proposed use, will not deplete the flow of Snake River measured at Murphy ~~Gauge~~ Gage by more than:
- i. Forty thousand (40,000) ~~acre-feet~~ af per calendar year when considered with all other uses approved for development of trust water during that calendar year; (3-18-22)()
- ii. Forty thousand (40,000) ~~acre-feet~~ af per calendar year using a four (4) year moving average when considered with all other uses approved for development of trust water during that four (4) year period; and (3-18-22)()
- iii. Twenty thousand (20,000) ~~acre-feet~~ af per calendar year from filings approved for reallocation of trust water ~~which that~~ meet the criteria of ~~Subsection~~ Paragraph 045.02.a. (3-18-22)()
- c. ~~The Director will determine on a case-by-case basis from available information whether a permit to be reprocessed or~~ The presumptions in Subsection 045.02, Paragraph 045.02.a., and Paragraph 045.02.b. may be rebutted by the protestant. In rebutting the presumptions that an application ~~for trust water which exceeds the flow depletion limits of Subsection 045.02, or one which meets the flow depletion limits but has been protested, will~~ does not cause a significant reduction. ~~In making this determination,~~ the Director ~~will~~ may consider: (3-18-22)()
- i. The amount of the reduction in hydropower generation that the proposed use will cause individually and cumulatively with other uses expected to be developed within twelve (12) months of the proposed use as compared to the existing hydropower generation output of the affected facility ~~or facilities.~~ (3-18-22)()
- ii. The relative importance of the affected hydropower facility ~~or facilities~~ to other sources of electrical power generation available to the holder of the facility ~~or facilities.~~ (3-18-22)()
- iii. The timing of the reduction in hydropower generation both on an annual basis and on a long-term basis considering the lag time between the beginning of diversion by the proposed use and the resulting reduction in hydropower generation. ()
- iv. The effect of the reduction in hydropower generation on the unit cost of hydropower from the facility ~~or facilities~~ and the average cost of electrical power offered by the facility holder ~~of the facility.~~ (3-18-22)()
- v. The terms of contracts, mortgages, or regulatory permits and licenses which require the hydropower generation facility holder ~~of the hydropower generation facility~~ to retain the capability to produce hydroelectric power at a specific level. (3-18-22)()
- ~~d. Other provisions of these rules notwithstanding, applications or permits to be reprocessed proposing a direct diversion of water for irrigation purposes from the Snake River between Milner Dam and Swan~~

~~Falls Dam or from tributary springs in this reach are presumed to cause a significant reduction. (3-18-22)~~

~~e. Other provisions of these rules notwithstanding, applications or permits to be reprocessed for DCMI purposes are presumed to not cause a significant reduction. (3-18-22)~~

03. Criteria for Evaluating Whether an Application for Reallocation of Trust Water in the Swan Falls Trust Water Area is in the Public Interest Under Section 42-203C(2), Idaho Code. If the Director determines that ~~a proposed use an application for reallocation~~ of trust water ~~held by the state pursuant to Section 42-203B(5), Idaho Code, within the Swan Falls Trust Water Area~~ will cause a significant reduction, the Director will consider the criteria of Section 42-203C(2), Idaho Code, before ~~acting on the application or permit being reprocessed approving or denying the application.~~ The Director shall consider and balance the relative benefits and detriments for each factor required to be weighed under Section 42-203C(2), Idaho Code, to determine whether a proposed reduction of the amount of water available for power production serves the greater public interest. The Director shall evaluate whether the proposed use sought in the permit being reprocessed or the application will provide the greater benefit to the people of the state of Idaho when balanced against other uses for the same water resource. In The Director will presume an application is in the public interest if it proposes a use consistent with Paragraph 045.03.f. The Director will presume an application is not in the public interest if it proposes a use consistent with Paragraph 045.03.g. In evaluating the public interest criteria, no single public interest criterion will be entitled to greater weight than any other public interest criterion. When evaluating the public interest criteria, the Director will use the following guidelines consider: (3-18-22)()

a. The ~~Director will consider the~~ potential benefits, both direct and indirect, ~~and~~ that the proposed use would provide to the state and local economy. The economic ~~appraisal shall~~ evaluation will be based upon generally accepted economic analysis procedures which uniformly evaluate the following factors within the state of Idaho and the county ~~or counties~~ directly affected by the project: (3-18-22)()

i. Direct project benefits. ()

ii. Indirect benefits including net revenues to the processing, transportation, supply, service, and government sectors of the economy. (3-18-22)()

~~iii. Direct project costs, to include the opportunity cost of previous land use. (3-18-22)~~

~~iv.iii.~~ Indirect project costs, including verifiable costs to government in net lost revenue and increased regulation costs, verifiable reductions in net revenue resulting from losses to other existing instream uses, and the increased cost of replacing reduced hydropower generation from unsubordinated hydropower generating facilities. ()

b. The ~~Director will consider the~~ economic impact the proposed use would have upon the electric utility rates in the state of Idaho, and the availability, foreseeability, and cost of alternative energy sources to ameliorate such impact. These evaluations will include the following considerations: (3-18-22)()

i. Projections of electrical supply and demand for Idaho and the Pacific Northwest made by the Bonneville Power Administration and the Northwest Power Planning Council and information available from the Idaho Public Utilities Commission or from the electric utility from whose water right trust water is being reallocated. ()

ii. The long-term reliability of the substitute source and the cost of alternatives including the resulting impact on electrical rates. (3-18-22)()

c. The Director will consider wWhether the proposed use will promote the family farming tradition in the state of Idaho. For purposes of this evaluation the Director will presume the application promotes the family farming tradition if the total land to be irrigated by the applicant, including currently owned and leased irrigated land and land proposed to be irrigated in the application and other applications and permits of the applicant, does not exceed nine hundred sixty (960) acres. For an application proposing to divert water within the service area of a water delivery organization or to divert water through infrastructure shared by otherwise independent farming operations, the Director will evaluate this presumption on an individual basis within the relevant service area or place of use. This

presumption may be rebutted by the protestant under Paragraph 040.03.c.ii. If the presumption above does not apply, the Director will consider whether the proposed use has the following factors characteristics:- (3-18-22)()

i. The farming operation developed or expanded as a result of the application is operated by the applicant or a member of the applicant's family (spouse, parents or grandparents, lineal descendants, including those that are adopted, lineal descendants of parents, and spouse of lineal descendants); ()

ii. In the event the application is filed in the name of a partnership, one (1) or more of the partners operates the farming operation; and ()

iii. If the application is in the name of a corporation, the number of stockholders does not exceed fifteen (15) persons, and one (1) or more of the stockholders operates the farming operation unless the application is filed by an irrigation district, drainage district, canal company, or other entity authorized to appropriate water for landowners within the district or for stockholders of the company all of whom satisfy the presumption in Paragraph 045.03.c. ()

~~d. If the total land to be irrigated by the applicant, including currently owned and leased irrigated land and land proposed to be irrigated in the application and other applications and permits of the applicant, do not exceed nine hundred sixty (960) acres, the application will be presumed to promote the family farming tradition. (3-18-22)~~

~~e. If the requirement of Subsection 045.03.c.i. is not met, the Director will consider the extent the applicant conforms to the following characteristics: (3-18-22)~~

~~i. The farming operation developed or expanded as a result of the application is operated by the applicant or a member of his family (spouse, parents or grandparents, lineal descendants, including those that are adopted, lineal descendants of parents; and spouse of lineal descendants); (3-18-22)~~

~~ii. In the event the application is filed in the name of a partnership, one or more of the partners shall operate the farming operation; and (3-18-22)~~

~~iii. If the application is in the name of a corporation, the number of stockholders does not exceed fifteen (15) persons, and one or more of the stockholders operates the farming operation unless the application is submitted by an irrigation district, drainage district, canal company or other water entity authorized to appropriate water for landowners within the district or for stockholders of the company all of whom shall meet the family farming criteria. (3-18-22)~~

~~f.d. The Director will consider the promotion of~~Whether the proposed project will promote full economic and multiple use development of the water resources of the state of Idaho. ~~In this regard, the extent to which the project proposed complies with the following factors will be considered: (3-18-22)()~~

i. ~~Promotes~~ing and conformsing with the adopted Idaho State Water Plan; (3-18-22)()

ii. ~~Provides~~ing for coordination of proposed and existing uses of water to maximize the beneficial use of available water supplies; (3-18-22)()

iii. ~~Utilizes~~ing technology economically available to enhance water and energy use efficiency; (3-18-22)()

iv. ~~Provides~~ing multiple use of the water, including multipurpose storage; (3-18-22)()

v. ~~Allows~~ing opportunity for reuse of return flows; (3-18-22)()

vi. ~~Preserves~~ing or ~~enhances~~ing water quality, fish, wildlife, recreation, and aesthetic values; ~~or~~ (3-18-22)()

vii. ~~Provides~~ing supplemental water supplies for existing uses with inadequate supplies. (3-18-22)()

~~ge.~~ The Director will consider whether a proposed use, which includes irrigation, irrigation development will conform to a staged development policy of up to twenty thousand (20,000) acres per year or eighty thousand (80,000) acres in any four (4) year period in the Snake River drainage above Murphy Gauge Swan Falls Trust Water Area. In applying these criteria, the Director will consider the following: (3-18-22)()

~~i.~~ “Above Murphy gauge” means the Snake River and any of its surface or groundwater tributaries upstream from Murphy gauge which gauge is located on the Snake River approximately four (4) miles downstream from Swan Falls Dam from which trust water is to be reallocated; (3-18-22)

~~ii.~~ Twenty thousand (20,000) acres per year or eighty thousand (80,000) acres per four (4) year period is a four (4) year moving average of twenty thousand (20,000) acres per year of permits issued during a calendar year for irrigation development. If permits for development of less than twenty-thousand (20,000) acres are issued in a year, additional development in excess of twenty thousand (20,000) acres can be permitted in succeeding years. Likewise, if more than twenty thousand (20,000) acres is permitted in one year (recognizing that a single large project could exceed twenty thousand (20,000) acres) the permitted development in succeeding years must be correspondingly less to maintain no greater than a twenty thousand (20,000) acres per year average for any four (4) year period; (3-18-22)()

~~iii.~~ The criteria of Subsection Paragraph 045.03.g. applies to multiple-use projects with irrigation as a principal purpose. Projects which use irrigation as only an incidental purpose, such as the land treatment of waste, shall will not be included within this policy; and (3-18-22)()

~~iv.~~ iii. An The Director may approve an application determined by the Director to be otherwise approvable but found to exceed the acreage limitations of Paragraph 045.03.e., when considered with other applications approved for development, may be approved with conditions providing for prescribing the construction of project works and beneficial use of water to be commenced in a future year. (3-18-22)()

~~h.~~ No single public interest criterion will be entitled to greater weight than any other public interest criterion. (3-18-22)

~~if.~~ The Director will presume an application is in the public interest if it proposes: ()

~~i.~~ Until such time as the studies prescribed in Policy 32-I of the State Water Plan are completed and accepted by the Idaho Water Resource Board, applications and permits reprocessed which propose to divert water to surface storage To store surface water from the Snake River and surface tributaries upstream from the Murphy Gauging Station shall be presumed to satisfy the public interest criteria of Section 42-203C(2), Idaho Code. Applications or reprocessed permits which are approved prior to completion of the studies, will not be subject to additional reprocessing Gauge consistent with the Idaho State Water Plan; or (3-18-22)()

~~ii.~~ A state of Idaho-sponsored ground water recharge project that is consistent with the Idaho State Water Plan; or ()

~~iii.~~ Domestic, commercial, municipal, or industrial use that does not have a maximum consumptive use of more than two (2) af per day. ()

~~iv.~~ The presumptions of Subparagraphs 045.03.f.i. through iii. may be rebutted by the protestant under Paragraph 040.03.c. In evaluating a proposed rebuttal to these presumptions, the Director may consider the criteria in Paragraphs 045.03.a. through e. ()

~~j.~~ Applications for permit for trust water sources filed prior to July 1, 1985, for projects for which diversion and beneficial use was complete prior to October 1, 1984, are presumed to satisfy the public interest criteria of Section 42-203C(2), Idaho Code. (3-18-22)

~~kg.~~ Applications or permits to be reprocessed proposing a direct diversion of water for The Director will presume an application is not in the public interest if it proposes an irrigation purposes project diverting water directly from the Snake River between Milner Dam and Swan Falls Dam or from tributary springs in this reach are

~~presumed not to be in the public interest as defined by Section 42-203C, Idaho Code~~ directly tributary to the Snake River in the Swan Falls Trust Water Area. Such proposals, are presumed to prevent the full economic and multiple use of water in the Snake River Basin and to adversely affect hydropower availability and electrical energy rates in the state of Idaho. This presumption may be rebutted by the applicant. In evaluating a rebuttal to this presumption, the Director may consider the criteria in Paragraphs 045.03.a. through e. (3-18-22)()

~~f. Proposed DCMI uses which individually do not have a maximum consumptive use of more than two acre feet/day are presumed to meet the public interest criteria of Section 42-203C(2), Idaho Code, unless protested.~~ (3-18-22)

046. -- 049. (RESERVED)

050. CONDITIONS OF APPROVAL (RULE 50).

01. Issuance of Permits with Conditions. The Director may issue ~~a~~ permits with conditions to ensure compliance with: ()

~~a. the provisions of Title 42, Chapter 2, Title 42, Idaho Code, and other statutory duties, the public interest, and specifically to meet applicable laws and statutes;~~ ()

~~b. Efficient administration of water rights by priority date;~~ ()

~~c. The Idaho State Water Plan as required by Section 42-1734B(4), Idaho Code;~~ ()

~~d. The criteria of Section 42-203A, Idaho Code; and to meet~~ ()

~~e. Requirements of Section 42-203B, Idaho Code, including conditions to subordinate a permit for hydropower generation to all rights to the use of water, other than hydropower, and limit a permit for hydropower generation to a term in connection with the power project;~~ ()

~~f. the Requirements of Section 42-203C, Idaho Code, to the fullest extent possible including conditions to promote efficient use and conservation of energy and water;~~ (3-18-22)()

~~g. The intent of agreements entered into by and between the state of Idaho and holders of water rights for power purposes and the state of Idaho's obligation to continually review the reallocation of trust water consistent with Section 42-203, Idaho Code; or~~ ()

~~h. The requirement to obtain authorization necessary to access the point of diversion, place of use, or to convey water across federal land prior to diversion and use of water under the permit.~~ ()

~~**02. Requirements to Mitigate Impact of Flow Depletion.** Permits to be reprocessed or applications approved to appropriate water from the main stem of the Snake River between Milner and Murphy gauging station for diversion to off-stream storage during the period November 1 to March 31 shall include requirements to mitigate, in accordance with the State Water Plan, the impact of flow depletions on downstream generation of hydropower.~~ (3-18-22)

~~**03. Applications and Existing Permits That Are Junior and Subordinate.** Applications and existing permits approved for hydropower generation shall be junior and subordinate to all rights to the use of water, other than hydropower, within the state of Idaho that are initiated later in time than the priority of the application or existing hydropower permit. A subordinated permit shall not give rise to any right or claim against future rights to the use of water, other than hydropower, within the state of Idaho initiated later in time than the priority of the application or existing hydropower permit. A permit issued for hydropower purposes shall contain a term condition on the hydropower use in accordance with Section 42-203B(6), Idaho Code.~~ (3-18-22)

~~**04. Permanent Flow Measuring Device Requirement.** Applications approved for on-stream storage reservoirs will, unless specifically waived by the Director, require permanent flow measuring devices both upstream and downstream from the reservoir.~~ (3-18-22)

~~05. Well Spacing and Well Construction Requirements. Applications approved for diversion of groundwater may include conditions requiring well spacing and well construction requirements. (3-18-22)~~

~~06. Reprocessed Permits. Permits reprocessed pursuant to Section 42-203D, Idaho Code, may be cancelled, modified or conditioned by the Director to make the permit comply in every way with any permit that would be issued for the same purpose based upon a new application processed under these rules. (3-18-22)~~

~~07. Voiding Approval of Permit. Permits may be conditioned to authorize the Director to void the approval of the permit if he the Director determines that the applicant submitted false or misleading information on the application or supporting documents. (3-18-22)()~~

~~08. Retention of Jurisdiction. The Director may condition permits to retain jurisdiction to insure compliance with the design, construction and operation provisions of the permit. (3-18-22)~~

~~09. Insuring Minimum Stream Flows and Prior Rights. The Director may condition permits to insure that established minimum stream flows and prior rights including prior rights reserved by federal law are not injured. (3-18-22)~~

~~10. Insuring Compliance with Water Quality Standards. The Director may condition permits to insure compliance with Idaho's water quality standards. (3-18-22)~~

~~11. Insuring Assignment of Interest. The Director may condition a permit issued for trust water to require that any amendment (Section 42-211, Idaho Code), transfer (Section 42-222, Idaho Code), or assignment of interest in the permit by any method whatsoever shall not result in the project failing to meet the public interest criteria of Section 42-203C, Idaho Code except, however, lenders obtaining title to the project through default will have a reasonable period of time, as determined by the Director, to meet such criteria or to convey the project to a person or entity that does meet the criteria. (3-18-22)~~

051. -- 054. (RESERVED)

055. MORATORIUM ~~(RULE 55).~~

01. Applications for Permits. (3-18-22)()

a. The Director may cease to approve applications action on an application or stay further development of a permit for which the permit holder has not submitted proof of beneficial use in a designated geographical area upon finding a need to: (3-18-22)()

i. Protect existing water rights; ()

ii. Ensure compliance with the provisions of Chapter 2, Title 42, Idaho Code; and or (3-18-22)()

iii. Prevent reduction of flows below a minimum stream flow which has been established held by the Director or the b Board pursuant to applicable law. (3-18-22)()

b. Notice of the Director's action to cease further action on an application approval or stay further development of a permit will be by: (3-18-22)()

i. Summary Order served by certified mail upon the then existing affected applicants or permit holder; and (3-18-22)()

ii. Publication of the order for three (3) consecutive weeks in a newspaper or newspapers of general circulation in the area affected. (3-18-22)()

c. The order of the Director's action to stay further development of a permit will require a permit

holder to file, within sixty (60) days of order issuance, either: ()

i. Proof of beneficial use for the extent of diversion and beneficial use accomplished prior to issuance of the order; or ()

ii. A response with supporting information demonstrating the permit holder made a substantial investment, prior to receipt of the order, in project works to divert and beneficially use water under the permit that merits the granting of additional time to complete all or part of the project. ()

iii. Failure to submit proof of beneficial use or a response will result in suspension of further development of the permit. ()

~~ed.~~ Objections to the Director's action ~~shall~~ will be considered ~~under the department's adopted~~ pursuant to IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources," and applicable law. (3-18-22)()

~~02. Permits.~~ (3-18-22)

~~a.~~ To the extent a permit has not been developed, the Director may cancel, or modify permits for which proof of beneficial use has not been submitted in a designated geographical area as an extension of Subsection 055.01. (3-18-22)

~~b.~~ Notice of the Director's action to cancel or modify permits shall be by: (3-18-22)

i. Summary Order served by certified mail upon the affected permit holders in the designated area. (3-18-22)



ii. Publication of the order for three (3) consecutive weeks in a newspaper or newspapers of general circulation in the area. (3-18-22)

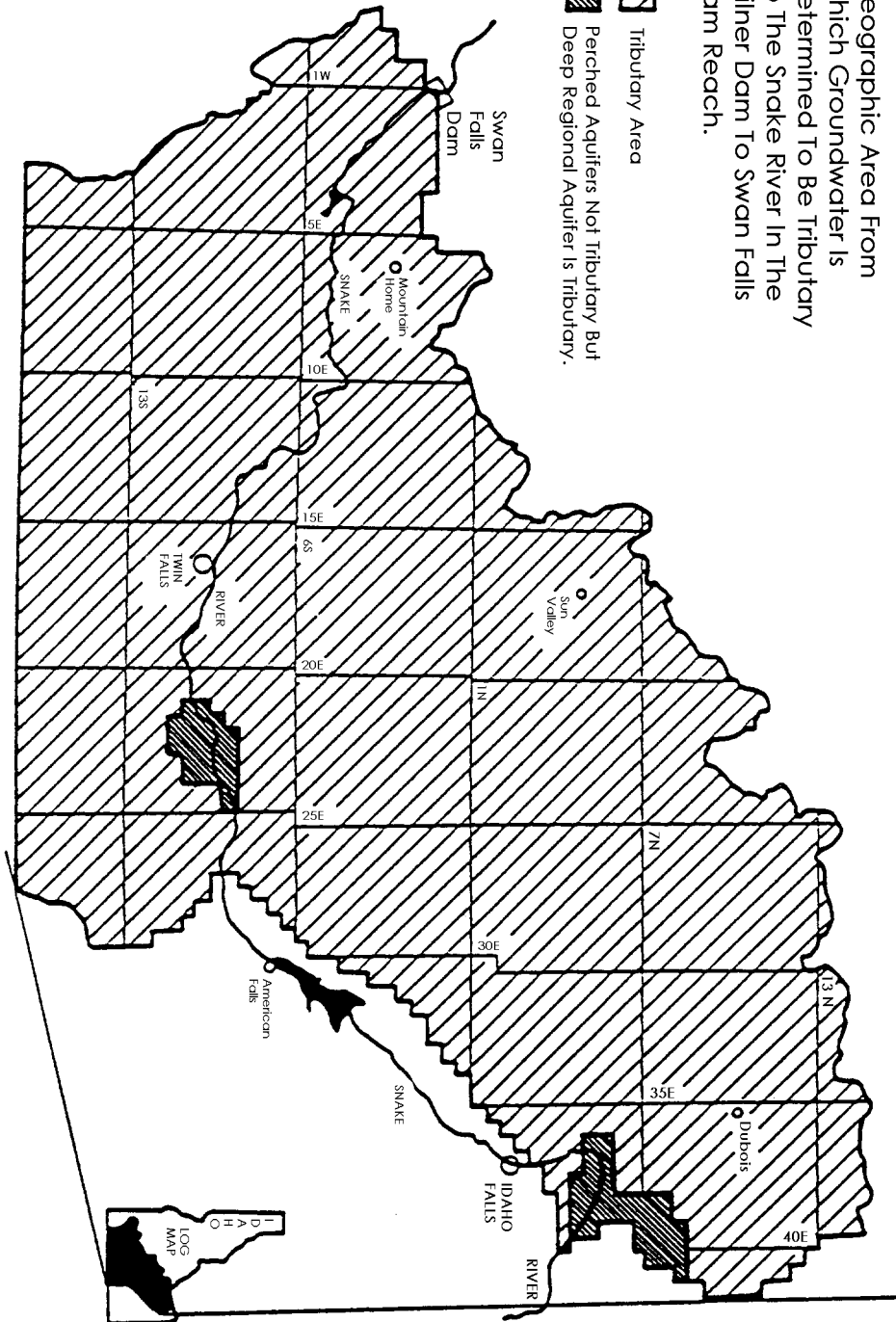
~~e.~~ Objections to the Director's action shall be considered under the department's adopted Rules of Procedure and applicable law. (3-18-22)

056. -- 999. (RESERVED)

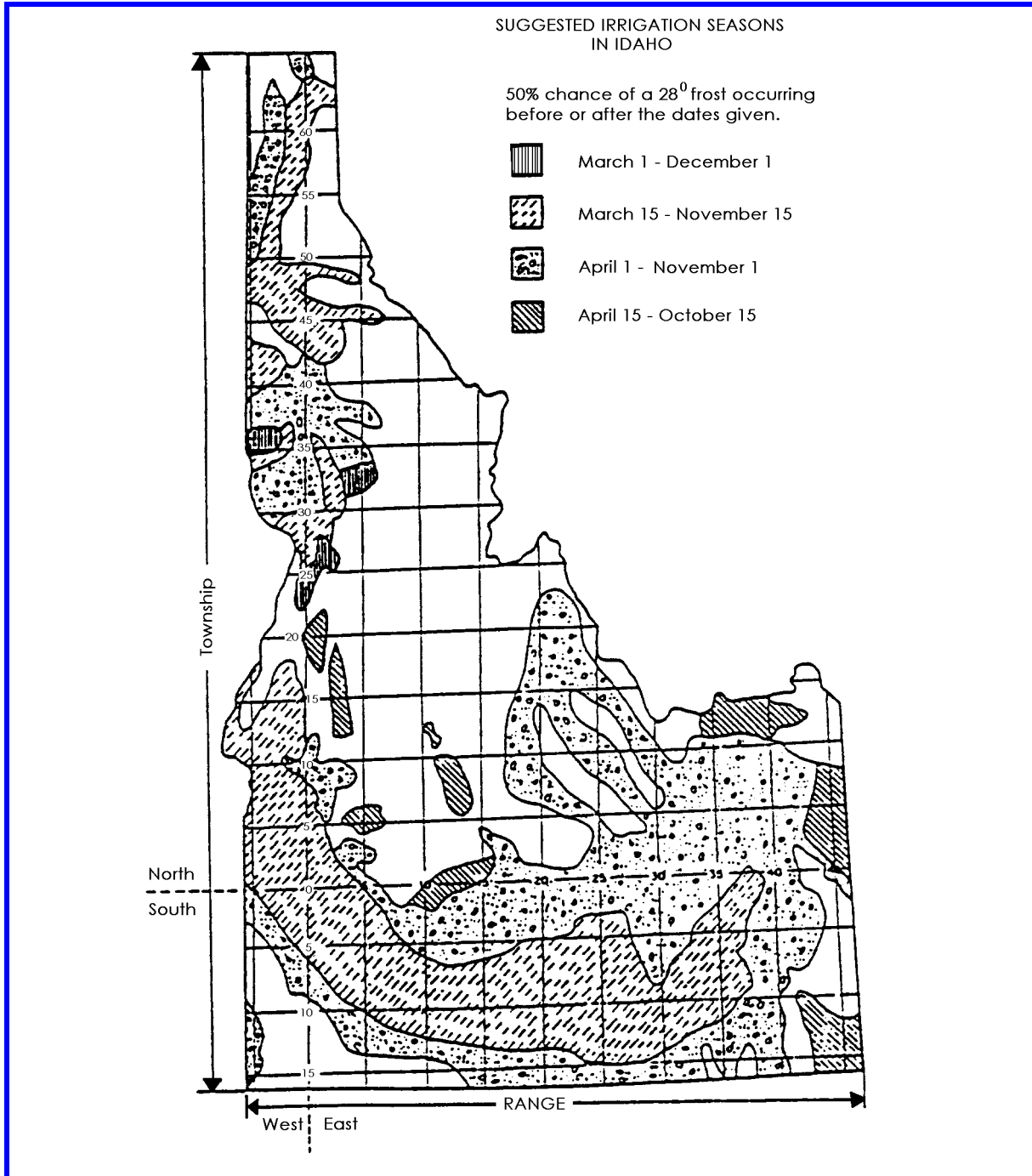
APPENDIX A

Geographic Area From Which Groundwater Is Determined To Be Tributary To The Snake River In The Milner Dam To Swan Falls Dam Reach.

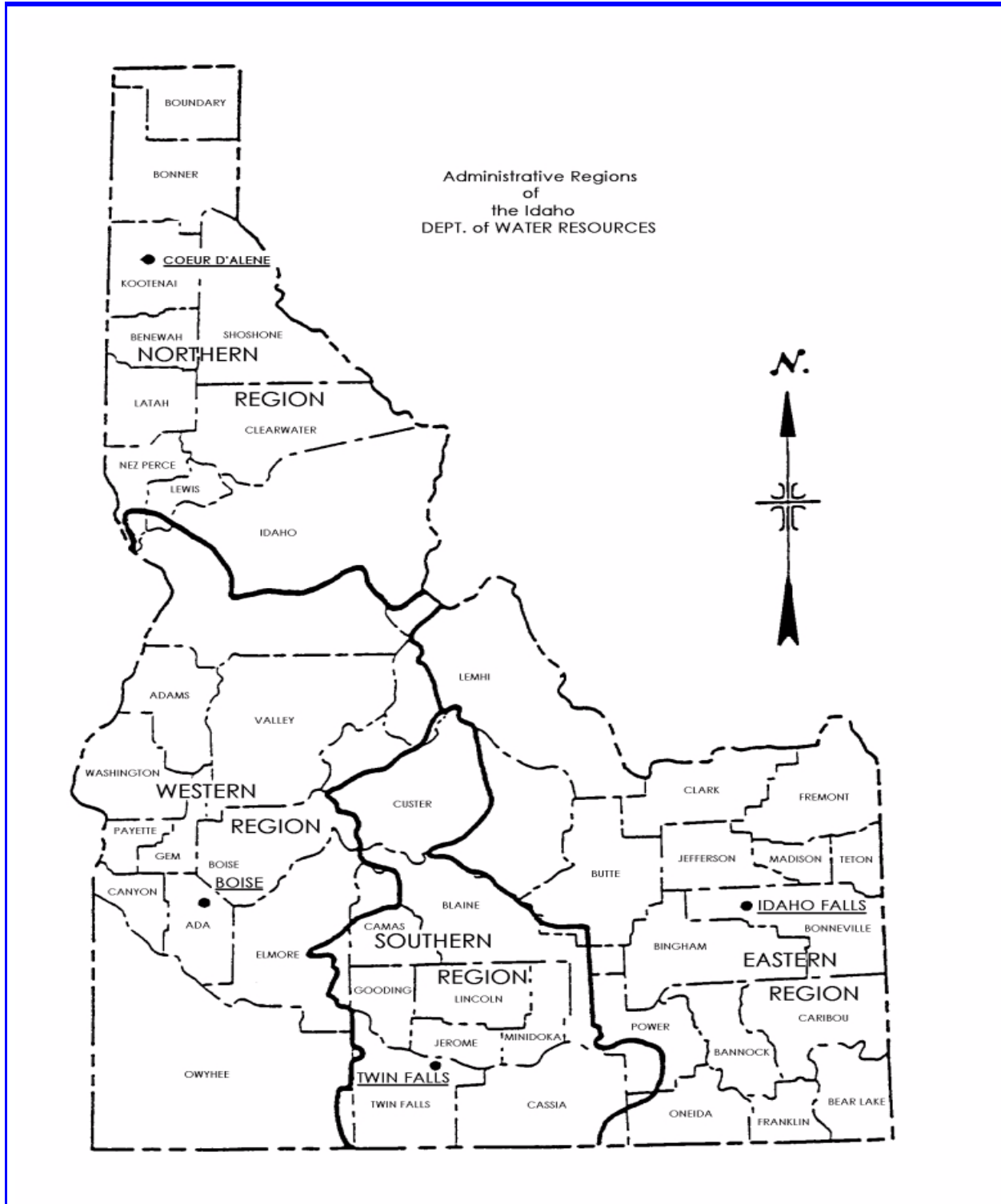
-  Tributary Area
-  Perched Aquifers Not Tributary But Deep Regional Aquifer Is Tributary.



APPENDIX B



APPENDIX C



IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

39.02.04 – RULES GOVERNING MANUFACTURER AND NEW VEHICLE DEALER HEARING FEES

DOCKET NO. 39-0204-2301 (ZBR 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 and 49-201, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 seeking to repeal this rule due to the passage of House Bill 128 in 2023. This rule prescribes the fees and refunds for department hearings concerning disputes between vehicle dealers and manufacturers. House Bill 128 changes the hearing process, rendering this Rule obsolete.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: This rule requires a vehicle dealer requesting a hearing to deposit a \$2,000 dollar filing fee with the department.

FISCAL IMPACT: The following is a specific 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 3, 2023, Idaho Administrative Bulletin, Vol. 23-5, pages 174-175.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 Brendan Floyd at 208-334-8474.

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 25, 2023.

DATED this 1st Day of September 2023.

Brendan Floyd
Policy Specialist
Idaho Transportation Department
11331 W. Chinden Blvd.
Boise, ID 83714
208-334-8474
Brendan.floyd@itd.idaho.gov

IDAPA 39.02.04 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

39.02.22 – RULES GOVERNING REGISTRATION AND PERMIT FEE ADMINISTRATION AND TEMPORARY VEHICLE CLEARANCE FOR CARRIERS

DOCKET NO. 39-0222-2301

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 and 49-201, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 only purpose for opening this rule, which was reviewed under the ZBR schedule in 2022, is to remove sections 100 and 101 to include them in the more relevant special permit combination rule, where the department is seeking to combine the following into a single rule: 39.03.01, 39.03.02, 39.03.03, 39.03.04, 39.03.05, 39.03.06, and 39.03.07.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: This rule chapter sets forth provisions for installment payments for commercial vehicle registration, establishes a \$40 dollar reinstatement fee for suspended accounts and vehicle registrations, and a \$20 NSF fee. However, there is no fee or charge impacted as a result of 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 in the July 5, 2023, Idaho Administrative Bulletin, [Vol. 23-7, pages 104-105](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 Brendan Floyd at 208-334-8474.

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 25, 2023.

DATED this 1st Day of September 2023.

Brendan Floyd
Policy Specialist
Idaho Transportation Department
11331 W. Chinden Blvd.
Boise, ID 83714
208-334-8474
Brendan.floyd@itd.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0222-2301
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS.

- 01. Combination of Vehicles.** A tractor or truck tractor and one (1) or more trailers and/or semitrailers. (3-28-23)
- 02. Nonsufficient Funds (NSF).** NSF will be the abbreviation as it pertains to checks written on personal and/or business checking accounts without sufficient funds to cover the check, for payment to the department. (3-28-23)
- 03. Non-Reducible Load.** Defined in IDAPA 39.03.01, Rules Governing Definitions Regarding Special Permits. (3-28-23)
- ~~**04. Quarterly Report.** The form for registrants to report the laden miles traveled on Idaho highways during the preceding three (3) months when transporting non-reducible vehicles/loads under annual overweight/oversize permits. (3-28-23)~~
- 054. Revocation of Registration.** The termination of a registrant's vehicle registrations and authority to operate on Idaho highways for failure to comply with requirements specified by the Department and Idaho Code. (3-28-23)
- 065. Registrant.** A person, firm, or corporation in whose name a vehicle or vehicles are registered, with an Idaho account number assigned by the department. (3-28-23)
- 076. Road Use Fee.** The fee per mile paid for non-reducible vehicles or combinations of vehicles hauling non-reducible loads. The fees are based on the number of axles on the vehicle or combination of vehicles and the total gross weight, in addition to the registration fee. (3-28-23)
- 087. Suspension of Registration.** The temporary withdrawal of a registrant's vehicle registrations and authority to operate on Idaho highways for failure to comply with requirements specified by the Department and Idaho Code. (3-28-23)

~~**011.—099. (RESERVED)**~~

~~**100. QUARTERLY ROAD USE FEE REPORTS FOR ANNUAL OVERWEIGHT PERMITS.**~~

~~To comply with Section 49-1001, Idaho Code, the customer will make quarterly reports of laden only mileage to the department for the movements of non-reducible vehicle/loads, at the appropriate permitted weight level of the annual special permits. These fees are in addition to the registration fees. Mileage and road use fees for single trip special permits are calculated and collected at the time of issuance and are not reported quarterly. (3-28-23)~~

~~**101. QUARTERLY ROAD USE FEE REPORTING.**~~

~~**01. Quarterly Reporting Forms Issued.** The department will generate an online quarterly report form for each valid annual special permit issued to them. (3-28-23)~~

~~**02. Use of Quarterly Reporting Form.** The customer will report each quarter's information on the Department's form with all requested information completed on or before the specified due date, even when reporting zero (0) miles traveled. (3-28-23)~~

~~**a.** If the customer does not receive a quarterly report form or report their information online, it is the customer's responsibility to notify the Department allowing adequate time to submit the report before the due date. (3-28-23)~~

- ~~b. Any report transmitted through the US Postal Service is considered filed and received by the department on the date shown by the post office cancellation mark stamped on the envelope or wrapper containing the report. A postage meter cancellation is not considered as a post office cancellation mark. (3-28-23)~~
- ~~e. If the quarterly report form due date falls on a Saturday, Sunday, or legal holiday, the due date will be extended to the next business day. (3-28-23)~~
- ~~d. Quarterly reports not submitted will result in the account being suspended. (3-28-23)~~

~~102~~011. -- 199. (RESERVED)

IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT
39.02.42 – RULES GOVERNING CONDITIONAL VEHICLE REGISTRATION
WHEN PROOF OF OWNERSHIP IS INSUFFICIENT
DOCKET NO. 39-0242-2301 (ZBR CHAPTER REWRITE)
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 and 49-201, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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:

39.02.42 addresses allowances for the department to issue temporary registration when ownership of a vehicle is unclear. The intent is to remove unnecessary language and combine the rule with conceptual similar rule - 39.02.46.

39.02.46 clarifies conditions when county offices and vehicle dealers may issue a temporary registration. The intent is to remove unnecessary language and combine the rule with a conceptually similar rule - 39.02.42.

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 3, 2023, Idaho Administrative Bulletin, [Vol. 23-5, pages 174-175](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 Brendan Floyd at 208-334-8474.

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 25, 2023.

DATED this 1st Day of September 2023.

Brendan Floyd
Policy Specialist
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Brendan.floyd@itd.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0242-2301
(ZBR Chapter Rewrite)

**39.02.42 – RULES GOVERNING CONDITIONAL VEHICLE REGISTRATION
WHEN PROOF OF OWNERSHIP IS INSUFFICIENT AND TEMPORARY REGISTRATION**

000. LEGAL AUTHORITY.

This rule is adopted under the authority of Sections 49-201, 49-444, 49-501, 49-507 and 49-523, Idaho Code.

(3-31-22)()

001. TITLE AND SCOPE PURPOSE.

01. Title. This rule is cited as IDAPA 39.02.42, “Rules Governing Conditional Vehicle Registration When Proof of Ownership is Insufficient” and issuance of thirty (30)-day temporary motor vehicle permits. (3-31-22)()

02. Scope. The purpose of this rule establishes conditional vehicle registration when the applicant does not have sufficient proof of ownership. This rule provides operating privileges for a specific time period and does not apply to Idaho licensed dealers, non residents of Idaho; or owners and/or operators of non Idaho based commercial vehicles operated in interstate commerce under the various proportional registration plans or agreements with other states of which Idaho is a participant. (3-31-22)

002. ADMINISTRATIVE APPEALS.

Administrative appeals under this chapter are governed by the rules of administrative procedure of the attorney general, IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General.” (3-31-22)

003. -- 099. (RESERVED)

100. GENERAL PROVISIONS FOR INSUFFICIENT PROOF OF OWNERSHIP INCLUDES CONDITIONAL REGISTRATION.

01. Vehicle Record. The vehicle for which record of ownership is unavailable; (3-31-22)

02. Title. The applicant does not have the title from the previous owner; (3-31-22)

03. Release of Interest. The previous owner of record has not released interest in the title; (3-31-22)

04. Bill of Sale. The possessor has the unreleased title but does not have a bill of sale to support transfer of ownership; (3-31-22)

05. Vehicle Identification Number. The title vehicle identification number (VIN) and the VIN on the vehicle do not match (except for obvious typographical errors); or (3-31-22)

06. Documentation for Component Part. Component parts of a homemade, reconstructed or specially constructed vehicle cannot be documented. (3-31-22)

01. Issuance of Conditional Registration. When all titling requirements cannot be completed but reasonable proof of ownership has been provided, conditional registration may be issued, for a one (1) year period without benefit of title or for up to a two (2) year period if purchased from a licensed Idaho vehicle dealer, by Idaho residents. ()

02. Applicant Responsibility. By the expiration of the conditional registration period, the applicant must complete the titling requirements for the vehicle issued a conditional registration. The conditional registration will not be extended and no further registration (permanent or temporary) will be issued, until all the title requirements have been met. ()

03. Issuance to Recreational Vehicles. Conditional registrations issued to recreational vehicles will expire in accordance with Section 49-445, Idaho Code, and will require the purchase of the recreational vehicle annual license pursuant to Section 49-444, Idaho Code. ()

04. Ineligible Vehicles. Vehicles with altered VINs, vehicles confirmed as stolen, salvage vehicles that have not been retitled as rebuilt, wheel mounted equipment, commercial vehicles over twenty six thousand (26,000) pounds, and noncommercial or farm vehicles over sixty thousand (60,000) pounds are not eligible to be issued a conditional registration. ()

101. -- 199. (RESERVED)

200. **PROCEDURE**30-DAY TEMPORARY REGISTRATION.

01. Conditional Registration. ~~“Registration Only” (conditional registration until titling requirements are met) may be processed for a one (1) year period without benefit of title. “Registration Only” will not be issued on vehicles with altered VINs, vehicles confirmed as stolen or vehicles where there is a recorded and unpaid lien.~~ (3-31-22)

02. Conditional Registration Procedure. ~~“Registration Only” procedure is as follows:~~ (3-31-22)

a. ~~VIN Inspection: The vehicle must be inspected by an agent of the county assessor’s office or a city, county or state peace officer. The inspecting officer will verify the identification number and provide the applicant with a signed inspection form containing the vehicle description, other pertinent information and recommendations. If the VIN has been altered or is missing, the officer may ask for the assistance of a motor vehicle investigator before issuing the VIN inspection.~~ (3-31-22)

b. ~~Indemnifying Affidavit. The “Registration Only” applicant will complete an indemnifying affidavit explaining how and where the vehicle came into the applicant’s possession, and why proper documentation is not available. The indemnifying affidavit must be signed, and fully indemnify and save harmless the department.~~ (3-31-22)

c. ~~Registration of the Vehicle: The vehicle may be registered for one (1) year. The title block of the registration document will show “Reg-Only” in bold letters. The applicant must obtain adequate proof of ownership prior to the expiration of the registration period. The one (1) year “Registration Only” period will not be extended.~~ (3-31-22)

d. ~~The county will hold the VIN inspection and the indemnifying affidavit in file until the applicant complies with requirements in Subsection 200.04.~~ (3-31-22)

03. Applicant Responsibility. ~~By the expiration of the “Registration Only” period, the applicant must present a properly executed title and bill of sale for the vehicle or apply for a bonded or conditional title.~~ (3-31-22)

04. Action by the County Assessor. ~~When the applicant has complied with Subsection 200.03, the county assessor will pull the VIN inspection and indemnifying affidavit from their file; prepare an Application for Title; and submit the application form with the title, bill of sale, indemnifying affidavit and VIN inspection for title processing.~~ (3-31-22)

05. Proof of Ownership. ~~If the applicant cannot prove ownership within the one (1) year “Registration Only” period, no further registration (permanent or temporary) will be issued until after the title requirement is met.~~ (3-31-22)

01. Issuance of 30 Day Temporary Registration. County assessors, the Department, Licensed Idaho

vehicle dealers, or agents of the Department may issue one thirty (30) day temporary registration to out-of-state residents who purchased a vehicle in Idaho and are transporting their newly purchased vehicle to their state of residence. ()

02. Ineligible Vehicles. Vehicles with altered VINs, vehicles confirmed as stolen, salvage vehicles that have not been retitled as rebuilt, wheel mounted equipment, and vehicles or vehicle combinations, except motorhomes, over twenty six thousand (26,000) pounds are not eligible to be issued a 30 day temporary registration. ()

201. -- 999. (RESERVED)

IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

39.02.46 – RULES GOVERNING TEMPORARY MOTOR VEHICLE REGISTRATION PERMIT

DOCKET NO. 39-0246-2301 (ZBR 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 and 49-201, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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:

39.02.46 clarifies conditions when county offices and vehicle dealers may issue a temporary registration. The intent is to remove unnecessary language and combine the rule with a conceptually similar rule, 39.02.42, thereby repealing 39.02.46.

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 3, 2023, Idaho Administrative Bulletin, [Vol. 23-5, pages 174-175](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 Brendan Floyd at 208-334-8474.

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 25, 2023.

DATED this 1st Day of September 2023.

Brendan Floyd
Policy Specialist
Idaho Transportation Department
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Boise, ID 83714
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IDAPA 39.02.46 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT
39.02.60 – RULES GOVERNING LICENSE PLATE PROVISIONS
DOCKET NO. 39-0260-2301 (ZBR CHAPTER REWRITE, FEE RULE)
NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312 and 49-201, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

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

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

This rule addresses details concerning various license plate allowances, special plate program provisions, and plate numbering structures that are not explicitly expressed through statute but are nonetheless necessary for managing the department's license plate programs.

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

This proposed rule does not contain any proposed fee change. The rule provides the following fees:

1. Dealer loaner plate fees (to match plate fees prescribed in 49-402, Idaho Code)
2. Transporter plate fees (\$15)
3. Custom vehicle plate fees (\$25 initial and \$15 annually)

Additionally, the rule requires that a plate and mailing fee be applied for the renewal of personalized plates when a customer requests new plates and establishes the requirement for state and federal agencies to reimburse that department "at cost" for exempt and undercover plates.

FISCAL IMPACT: The following is a specific 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 3, 2023, Idaho Administrative Bulletin, [Vol. 23-5, pages 174-175](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 Brendan Floyd at 208-334-8474.

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 25, 2023.

DATED this 1st Day of September 2023.

Brendan Floyd
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Idaho Transportation Department
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THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 39-0260-2301
(ZBR Chapter Rewrite)

39.02.60 – RULES GOVERNING LICENSE PLATE PROVISIONS

000. LEGAL AUTHORITY.

This rule, establishing the policies used to administer Idaho’s standard and specialized license plate programs, is adopted under the authority of Section 49-201, Idaho Code. ()

001. ~~TITLE AND SCOPE~~ PURPOSE.

01. ~~Title.~~ Title. These rules are titled IDAPA 39.02.60 “Rules Governing License Plate Provisions.” (3-21-22)

02. ~~Scope.~~ Scope. This rule governs ~~license plate~~ provisions for standard ~~license plates not otherwise detailed in Title 49, Idaho Code, and provisions for all specialty program license plates, personalized plates, and special eligibility license plates. Subchapter A further establishes provisions for administering the exempt and undercover license plate programs not otherwise detailed in Title 49, Chapter 4, Idaho Code.~~ (3-21-22)()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Authorized Employees. Authorized employee as used in this rule means any non-salesperson or employee who is paid compensation for a minimum of thirty (30) hours each week, and appears on the records of the employer as an employee for which social security, income tax, and all deductions required by law have been made. ()

02. Exempt License Plate. Standard license plate issued to the entities described in Section 49-426(1), Idaho Code, which are exempt from payment of vehicle operating fees. ()

03. Exempt Personalized License Plate. An exempt plate which identifies the agency by a unique identifier specified by the agency that does not conform to the standard exempt identifier listed in Section 400; a plate wherein the serial number portion represents inventory control numbers, badge numbers, radio call signs, or other unique lettering or numbering schemes developed by the requesting agency; plates that are lettered and/or numbered to indicate a person’s position in the hierarchy of an agency. ()

04. Furtherance or Pursuance of Business. Furtherance or pursuance of business as used in this rule or in Section 49-1627, Idaho Code, means any lawful use of a dealer or loaner plate by an authorized employee of a

dealership for the movement of a vehicle to be sold, repaired or transferred from one (1) location to another. ()

05. Leased or Rented Vehicles. Leased or rented vehicles owned by the licensed dealer as used in Section 49-1627, Idaho Code, means vehicles titled in the name of the dealership which are leased or rented on a contractual basis to the public. ()

06. Undercover License Plate. A standard license plate issued upon application to the Department from an exempt agency with law enforcement authority. Undercover license plates will be randomly issued by the Department, and appear as a standard county plate. ()

07. Vehicles Not Held in Stock. Vehicles not held in stock for sale as used in Section 49-1627, Idaho Code, means vehicles titled in the name of the dealership or vehicles which cannot be titled or for which the dealership does not hold title. ()

08. Vehicles Sold. Vehicles which have been sold as used in Section 49-1627, Idaho Code, means vehicles for which a dealer has a signed contract of sale or other vehicles not belonging to the dealership. ()

011. LICENSE PLATE PROVISIONS FOR ALL LICENSE PLATES.

01. Plate Numbering and Lettering. The Idaho Transportation Department is authorized to assign unique plate letter/number spacing schemes and to use specific letter/number combination schemes as needed for the purpose of ensuring unique numbering systems for all license plate programs and to administer the provisions of this rule. ()

02. Plate Life Expiration Date. License plates will be valid for the period described in 49-443 (2) and will expire on the last day of the month, consistent with the month of the registration expiration. ()

012. PROOF OF REGISTRATION FOR NEW, REPLACEMENT, OR REISSUED LICENSE PLATES.

01. Proof of Registration Document. Upon receipt of payment for required registration and program fees, a proof of registration ~~receipt document may be issued, indicating "license~~ plates on order document will be issued.² This option will be used whenever license plates are manufactured after the registration transaction has been completed. The proof of registration receipt document will provide proof that the vehicle has been registered and fees have been paid, and the vehicle may be operated until new plates have been received by the registrant. ~~At the discretion of the Department, more than one (1) proof of registration may be issued, if needed, in order to manufacture license plates.~~ (3-21-22)()

02. Placement of Proof of Registration Document. The proof of registration receipt document will be displayed in the rear window or on the rear of the vehicle for which it is issued in a manner that is readily legible for a distance of twenty five (25) feet and will be legible throughout the duration of the permit. When issued to a convertible, motorcycle, or other vehicle in which it is not possible to display in the rear window, the proof of registration must be conspicuously displayed where the expiration date of the newly issued plate may be easily read at a distance of twenty five (25) feet, and where it is protected from exposure to weather conditions, which would render it illegible. ()

03. Issuance of Manually Completed Temporary Registrations When Automated System is Unavailable. Upon receipt of payment for required registration and program fees, the ~~county~~ department or its agent may issue a manual temporary proof of registration ~~valid for thirty (30) days, through use of a temporary on a~~ department form ~~provided by the Department,~~ in the event the automated system is unavailable. When the system resumes normal operation, the ~~county office will enter such~~ registration information will be entered in the system, and produce the registration form ~~and validation decals and will be mailed~~ to the registered applicant. The manual temporary proof of registration form will be displayed in accordance with IDAPA 39.02.60.12.02 ~~the rear window of the vehicle for which it is issued in a manner that is readily legible for a distance of twenty five (25) feet and will be legible throughout the duration of the permit. When issued to a convertible, motorcycle, or other vehicle in which it is not possible to display in the rear window, the temporary registration must be conspicuously displayed where the expiration date of the permit may be easily read at a distance of twenty five (25) feet, and where it is protected from~~

~~exposure to weather conditions, which would render it illegible.~~

~~(3-21-22)()~~

013. -- 099. (RESERVED)

100. LICENSE PLATE PROVISIONS FOR STANDARD PLATES.

01. County Designations. The county in which a vehicle is registered will be designated by a number and letter on license plates for passenger cars, pick-up trucks eight thousand (8,000) pounds and under gross weight, hearses, ambulances, wreckers, farm vehicles between eight thousand one (8,001) and sixty thousand (60,000) pounds gross weight, and recreational trailers. The county designators are as follows:

County Designations			
1A - Ada	2A - Adams	1B - Bannock	2B - Bear Lake
3B - Benewah	4B - Bingham	5B - Blaine	6B - Boise
7B - Bonner	8B - Bonneville	9B - Boundary	10B - Butte
1C - Camas	2C - Canyon	3C - Caribou	4C - Cassia
5C - Clark	6C - Clearwater	7C - Custer	E - Elmore
1F - Franklin	2F - Fremont	1G - Gem	2G - Gooding
I - Idaho	1J - Jefferson	2J - Jerome	K - Kootenai
1L - Latah	2L - Lemhi	3L - Lewis	4L - Lincoln
1M - Madison	2M - Minidoka	N - Nez Perce	1O - Oneida
2O - Owyhee	1P - Payette	2P - Power	S - Shoshone
1T - Teton	2T - Twin Falls	V - Valley	W - Washington

()

101. LICENSE PLATE PROVISIONS FOR RESTRICTED VEHICLE PLATES.

The Department will ~~provide~~ **produce** these plates ~~to county DMV offices and to the Idaho Department of Parks and Recreation (if needed)~~ **on demand**. Idaho Department of Parks and Recreation has the authority to issue, manage and maintain records of these plates. The plate will not be valid without the registration sticker, issued pursuant to Section 67-7122, Idaho Code, affixed to the lower corner of the plate. Idaho restricted vehicle plates may not be personalized.

~~(3-21-22)()~~

102. -- 149. (RESERVED)

150. VEHICLE DEALER AND MANUFACTURER LICENSE PLATES FORMATS.

01. Designation for Plates. Plates issued to dealers will bear the designation “DLR” and plates issued to manufacturers will bear the designation “MFR”. The sequential license plate number will be a maximum of two (2) digits. ()

a. If a dealer or manufacturer is issued more than ninety-nine (99) plates, an alpha character will be placed in the first position, followed by a number. ()

b. The dealer or manufacturer number will be a maximum of four (4) digits. No dealer or manufacturer number may be preceded by a zero (0): Dealer number one (1), plate number one (1): 1-01; Dealer number one thousand one (1001), plate number one hundred (100): 1001-A1. ()

c. Dealer restricted vehicle plates will display the abbreviation “DLR” within the lower left hand box labeled “Restricted Vehicle”. The dealer validation sticker will be displayed within the box labeled “Dealer Validation Sticker”. ()

151. VEHICLE DEALER LICENSE PLATES RESTRICTIONS.

01. Restrictions. Restrictions on the use of manufacturer or dealer plates are provided for by Section 49-1627, Idaho Code. In addition, the following restrictions apply: ()

a. The authorized employee must carry an identification card issued by the dealer. The identification card will contain the employee name, dealership, date of issue, dealer number and signature of an authorized representative of the dealership and the signature of the employee. This use will be limited to normal business hours unless the operator is in possession of a letter from the dealer listing the specific reason for the after-hour use. ()

b. Vehicles displaying a dealer restricted vehicle plate are not required to display the Idaho Department of Parks and Recreation Off-highway registration to be valid, but are required to be validated in the same manner as are standard dealer plates and display the required annual validation sticker on the restricted plate. Use will be permitted pursuant to Section 49-426 (3) and (4), Idaho Code. ()

c. A prospective purchaser will not have in his possession a vehicle belonging to a dealership after normal business hours without a letter of authority from the dealership. ()

152. VEHICLE DEALER LOANER PLATES.

01. Numbering. Plates will be numbered from LAA001 to LZZ999. ()

02. Surrender of Plates. If the dealership license becomes invalid, the dealer must surrender the registration and loaner plates that have been issued. There will be no refund of fees. ()

03. Vehicle Log. Dealerships will maintain a vehicle log of each vehicle on which a loaner plate is displayed. The log will be available for inspection by any peace officer or agent of the Department and contain the information provided for by section 49-1628, Idaho Code. ()

04. Registration Card. The authorized issuing entity will provide a registration card for each dealer loaner plate as provided for by section 49-421, Idaho Code. ()

05. Letter of Authorization. Persons using the plate on loaner vehicles while waiting for their own vehicle to be repaired will have in their possession a letter of authorization or a document showing both the user and dealership name. The document or letter will be signed and dated by an authorized employee of the dealership. ()

06. Vehicle Use Donation for Civic and Charitable Events. Licensed dealers may authorize the use of their loaner plates when donating the use of vehicles held in their inventory for civic or charitable events. Such time period will not exceed thirty (30) days. The dealer will provide a letter of authorization to be carried in the vehicle and proof of current liability insurance, as required by Chapter 12, Title 49, Idaho Code. ()

07. Fees. The fees charged for dealer loaner plates will be the same as the fees required by Section 49-402, Idaho Code, for new vehicles, and will be in addition to the current Emergency Medical Service (EMS) and plate fees. Applicants for new loaner plates received after January 1 will be charged one-twelfth (1/12) the annual fee charged for a new vehicle for each month remaining in the licensing year, including the month of application. The annual EMS and plate fees are not prorated. ()

153. VEHICLE DEALER TRANSPORTER REGISTRATION AND PLATE.

01. Purpose. Utility and boat trailers that weigh under two thousand (2,000) pounds unladen may be moved by a manufacturer, dealer, or an employee of either, or by a transporter service contracted by the vehicle's manufacturer or dealer upon registration and payment of an annual fifteen dollar (\$15) transporter plate fee to the department, or by purchase of a single trip permit. These plates may be used only on boat trailers and utility trailers for demonstration purposes, and may be used while laden for demonstration purposes. ()

02. Numbering of Plates. Transporter plates will be numbered from PA1 TO PZ9999. Transporter plates are to be displayed on the rear of the trailer. ()

03. Renewal of Plates. The transporter registration and plate are valid for one (1) year from January 1 through December 31 and may be renewed by use of a registration sticker showing the year of validation. ()

04. Use of Plates. Transporter plates may be moved by registrants from one (1) utility or boat trailer weighing under two thousand (2,000) pounds unladen to another trailer meeting this criteria during the current registration period. Vehicles towing a laden trailer displaying a transporter plate are to be registered within the appropriate gross vehicle weight category for the combined load. ()

05. Possession of Registration. When transporting a vehicle displaying a transporter plate, the operator of a towing vehicle will carry the transporter registration in the towing vehicle at all times. ()

06. Violations. Violations of this section include: ()

a. Display of a transporter plate on any vehicle not required to be registered under this Section; and ()

b. Display of a transporter plate on a vehicle not lawfully under the control of the registration holder. ()

07. Penalties: ()

a. Violation of this section will be a misdemeanor as provided for by Section 49-236, Idaho Code; and ()

b. The plate and registration of anyone who displays a transporter plate other than provided for by this section may be canceled. ()

154. PROVISIONS FOR WRECKER PLATES.

01. Purpose. Wrecker plates are for the exclusive use of businesses engaged in the towing of a wrecked, abandoned, salvaged, or disabled motorized vehicle. Plates will not be used on vehicles being repossessed. ()

02. Numbering of Plates. Plates will be numbered as determined by the department and will display the abbreviation "WRKR" vertically on the left hand side of the plate. ()

03. Renewal of Plates. The wrecker registration and plate are valid for one (1) year from January 1 through December 31 and may be renewed by use of a registration sticker showing the year of validation. ()

04. Use of Plates. Plates are not to be displayed on the towing power unit vehicle nor are they to be used on a vehicle not being towed. Plates are to be displayed on the rear of the towed vehicle in such a manner as to be visible to vehicles approaching from the rear. Wrecker plates may be moved from one (1) towed motorized vehicle to another vehicle under the direct lawful control of the registration holder. ()

05. Possession of Registration. When towing a motorized vehicle displaying a wrecker plate, the operator of the towing vehicle will carry the wrecker plate registration in the towing vehicle. ()

06. Acquisition/Renewal of Wrecker Plates. Wrecker plates will be issued and renewed through the department by mail or by fax using an application and renewal process determined by the department. ()

155. PROVISIONS FOR SPECIAL LICENSE PLATE PROGRAM PREQUALIFICATION AND APPLICATION PROCEDURES.

01. Special License Plate Prequalification. A Special Plate Program Application will be provided to each applicant, detailing the procedures for the prequalification and providing information regarding the steps required to successfully accomplish a special plate program. ()

02. Special License Plate Approved by the Legislature. If a special license plate program is approved by the Idaho legislature, prior to production and sale of the special license plates, the sponsor will meet the requirements outlined in sections 49-402C & 49-402D, Idaho Code. ()

03. Submission to the Legislature. For those Special License Plate Programs with enacting legislation that fail to meet the requirements of this Section, the Department will report such finding to the chairman of the Senate Transportation Committee and the chairman of the House Transportation and Defense Committee of the Idaho State Legislature, and will not proceed with production and sale of the special plates. ()

04. Annual Report. An annual report form, designed and provided by the Department, will be made available to special license plate sponsors for all special license plate programs receiving revenue in existence or passed by the legislature on or prior to July 1, 2020. The report will require an accounting of revenues and expenditures associated with the funds collected for the special license plate program. ()

05. Appeals. The appeals process will allow the applicant for a special license plate program to appeal the Department's decision to deny the application (See Section 003 of this rule). The notice of the appeal will be sent in writing via mail, electronic mail or facsimile within twenty (20) days of the denial. ()

06. Cancellation of Plate Programs. The Department will notify the plate program sponsor ~~ninety (90) days prior to cancellation informing the sponsor~~ of the intent to cancel the program due to failure to provide an annual report or low plate sales volume. Sales volume is calculated by determining the number of current active plates for the plate program on file with the Department. ~~(3-21-22)~~()

i. The Department will notify current registrants of the special plate program of the cancellation, and advise the registrant may retain and renew the registration with the additional program fees, and retain the plates until the physical plates are required to be replaced, however replacement plates will not be available, due to loss or damage. ()

ii. The portion of canceled special plate program fees no longer deposited with the nonprofit agency (who has filed a 501 (c) (3) federal income tax status) program sponsor will be deposited in the state highway account. ()

iii. Upon mandatory replacement of physical plates as required by statute, the customer may choose another plate program or standard county plates at the customer's preference. ()

iv. The Department will include in its annual report to the chairman of the Senate Transportation Committee and the chairman of the House Transportation and Defense Committee of the Idaho State Legislature any special plate programs that have been canceled during the preceding year. ()

156. -- 198. (RESERVED)

199. LICENSE PLATE PROVISIONS FOR SPECIAL PROGRAM AND PERSONALIZED PLATES FOR TRAILERS.

Special program and personalized plates may be issued to trailers manufactured primarily for recreational vehicle uses. Such trailers will include camper, tent or fifth-wheel recreational trailers. Trailers with multiple uses such as utility, horse, or boat, with or without recreational vehicle facilities, will be excluded. ()

200. LICENSE PLATE PROVISIONS FOR SPECIAL PLATES.

01. Year of Manufacture Plates. ()

a. Vehicles manufactured up through 1974, excluding model years 1969, 1971, 1972, and 1973, but including and ending with model year 1974 are eligible for this program. ()

b. The license plate must be in serviceable condition as originally manufactured, i.e., cannot be marred, bent, faded, or otherwise damaged to the point it is illegible. If the plate is repainted to bring it to a serviceable condition, the colors will match the original colors as closely as possible and will equal or exceed the original quality. The plate number cannot be a duplicate of a previously manufactured “year of manufacture” plate still in use. ()

c. The application for use of the plate will include a statement signed by the applicant attesting that the applicant understands, if the plate use is approved, the plate does not have reflectorized material which meets the requirements of Section 49-443, Idaho Code. The responsibility for any accident or injury arising out of the possible consequence of not having this reflectorized safety feature on the license plate will be borne by the registrant. ()

d. “Classic” or “Old Timer” plates may be used in conjunction with this revived plate at the option of the registrant. ()

02. Centennial License Plates. Personalized and regular number plates are available in the centennial format. ()

03. Disabled Veteran License Plates. Disabled veteran license plates may, upon the registrant's request, display the international disability symbol to ensure reciprocal parking privileges in all states and provinces. ()

04. Custom Vehicle License Plates. The applicant shall pay the initial program fee of \$25 and the annual program fee of \$15. ()

201. PROVISIONS FOR LEGISLATIVE LICENSE PLATES.

01. Option to Apply. Members of the Idaho Legislature have the option of applying to the Department for one (1) set of specially numbered license plates bearing the designation “HOUSE” or “SENATE.” ()

02. Numbering Assignment List. Each year, the Department will request from the Speaker and Pro Tem a current list of license numbers assigned to all legislators. ()

202. PROVISIONS FOR PERSONALIZED LICENSE PLATES.

01. ~~Special Characters or Marks~~ Limitations. No special characters, or punctuation marks, may be used for personalized messages on license plates. (3-21-22)()

a. ~~Up to seven (7) letters or any combination of seven (7) letters and numbers and spaces (no half spaces) may be used for personalized messages on eligible six inch by twelve inch (6” x 12”) license plates.~~ ~~The department will determine how many characters are allowed on any given plate.~~ (3-21-22)()

b. ~~Up to six (6) letters or any combination of six (6) letters and numbers and spaces (no half spaces) may be used for personalized messages on four inch by seven inch (4” x 7”) motorcycle plates.~~ (3-21-22)

c. ~~Up to six (6) letters or any combination of six (6) letters and numbers and spaces (no half spaces) may be used for personalized messages on specialty program license plates.~~ (3-21-22)

d. ~~Disability six inch by twelve inch (6” x 12”) plates will display the international disability symbol followed by up to five (5) letters, numbers, and spaces in the personalized message. Disability four inch by seven inch (4” x 7”) motorcycle plates will display the international disability symbol followed by up to four (4) letters, numbers, and spaces (no half spaces) in the personalized message.~~ (3-21-22)

02. Issue of Personalized Plates. Personalized plates may be issued to vehicles if no specific wording is required on the plate to identify the purpose for which the vehicle is registered. Personalized plates will not be issued if such plates would jeopardize the integrity of unique plate identification requirements. Examples include but

are not limited to: ()

a. Commercial vehicles registered under the International Registration Plan (IRP), because the designators PRP are required to be printed on the plate; ()

b. Vehicles for which the designators “PRP” are required to be printed on the plate to identify the use; and ()

c. Utility, horse, or enclosed car hauling trailers with RV facilities or boat trailers. ()

03. Specific Requests. Requests for specific plate letters and/or numbers will be issued on a first come, first served basis. In the event of a request for the same plate by more than one (1) individual, the request with the earliest postmark, e-mail transmission time, ~~or fax transmission time,~~ or data entry time will prevail. If the postmarks are the same, the date stamped upon arrival ~~at the Department~~ will prevail. Applications ~~submitted~~ processed at county assessors’ offices will be considered valid when ~~date stamped in by the Department~~ entered in the system. Telephone requests will not be accepted. (3-21-22)()

04. Lack of Current Plates. When an applicant for personalized plates does not have current regular number plates: ()

a. The Department may, upon payment of all required fees, issue a proof of registration document consistent with Section 012 of this rule. ()

05. Credits. When personalized plates are issued before an applicant’s current registration is expired, credit will be given for unexpired registration fees only. ()

06. Renewing Plates. The applicant will have the choice of renewing existing personalized plates with validation stickers or ordering a new set of plates at the time of renewal. If new plates are requested, ~~the a plate and mailing~~ fee will be charged in addition to all other fees that are due. Personalized plates will be reissued in accordance with Section 49-443, Idaho Code. (3-21-22)()

07. Transfer of Plates. When personalized plates are issued, the vehicle’s regular number plates may be transferred to another vehicle belonging to the owner. If registration credit is given from the regular number plates to the personalized, the regular number plate registration is canceled. ()

08. Acceptability of Plates Message. Acceptability of the personalized license plate message and issuance, denial or cancellation will be determined by the Department based on the following criteria: ()

a. ~~The combination of numbers and letters~~ characters requested ~~or combinations of same~~ may not duplicate an existing combination in use, ~~pursuant to Idaho Code on the same size plate or replicate an existing law enforcement plate combination.~~ (3-21-22)()

b. The message, in any language, may not carry a sexual connotation nor consist of a term that is considered to be one of obscenity, contempt, prejudice, hostility, insult, racial ~~degradation,~~ or ethnic degradation, or profanity, ~~or vulgarity,~~ as defined ~~in dictionaries of general use, including, but not limited to, Webster’s Unabridged Dictionary and the Harper & Row New Dictionary of American Slang~~ by common internet and dictionary resources. (3-21-22)()

i. The message may not refer to any of the following: bodily functions, bodily fluids, or intimate body parts; sexual preference or orientation; acts of violence; illegal substances or the use thereof. ()

ii. The message may not represent a ~~club, membership, or gang~~ group that is commonly known to promote violence, illegal substances or illegal acts. (3-21-22)()

c. The criteria in Paragraph 202.08.b. of ~~these rules~~ this rule is not to be considered an exhaustive list. A compilation of ~~offensive or obscene~~ words, terms or letter/number combinations gathered from the experience of Idaho and other states may also be used as a guide. The Department may also rely on information obtained from law

enforcement agencies within or outside of Idaho.

(3-21-22)()

d. When a complaint is received from the public concerning an issued plate, the name of the complainant will not be recorded nor, if known, revealed. ()

e. Final determination regarding applications for questionable messages or cancellation of issued plates will be made by the Division of Motor Vehicles. The determination process will include a first review by technical staff, followed by a second review by supervisory and management staff. An applicant does, however, have a right to a hearing on the decision. ()

09. **Message Preferences.** Applicants may submit three (3) message preferences including the specific meaning of each. The first choice that is available and acceptable will be issued. If none of the preferences are available or acceptable, the applicant will be notified by return mail or email. ()

10. **Recalled Plates.** Personalized plates may be recalled by the Department for the following reasons: ()

a. Error in manufacturing; or ()

b. Clerical error. ()

c. Unacceptable personalized messages as outlined in Paragraph 202.08.b. of these rules. ()

11. **Unexpired Fees.** If a set of personalized plates is recalled, the personalized plate program fee, unexpired portion of the registration fee, E.M.S. fee, plate fee, (if plates are returned to the Department), and all other applicable special plate fees, will not be refunded ~~or~~ but may be transferred to a new issue of personalized plates. (3-21-22)()

12. **Expired Plates.** Personalized plates that have their registration expire will become immediately available for reissue to another applicant. There is no grace period. ()

203. PROVISIONS FOR FORMER PRISONER OF WAR (POW) LICENSE PLATES.

01. **Eligible Person.** Any veteran who was a prisoner of war (POW) of an armed enemy of the United States during active service in the armed forces of the United States during the following recognized war periods may be eligible:

WORLD WAR I	April 6, 1917 to November 11, 1918
WORLD WAR II	December 7, 1941 to December 31, 1946
KOREAN WAR	June 27, 1950 to January 31, 1955
VIETNAM WAR	August 5, 1964 to May 7, 1975
USS PUEBLO	January 23, 1968 to December 23, 1968
PERSIAN GULF	August 2, 1990 (Congress has not assigned an ending date.)

(3-21-22)()

02. **Certified Documentation.** Eligibility will be documented by a copy of the applicant's 53.55 or DD-214 Separation from Active Duty papers, or other specific documentation received from the Veterans Administration that certifies that the applicant was a prisoner of war during the recognized war periods stated above. ()

204. SURRENDER OF PLATES.

Registered owners desiring to surrender their license plate numbers may do so at any time. Upon surrender, license plate numbers shall immediately become available to be issued by the system or, if personalized, applied for use by another, upon application and payment of applicable plate, registration, and program fees. (3-21-22)()

205. -- 299. (RESERVED)

300. PROVISIONS FOR SAMPLE PLATES.

Sample plates are issued at on the “Scenic Idaho/Famous Potatoes” red, white, and blue plate or Special Program License plates as follows: ()

01. Plate Size. Plates carrying the ~~word abbreviation~~ **SAMPLE** ~~in in the lower right sticker box on~~ both passenger car ~~size (six inches by twelve inches (6" x 12"))~~ and motorcycle ~~size (four inches by seven inches (4" x 7"))~~ license plates. (3-21-22)()

02. Personalized Sample Plates. Personalized Sample plates are issued on both plate sizes, ~~passenger car with maximum of seven (7) characters and motorcycle size with a maximum of six (6).~~ (3-21-22)()

a. ~~The applicant completes an Application for Personalized Sample License Plate Form.~~ (3-21-22)

ba. The acceptability screening process used is the same as that used for regular personalized plate application. ()

eb. The Department will adopt written policy for the issuance of duplicate and replacement sample plates with personalized character combinations. ()

dc. The department may include other special license plate programs for sample plate sale, when not prohibited by code, or that would not cause a compromise of a special eligibility plate program. ()

03. Penalties. There is a penalty for fictitious display of sample plates (Section 49-456, Idaho Code). ()

301. -- 399. (RESERVED)

**SUBCHAPTER A – RULES GOVERNING LICENSE PLATES
FOR GOVERNMENTAL AGENCIES AND TAXING DISTRICTS**

400. STANDARD EXEMPT PLATE DESIGNATORS.

The standard exempt license plate designators used to identify the agency, entity, or office will be assigned pursuant to Section 49-443B (2), Idaho Code. ()

401. ISSUING AGENCY.

All exempt and undercover license plates will be issued by the Idaho Transportation Department upon receipt of a request from an authorized agency. ()

402. INFORMATION TO BE PROVIDED BY AN AUTHORIZED AGENCY.

A request for exempt or undercover plates will contain: ()

01. Actual Name and Address. The name and address of the requesting agency. ()

02. Vehicle Description. The description of the vehicle(s) to be registered, including the year, the make, model, type, vehicle identification (VIN), color and title number, and truck weight if eight thousand one pounds (8,001 lbs.) or more. ()

03. Fictitious Name and Address. The name and address of the registrant to appear on the undercover plate registration, and title records of the Department. ()

04. Authorized Official. The request must be signed by an authorized official of the authorized agency. ()

403. VEHICLE TITLING.

01. For Exempt Registration and License Plates. If the vehicle is not titled, the title transaction will be ~~completed at the local county assessor's office~~ **initiated** before requesting exempt plates. The control number from the title application may be used in lieu of the title number on the exempt plate request letter. (3-21-22)()

02. Undercover Vehicle Titling. The actual name and address of the requesting agency, along with the fictitious name and address of the registrant will be provided directly to the Department on a completed application approved by the authorized official. ()

404. EXEMPT AND UNDERCOVER PLATE FEES.

01. Department Reimbursement. State and federal agencies and taxing districts will reimburse the Department the cost of providing license plates. These costs will be determined by the cost of manufacture and the cost to the Department of processing the transaction. ()

02. Adjusted Fees. Periodically, fees may be adjusted in accordance with changes in manufacturing costs, postage, employee costs and legislative mandate. ()

405. EXEMPT PLATE DISPLAY.

Exempt license plates will be displayed in accordance with Section 49-428, Idaho Code. ~~A pressure sensitive sticker with a~~ The designator "EX" will be provided with each exempt plate and be attached to the plate(s) in the space provided for this purpose. The department may have the EX designator printed in the appropriate space on the plate as an alternative to the sticker. (3-21-22)()

406. UNDERCOVER PLATE DISPLAY.

Undercover license plates will be displayed in accordance with Section 49-428, Idaho Code. A pressure-sensitive sticker displaying an expiration date matching the plate number will be attached to the plate(s) in the space provided for this purpose. There will be no discerning markings to indicate that the plate or registration record is in undercover use. ()

407. ALTERNATIVE PLATES.

If an authorized agency requests a specialized license plate format normally reserved for the general public, all the statutory special program fees for the plate will be paid, with the exception of the registration (operating) fee, in addition to the department administrative and plate manufacturing fees. Special eligibility plates will not be issued to exempt vehicles. "Special eligibility" requires the individual registrant to meet specific requirements for programs such as: Purple Heart, Disabled Veteran, Disability, Military Reservist, Former Prisoner of War, Congressional Medal of Honor, National Guard and Air National Guard, Radio Amateur, Pearl Harbor Survivor, and Legislative plates. ()

408. EXEMPT PLATE STATUS.

01. Non-Expiring Plates. Exempt plates are non-expiring and require no annual renewal. ()

02. Transfer of Plates. Exempt plates may be transferred between vehicles. If an exempt plate is transferred to another vehicle, a transfer request must be made to the Department. ()

03. Reissue of Plates. Exempt plates will also be assessed personalization and program fees upon each reissuance. ()

409. UNDERCOVER PLATE STATUS.

01. Expiration of Plates. Undercover license plates will expire annually or biennially based upon the application of the authorized agency. Registration status will appear as valid, until expiration date. Renewals must be made to the Department upon expiration of the undercover license plate. ()

02. Transfer of Plates. Undercover license plates may be transferred between vehicles. If an undercover license plate is transferred to another vehicle, a transfer request must be made to the Department's Vehicle

Services Section/Special Plates Unit. ()

03. Reissue of Plates. Undercover plates will be reissued in accordance with Section 49-443(2), Idaho Code. ()

~~**04. Emission Testing of Undercover Vehicles.** Vehicles issued undercover license plates who list an address in a county or area of required emission testing will need to check with the emission authority to be exempted from the testing requirement, or test as a typical registered vehicle. (3-21-22)~~

410. -- 999. (RESERVED)

IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT
39.03.01 – RULES GOVERNING DEFINITIONS REGARDING SPECIAL PERMITS
DOCKET NO. 39-0301-2301 (ZBR CHAPTER REWRITE, FEE RULE)
NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 40-312 and 49-201, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 line with the governor's [Zero-Based Regulation Executive Order](#), the department is seeking to combine the following commercial vehicle permits rules into a single rule: 39.03.01, 39.03.02, 39.03.03, 39.03.04, 39.03.05, 39.03.06, and 39.03.07. The proposed new title for this single rule is "39.03.01 - Rules Governing Special Permits." The department proposes a complete repeal of 39.03.02, 39.03.03, 39.03.04, 39.03.05, 39.03.06, and 39.03.07.

Current rule 39.03.01 provides definitions regarding special vehicle permits.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: Of these combined rules, only 39.03.03 – Rules Governing Special Permits, is a fee rule. This rule provides that certain permits will impose a road use fee, as set forth through Section 49-1004(2), Idaho Code, and includes a schedule of permit fees through current section 39.03.03.910.04.

FISCAL IMPACT: The following is a specific 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 5, 2023, Idaho Administrative Bulletin, [Vol. 23-7, pages 104-105](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 Brendan Floyd at 208-334-8474.

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 25, 2023.

DATED this 1st Day of September, 2023.

Brendan Floyd
Policy Specialist
Idaho Transportation Department
11331 W. Chinden Blvd.
Boise, ID 83714
208-334-8474
Brendan.floyd@itd.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0301-2301
(ZBR Chapter Rewrite)

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. (3-31-22)~~

~~001. TITLE AND SCOPE.~~

~~**01. Title.** This rule is titled IDAPA 39.03.01, “Rules Governing Definitions Regarding Special Permits,” IDAPA 39, Title 03, Chapter 01. (3-31-22)~~

~~**02. Scope.** This rule gives the definitions for terms used in rules in IDAPA 39, Title 03 regarding special permitting. (3-31-22)~~

~~002.—009. (RESERVED)~~

~~010. DEFINITIONS.~~

~~**01. Accessories.** Additional parts of the single item load that have been removed to reduce width, length or height. (3-31-22)~~

~~**02. Administrative Cost.** The government’s cost of processing, issuing and enforcing a permit. (3-31-22)~~

~~**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. (3-31-22)~~

~~**04. Annual.** Twelve (12) consecutive months. (3-31-22)~~

~~**05. Automobile Transporter.** See Section 49-102, Idaho Code. (3-31-22)~~

~~**06. Base Width.** The measurement below the eaves of a manufactured home, modular building, or office trailer. (3-31-22)~~

~~**07. Boat Transporter.** See Section 49-103, Idaho Code. (3-31-22)~~

~~**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, is excluded from the definition of a cargo unit. (3-31-22)~~

~~**09. Convoy.** A group of two (2) or more motor vehicles traveling together for protection or convenience. (3-31-22)~~

~~**10. Department.** Idaho Transportation Department. (3-31-22)~~

~~**11. Designated Agent.** An employee or relative of the farmer. (3-31-22)~~

~~**12. Disabled Vehicle.** A vehicle unable to complete transportation under its own power. (3-31-22)~~

~~**13. Dromedary Tractor.** See Section 49-105, Idaho Code. (3-31-22)~~

- ~~14. **Economic Hardship.** The loss of a substantial amount of money caused by economic changes. (3-31-22)~~
- ~~15. **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. (3-31-22)~~
- ~~16. **Escort Vehicle.** See Pilot Vehicle. (3-31-22)~~
- ~~17. **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. (3-31-22)~~
- ~~18. **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. (3-31-22)~~
- ~~19. **Extra Ordinary Hazard.** Any situation where the traveling public's safety or the capacity of the highway system is endangered. (3-31-22)~~
- ~~20. **Farm Tractor.** See Section 49-107, Idaho Code. (3-31-22)~~
- ~~21. **Gross Vehicle Weight.** See Section 49-108, Idaho Code. (3-31-22)~~
- ~~22. **Heavily Loaded.** Exceeding legal weight or hauling a load that obstructs the driver's view. (3-31-22)~~
- ~~23. **Heavy Duty Wrecker Truck.** A motor vehicle designed and used primarily for towing disabled vehicles. (3-31-22)~~
- ~~24. **Height.** The total vertical dimension of a vehicle above the ground surface including any load and load-holding device thereon. (3-31-22)~~
- ~~25. **Implement of Husbandry.** See Section 49-110, Idaho Code. (3-31-22)~~
- ~~26. **Incidentally Operated.** See Section 49-110, Idaho Code. (3-31-22)~~
- ~~27. **Legal.** In compliance with the Idaho Code on size and weight. (3-31-22)~~
- ~~28. **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." (3-31-22)~~
- ~~29. **Light Truck.** See Section 49-121, Idaho Code. (3-31-22)~~
- ~~30. **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). (3-31-22)~~
- ~~31. **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 includes 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. (3-31-22)~~

~~**32. 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. (3-31-22)~~

~~**33. 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. (3-31-22)~~

~~**34. Non-Reducible.** Any load or vehicle exceeding applicable length or weight limits that, if separated into smaller loads or vehicles, would: (3-31-22)~~

~~**a.** Compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended; (3-31-22)~~

~~**b.** Destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or (3-31-22)~~

~~**e.** 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. (3-31-22)~~

~~**35. 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. (3-31-22)~~

~~**36. Office Trailer.** See definition of Manufactured Homes. (3-31-22)~~

~~**37. 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). (3-31-22)~~

~~**38. 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. (3-31-22)~~

~~**39. Overdimensional.** Any vehicle or load in excess of the limits established in Section 49-1010, Idaho Code. (3-31-22)~~

~~**40. Overhang.** The distance from the end of the vehicle to the end of its load. (3-31-22)~~

~~**41. Overheight.** A vehicle or load in excess of the limits established in Section 49-1010, Idaho Code. (3-31-22)~~

~~**42. 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. (3-31-22)~~

~~**43. Oversize.** A vehicle or load in excess of the limits established in Section 49-1010, Idaho Code. (3-31-22)~~

- ~~44. **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. (3-31-22)~~
- ~~45. **Overwidth.** A vehicle or load in excess of the limits established in Section 49-1010, Idaho Code. (3-31-22)~~
- ~~46. **Pilot Vehicle.** Passenger cars or trucks equipped as specified in IDAPA 39.03.05, "Rules Governing Special Permits—Oversize Non-Reducible." (3-31-22)~~
- ~~47. **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). (3-31-22)~~
- ~~48. **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. (3-31-22)~~
- ~~49. **Snowplow.** A device intended for the use of removing snow or ice from road surfaces. (3-31-22)~~
- ~~50. **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. (3-31-22)~~
- ~~51. **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. (3-31-22)~~
- ~~52. **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). (3-31-22)~~
- ~~53. **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. (3-31-22)~~
- ~~54. **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. (3-31-22)~~
- ~~55. **Variable Load Suspension Axle.** See Section 49-123, Idaho Code. (3-31-22)~~
- ~~56. **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. (3-31-22)~~
- ~~57. **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." (3-31-22)~~
- ~~011.—999. (RESERVED)~~

39.03.01 – RULES GOVERNING SPECIAL PERMITS

000. LEGAL AUTHORITY.

This rule is adopted under the authority of Sections 49-201, 40-312, 49-1001, 49-1002, 49-1004, 49-1005 and 49-1010 Idaho Code. ()

001. PURPOSE.

This rule governs the conditions for issuing special permits. ()

003. – 009. (RESERVED)

010. DEFINITIONS.

01. 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. ()

02. Annual. Twelve (12) consecutive months. ()

03. Appurtenances. Rearview mirrors turn signal lamps, splash and spray suppressant devices, awnings on recreational vehicles, load-induced tire bulge, and other non-cargo carrying appurtenances are 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 non-cargo carrying appurtenances or devices will be excluded from determining allowable length. ()

a. Other appurtenances not listed above are limited to extending three (3) inches on each side or end of a vehicle or load. Other appurtenances may include, but not be limited to, clearance lights, door handles, handholds, window fasteners, door and window trim, moldings, and load securement devices. ()

04. Cargo-Carrying Unit. Any portion of a commercial motor vehicle combination (other than a truck tractor) used for carrying cargo, including a trailer, semitrailer, or the cargo-carrying section of a single-unit truck. The length of the cargo-carrying commercial motor vehicle with two or more such units is measured from the front of the first unit to the rear of the last (including the connecting devices between the units). ()

05. Convoy. A group of two (2) or more motor vehicles traveling together for protection or convenience. ()

06. Disabled Vehicle. A vehicle unable to complete transportation under its own power. ()

07. Divisible Load. Referred to in Title 49, Idaho Code as Reducible. Single or multiple items for transport could reasonably be repositioned so the load conforms to legal size and weight dimensions. Determining the 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). ()

08. 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. ()

09. Height. The total vertical dimension of a vehicle above the ground surface, including any load and load-holding device thereon. ()

10. Legal. In compliance with the Idaho Code on size and weight. ()

11. Length. The total longitudinal dimension of a single vehicle, a trailer, or a semi-trailer. The 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. ()

12. 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). ()

13. Modular Buildings. A facility designed as a building or building section constructed to standards contained in the Uniform Building Code (UBC), adopted by Section 39-4109, Idaho Code. ()

14. **Non-Divisible.** Referred to in Title 49, Idaho Code as 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; or** ()

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 non-divisible load permit has the burden of proof of establishing the number of work hours required to dismantle the load.** ()

15. **Off-Track.** The difference in the path of the first inside front wheel and of the last inside rear wheel as a vehicle negotiates a curve. ()

16. **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. ()

17. **Oversize.** A vehicle or load in excess of the limits established in Section 49-1010, Idaho Code. ()

18. **Overweight.** A single vehicle or a vehicle combination hauling or towing a load whose weight is in excess of eighty thousand (80,000) pounds and/or legal axle weights. ()

19. **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 inches (40") apart extending across the full width of the vehicle. ()

20. **Snowplow.** A device intended to remove snow or ice from road surfaces. ()

21. **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. ()

22. **State Roadways.** A collective term referring roadways under the purview of the department, which include United States federal interstate and defense highways, State Highways, and any other local roads covered under an agreement with the department. ()

23. **Steer Axle.** The axle or axles on the front of a motor vehicle are activated by the operator to directly accomplish guidance or steering of the motor vehicle and/or combination of vehicles. ()

24. **Tandem Axle.** Any two (2) axles whose centers are more than forty inches (40") but not more than ninety-six inches (96") 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. ()

25. **Tridem Axle.** Any three (3) consecutive axles whose extreme centers are not more than one hundred forty-four inches (144") 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. ()

26. **Vocational Vehicle.** A vehicle specifically designed to enable the operator to perform specific tasks, none of which are primarily to transport loads. Cranes, loaders, scrapers, motor graders, and drill rigs are examples of vocational vehicles. ()

27. **Width.** The total outside transverse dimension of a vehicle, including any load or load-holding devices thereon, excludes any appurtenances. ()

28. Wrecker Truck. A motor vehicle designed and used primarily for towing disabled vehicles ()

011. – 099. (RESERVED)

Subchapter A – General Permit Provisions

100. DEPARTMENT AUTHORITY AND RESPONSIBILITY.

01. Primary Concern. The Department’s primary concern, in the issuance of special permits, will be the safety and conveyance of the general public and the preservation of the highway infrastructure. ()

02. Permit Issuance. The Department will, in each case, predicate the issuance of a special permit on a reasonable determination of the necessity and feasibility of the proposed movement. Permits will be issued to specific vehicles. ()

03. Special Permit. The special permit authority of the Department will cover travel on state roadways only, unless the Department has an existing agreement under subsection 004 of this rule. Special permits issued by the Department will be valid only on completed sections of state roadways, as 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 will include those sections of state roadways within corporate limits of cities and towns. Still, it will not include sections of state roadways intersecting with local highways, when travel is occurring on the local highway(s). Additionally, it will not release the permittee from complying with other existing laws, local ordinances, or resolutions which may also govern their movement. 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. ()

04. Offices For Issuance Of Special Permits. The Department will make access to permits available electronically, over the phone, and in person at Ports of Entry, as practicable. ()

101. LOCAL HIGHWAY JURISDICTION AUTHORITY.

Local Highway Jurisdictions. At their discretion, a Local Highway Jurisdiction may enter into an agreement with the Department to allow for the issuance of special permit to include travel on that local jurisdiction controlled highways. ()

102. PERMITTEE RESPONSIBILITY.

01. General Responsibilities. The permittee will determine and declare the gross weight, distribution of weight, and the dimensions of the vehicle and load and submit all other required information before issuance of the permit. Accepting 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 will be deemed an unequivocal assurance that he has complied, or will comply with all operating, licensing, and financial responsibility requirements. ()

02. Application for Special Permits. Applications can be completed Online, at Ports of Entry, or with the Commercial Vehicle Services. ()

a. An application must be submitted for all special permits. Applicants must provide all the information requested by the department to assist in the determination of the necessity of the proposed movement and the need for an engineering determination of the feasibility of the proposed movement. ()

03. Permit to Be Carried in Vehicle. The special permit must be carried or available electronically in the vehicle to which it refers during the time of movement and, 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. ()

04. Basic Limitations Will Not Be Exceeded. Special permits will 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 an exception is made by the Transportation Board, or as otherwise provided herein. ()

05. Insurance For Extraordinary Hazards. Evidence of insurance is required when necessary because loads create 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 insurance 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. ()

06. Hazardous Travel Conditions Restrictions. Extreme caution in the operation of a special-permitted vehicle will 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 will 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. ()

07. Delaying Movement. Enforcement personnel responsible for any section of the highway will carry out enforcement action for violations involving special permit operations and may delay movements. ()

103. 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 when a permit is issued. The inspection will be completed in compliance with 49 CFR Part 396.17 and any other applicable Federal Motor Carrier Safety Administration regulations. ()

02. Inspectors. Inspectors completing required annual inspections will meet the certifications requirement in 49 CFR 396.19 and brake inspector qualification in 49 CFR 396.25. ()

03. Drivers. All drivers will 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. ()

104. EQUIPMENT REQUIREMENTS FOR PERMITTED VEHICLES.

01. Brakes. Brakes will meet the Federal Motor Carrier Safety Regulations and be maintained to the Federal Motor Vehicle Safety Standards No. 121 in effect when the commercial motor vehicle was manufactured. ()

02. Lighting For Loads Traveling In Low Visibility. Those over-width vehicles and/or loads traveling thirty (30) minutes after sunset to thirty (30) minutes before sunrise or when general visibility is less than five hundred (500) feet will be required to display lights to mark the vehicle and/or load extremities. These lights are in addition to the clearance lights required on legal-size vehicles when traveling at night. ()

a. The lights may be flashing or steady burning. ()

b. Lights visible from the front of the oversize vehicle and/or loads and the extremities in the middle or near the front of the oversized vehicle and/or load will be amber. ()

c. Lights visible from the back of the over-width vehicle and/or load and the extremities near the back of the oversized vehicle and/or load will be red. ()

03. Lights on Rear Overhang. Lights are required when the rear overhang exceeds the end of the trailer by four (4) feet or more to show the maximum width of the overhang. Overhang lighting should be as follows: ()

a. If the overhang is two feet (2') wide or less, only one (1) light is required on the end of the overhang. ()

b. If the overhang is over two feet (2') wide, two (2) lights are required on the end of the overhang. ()

04. Flagging For Overhang On Vehicles Or Loads. Warning flags are required on all over-width vehicles and/or loads, and when the rear overhang exceeds the end of the trailer by four feet (4') or more. Warning flags must: ()

a. Have a minimum size of eighteen inches (18") by eighteen inches (18"); and ()

b. Be red or fluorescent orange in color. ()

c. If the overhang is two feet (2') wide or less, only one (1) flag is required on the end of the overhang. If the overhang is over two feet (2') wide, two (2) flags are required on the end of the overhang to show the maximum width of the overhang. ()

05. Signing. Oversize load signs will be required on all vehicles and/or loads exceeding legal width. Signs will not be displayed when the vehicle is empty and of legal dimensions. Signs will meet the following requirements: ()

a. A minimum of twelve inches (12") high by five feet (5') wide and eight inch (8") high letters, one inch (1") stroke width and black letters on yellow background. ()

b. Signs will be displayed on the front or the roof top of the towing vehicle and the rear of the oversize load, or on the front and back or the roof top of self-propelled oversize vehicles. ()

06. Axles. All axle types adjacent to an axle grouping, which exceeds the applicable weight allowance in Section 49-1001 or 49-1004, Idaho Code, must be fully deployed while operating on State roadways. ()

105. WAIVER OF LIMITATIONS FOR EMERGENCY MOVEMENTS.

01. Board Authority. Notwithstanding other provisions of this rules, the Idaho Transportation Board may waive existing permit policy limitations in an emergency, subject to such limitations or special requirements as the Board may impose. ()

02. 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 Commercial Vehicle Services within the Department. ()

03. Emergencies Endangering the Public Health, Safety, or Welfare, Including but Not Limited to Fire, Flood, or Earthquake. During an emergency endangering public health, safety, or welfare, there may be an urgent and immediate need for equipment. It will not be in the public interest to require a special permit to be in the vehicle before an oversize movement. Verbal approval to proceed without a special permit in the vehicle may be obtained from the Commercial Vehicle Services or an Idaho Port-of-Entry. Once the emergency movement is completed, a formal application for a special permit must be submitted to Commercial Vehicle Services. ()

04. Emergency Movement of Implements of Husbandry. It will 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 Commercial Vehicle Service on-call staff. That verbal authorization may include escort vehicle requirements based on the travel route and the load's dimensions. Once the emergency movement is completed, the permittee will formally apply for a permit with Commercial Vehicle Services on the first working day after the occurrence. ()

05. 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. ()

106. SPRING BREAKUP SEASON LOAD RESTRICTIONS.

01. Authority. The Department will have the authority to impose restrictions on sections of State roadways in order to ensure the safe travel for the citizens of Idaho and to protect the infrastructure of the state during periods of severe spring breakup. The Department, as much as practicable, will maintain standard load limits on these roads unless conditions are such that severe breakup will result. ()

02. Spring Breakup Restrictions. Depending upon the type of road construction, stability of the roadway, reduction in load bearing capacity, the amount of moisture, temperature conditions, and severity of frost heaves and breakup, routes or sections of routes may have restrictions applied by the department. A freeze-up of the pavement may temporarily restore the load-bearing capacity after a section has been posted for load and speed restrictions. ()

03. Maximum Weight Restriction. The possible restrictions on maximum weight may be one (1) of the following: ()

a. Sixteen thousand (16,000) pounds on any axle; or ()

b. Fourteen thousand (14,000) pounds on any axle; or ()

c. Twelve thousand (12,000) pounds on any axle. ()

04. 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 inches (10") of tire width. Tubeless tires will be credited for the width of the conventional tubed tires they replace. ()

05. Width Restrictions. When a weight restriction is applied under Subsection 106.02 of this section it will automatically restrict the width allowed by a special permit on two lane road. On any two (2) lane section of state roadways restricted to less than legal weight, the maximum width by the special permit will be restricted to twelve feet six inches (12'6") during the weight restriction period. ()

06. Speed Restrictions. When a weight restriction is applied under Subsection 106.02 of this section it will automatically restrict the speed of some vehicles. 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. Red and green markers will mark restricted speed zones. 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 signposts and, when properly used, will afford protection to the highway subgrade and surface and speed traffic flow. ()

07. Suspended Weight Limits. Normal overweight special permit limits may be suspended on all highways in the areas where spring breakup restriction are in force. ()

08. Weight Restrictions. The department is authorized to issue special permits to overweight vehicles in areas with spring breakup restrictions as long as all of the following conditions are met: ()

a. Minimum tire width on all tires is ten inches (10") or larger, and; ()

b. Maximum axle weight on any single axle having two (2) single wheels will not exceed ten thousand (10,000) pounds, and; ()

c. Maximum axle weight on any single axle having four (4) or more tires will not exceed fourteen thousand (14,000) pounds, and; ()

d. Permit is being requested for a non-divisible loads. ()

09. Temporary Waiver of Spring Breakup Restrictions. The department may temporarily waive the spring breakup restrictions by posting GREEN markers on the speed limit signs and other signs, if appropriate, within a section of the highway posted with restrictions. This may occur in the event that a freeze-up of the pavement may temporarily restore the load-bearing capacity after a section has been posted for load and speed restrictions or for other circumstances. ()

10. Spring Breakup Restriction Waivers. The department may allow exceptions to the spring breakup weight restrictions for emergency and critical service vehicle(s), i.e. 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 will be in writing from the department and must be carried in the vehicle. ()

11. Restriction Signage. The department 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 signs and marks are posted. ()

107. PERMITTING FEES AND COSTS.

01. Special Permit Fees To Be Borne By Permittee. The movement of oversize or overweight vehicles or vehicles with special loads is a privilege not afforded to every highway user. The administrative cost incurred in the processing, issuing, and enforcing of special permits will be borne by such permittees and not by the general traveling public through the expenditure of highway user funds. Special permits issued for non-divisible, 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. ()

- 02. Payment of Fees.** Permit fees are due at the time of issuance. ()
- 03. Refund.** Permit fees are not refundable once they have been processed into the Department's accounting system unless the permittee contacts Commercial Vehicle Services 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. ()
- 04. Permit Costs.** Special permit fees listed below are intended to cover the administration cost and are subject to periodic change depending on costs incurred in processing, issuance, and enforcement of special permit rules. ()
- 05. Current Schedule of Fees.** ()
- a. Following Permits are thirty dollars (\$30):** ()
- i. Oversize only, single trip.** ()
- b. Following Permits are thirty-three dollars (\$33):** ()
- i. Overweight/Oversize or Overweight (non-divisible) single trip.** ()
- c. Following Permits are forty-five (\$45):** ()
- i. Annual Divisible Loads;** ()
- ii. Cylindrical hay bales, two (2) wide;** ()
- iii. Multiple width loads of kiln stacked lumber;** ()
- iv. Divisible loads, up to and including fifteen feet (15') high;** ()
- v. Disabled Vehicle;** ()
- vi. East port/Canadian Weight;** ()
- vii. Economic Emergency Waiver;** ()
- viii. Oversize (non- divisible) including, but not limited to, annual Manufactured homes, modular buildings, and office trailers permits, farm tractors exceeding nine feet (9') width on Interstate and implements of husbandry, Snowplow, multiple width loads of crane booms, and multiple width loads of conveyor units;** ()
- ix. Extra Length/Weight annual, authority to exceed eighty thousand (80,000) lbs. with divisible 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).** ()
- d. Following permits are one hundred twenty-eight dollars (\$128):** ()
- i. Overweight/Oversize (non-divisible) annual.** ()
- e. Reissuance or transfers of a permit is fifteen dollars (\$15).** ()
- 06. Online Discount.** Annual special permits purchased online will be five dollars (\$5) less than the listed price in Subsection 107.05 of this section. ()
- 07. 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. ()

108. REVOCATION OF PERMIT FOR NON-COMPLIANCE WITH PROVISIONS OF THE PERMIT.

01. Disqualification of Permits. Any issued permit will become invalid, and the cited vehicle may be disqualified from 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 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 flags and/or signs. ()

iii. Failure to provide the correct number of pilot cars and/or proper placement. ()

iv. Failure to provide 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 with 511 advisories for hazardous travel conditions. ()

c. The vehicle violates weight limits under Section 49-1001(1), (2), and (9), Idaho Code, as follows: ()

i. Single, tandem, tridem, quad, or other axle groups weight is more than fifteen percent (15%) over. ()

ii. Gross or bridge weight is more than seven percent (7%) over. ()

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 Commercial Vehicle Services 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 a 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 will be subject to all applicable penalties provided by law with regard to the provisions violated. ()

109. RESPONSIBLE FOR INJURY TO PERSONS OR PROPERTY.

The permittee will 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 will 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. ()

110. – 199. (RESERVED)

Subchapter B – Divisible Load Permits

200. GENERAL WEIGHT REQUIREMENTS AND CONDITIONS.

01. Permit Types to Exceed Eighty Thousand Pounds Gross Weight. Permits will be issued for vehicle combinations operating on Interstate and national network 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. Except that, no vehicle combination weighing more than one hundred five thousand five hundred (105,500) pounds will operate on local highways contrary to the provisions of Section 49-1004A, Idaho Code, and this rule. ()

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. ()

201. DESIGNATED ROUTES FOR EXTRA-LENGTH VEHICLE COMBINATIONS UP TO ONE HUNDRED TWENTY-NINE THOUSAND (129,000) POUNDS.

01. Designated Routes for Vehicle Lengths and Weights. All designated state-approved routes for vehicle combinations to operate at lengths and weights above one hundred five thousand five hundred (105,500) pounds will be identified on the “Designated Extra Length Excess Weight up to 129,000 Pound Map” which is available online and Ports of Entry. ()

02. Requests To Add Routes. Routes not currently designated to operate at up to one hundred twenty-nine thousand (129,000) pounds and maintained under the purview of the department may be requested to be added. The request process is as follows: ()

a. Requestor will complete the request form (ITD 4886) and submit the completed form to the Idaho Transportation Department Office of the Chief Engineer. The requestor will forward the form to the adjacent local jurisdictions. ()

b. Once submitted, the request will be reviewed for completeness and the department will complete an analysis for engineering and safety criteria. The criteria will include an 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, including road width and curvature. Additional consideration will be given to traffic volumes and other safety factors. ()

c. Once the analysis is completed, the request will be submitted to the Chief Engineer, who will report to the Idaho Transportation Board Sub-committee. ()

d. The Idaho Transportation Board Sub-committee will make a recommendation (approve, reject, or request additional information) to the Idaho Transportation Board based on the Department's analysis. ()

e. If the Idaho Transportation Board recommends approval or denial, it will instruct the Chief Engineer to issue a letter of determination. An adverse person may contest the letter of determination and request a hearing. The hearing will be conducted pursuant to the Idaho Administrative Procedures Act, Title 67, Chapter 52, Idaho Code. ()

f. 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. ()

g. The Department will notify the requestor of the Chief Engineer’s Preliminary Order and post to the Idaho Transportation Department Web site. ()

h. An appeal of the Preliminary Order may be made pursuant to the Idaho Administrative Procedures Act, Title 67, Chapter 52, Idaho Code. The appeal will be made to the Director of the Idaho Transportation Department. ()

03. Local Highways Approved Routes. 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. ()

202. OPERATING REQUIREMENTS FOR EXTRA-LENGTH/EXCESS WEIGHT PERMITS UP TO ONE HUNDRED TWENTY-NINE THOUSAND (129,000) POUNDS VEHICLE COMBINATIONS.
All vehicle combinations will 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, will consist of not more than four (4) units, will not exceed one hundred fifteen (115) feet overall, and no such vehicle combination will 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 will 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 will be as specified by Federal Motor Carrier Safety Regulations, Part 393. ()

04. Trailer Weight Sequence. In any extra-length combination, the respective loading of any trailer will not be substantially greater than the weight of any trailer located ahead of it in the vehicle combination. (Substantially greater will be defined as more than four thousand (4,000) pounds heavier.) ()

05. Operating Restrictions. Operators of all vehicle combinations governed by this rule will comply with the following operating restrictions: ()

a. A minimum distance of five hundred (500) feet will be maintained between combinations of vehicles except when overtaking and passing. ()

b. Except when passing another vehicle traveling in the same direction, the combination will 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. ()

203. 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 are allowed to travel under the authority of special permits issued to the power unit. A copy of the rule, and gross loads tables will accompany and be part of all annual extra-length/excess weight, up to one hundred twenty-nine thousand (129,000) pound permits. Operations are valid only on routes of the state highway system designated for such purposes as set forth on the “Extra Length Map” or the “Designated Routes Up to 129,000 Pound Map,” which will accompany the permit. ()

a. The operator of any extra-length, excess weight, and up to one hundred twenty-nine thousand (129,000) pound vehicle combination will 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, will be available for inspection by enforcement officers with the permit for the vehicle combination.

When the Idaho Off-Track Computation Form is required, the permit will be invalid until the form is completed and available for inspection. ()

02. 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 is subject to the following course of action: ()

a. The vehicle combination will be escorted by the 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 will require an advance pilot/escort vehicle to escort the vehicle combination, and the pilot/escort vehicle will meet the pilot/escort vehicle requirements. ()

204. PERMITS FOR MULTIPLE-WIDTH OR MULTIPLE-HEIGHT LOADING.

01. Cylindrical Hay Bales. Special permits may be issued for overwidth transportation of cylindrical hay bales that may be loaded two (2) bales wide and two (2) bales high not exceeding eleven feet six inches (11'6") wide. Hauling vehicles may not exceed sixty eight feet (68') of trailers, including connecting tongue or eighty feet (80') overall length. Operation of such overwidth loads will be subject to the same time of travel and other safety requirements of non-divisible overwidth loads. ()

02. Divisible Height Loads. Special permits may be issued to allow the transportation of divisible 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 vertical clearance map is available at the Port of Entry and online. ()

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 will be considered a single non-divisible unit and may be hauled two (2) stacks wide and two (2) stacks high. Hauling vehicles eligible for a permit for this purpose will be legal-size vehicles registered for travel on public highways. Operations of such overwidth loads will be subject to the same type of travel restrictions and other safety requirements as other overwidth non-divisible loads having a similar width. ()

04. Overwidth Overhang. Overwidth loads will distribute overhang to the sides of the trailer as evenly as possible. ()

205. – 299. (RESERVED)

Subchapter C – Non-Divisible Load Permits

300. RESPONSIBILITY OF THE PERMITTEE.

01. Certification Load Is Non-Divisible. Upon application, the permittee must certify that steps have been taken to reduce the dimensions, weight, and/or load, involved in the movement. ()

02. Required Stops. All oversize vehicles are required to stop at all POE sites for inspection. ()

03. Map Resources. The Pilot/Escort Vehicle Travel and Vertical Clearance of Structures Map available online and Ports of Entry. ()

04. Maximum Dimensions Allowed. The maximum dimensions of oversize vehicles or oversize loads will depend on the route to be traveled: width of roadway, alignment, and sight distance, vertical or horizontal clearance, and traffic volume. ()

05. Registration. Any vehicle hauling or towing non-divisible 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 not from weight limitations. ()

06. Overweight Permit Requirements. Overweight permits will be issued for non-divisible 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, which is a part that can be removed 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. ()

a. 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 this rule must operate by approved single trip permit. ()

07. Maximum Tire Weights. The maximum overweight levels will not exceed eight hundred (800) pounds per inch width of tire. ()

08. Protection of Facilities. The permittee will be responsible for the protection of signposts, guideposts, delineators, and may be required to post bond to cover the costs of repairs or replacements of such facilities. ()

09. Traffic Control Plans. The movement of special loads will be made in such a way that the route will remain open as often as feasibly possible and to provide for frequent passing of vehicles traveling in the same direction. To achieve this, a traffic control plan is required to be submitted when operating on two (2) lane highways and exceeding the following dimensions: ()

a. Width exceeds eighteen (18) feet; or ()

b. Length exceeds one hundred fifty (150) feet; or ()

c. Height exceeds sixteen (16) feet. ()

10. Traffic Control Plan Preparation. The traffic control plan will be prepared by a licensed engineer or an American Traffic Safety Services Association (ATSSA) certified traffic control supervisor and include the following information: ()

a. Locations and mileposts of where the vehicle/load can pull over to allow for traffic relief; ()

b. How pilot cars and traffic control personnel will be utilized; ()

c. Identification of any railroad tracks being crossed and the emergency contact number for the governing entity; and ()

d. Procedure for allowing emergency vehicles to navigate around the vehicle/load when necessary. ()

11. Bridge Analysis. After the completion of district approval and/or bridge analysis, additional traffic control plans may be required. The Department may require traffic control plans based on route and load considerations. ()

12. Loading And Parking on State Highway. The permitted vehicle will not be loaded, unloaded, or parked upon any State roadway, except for emergencies, without the specific permission or by direction of the Department or policing agency having jurisdiction over such highway. ()

301. OVERWIDTH HAULING VEHICLES, RESTRICTIONS.

01. Width of Hauling Equipment. Special permits may be issued for trailers up to ten feet (10') wide

hauling non-divisible loads smaller than the trailer. The issued permit will be valid for the laden and unladen movement. ()

02. Load Dimensions. Any load exceeding the dimensions of the trailer will be non-divisible 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 will be restricted to loads requiring an overwidth hauling vehicle and the backhaul permit will be for the unladen vehicle. ()

04. Buildings. Buildings that are too wide to be safely transported on legal-width hauling vehicles will be moved either on house-moving dollies or on trailers that can be reduced to legal width for unladen travel. ()

302. 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 sixteen feet six inches (16'6") feet high must contact local utility company(s) for approval and assistance with power lines. ()

303. INSURANCE AND BONDING REQUIREMENTS.

01. Insurance. The permittee when hauling buildings fourteen feet (14') or more in width will be required to carry evidence of insurance in the permitted vehicle in the same minimum amounts as is necessary 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. 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. ()

304. 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 will not exceed four (4) oversize loads or vehicles between pilot/escort vehicles. Maximum width of units in a convoy will be limited to fourteen (14') feet wide on black-coded routes of the Pilot/Escort Vehicle Travel and Vertical Clearance of Structures Map and to twelve feet six inches (12'6") on red-coded routes of the Pilot/Escort Vehicle Travel and Vertical Clearance of Structures 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 will 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 Travel and Vertical Clearance of Structures 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 will 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 will 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 will 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 Travel and Vertical Clearance of Structures Map. Minimum spacing of approximately one thousand (1,000') feet will be maintained between all units in a convoy except when a pilot/escort is necessary to control traffic in turning movements. Maximum length of units in a convoy will 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 Travel and Vertical Clearance of Structures Map and one hundred twenty (120') feet on the interstate. ()

305. TIME OF TRAVEL RESTRICTIONS FOR OVERSIZE LOADS.

01. Red-Coded Routes. Daylight travel until 2 p.m. on Friday or the day before a holiday, as identified in Subsection 305.04 of this section, no travel is allowed on Saturday or Sunday. Single-trip permits may allow travel during different time periods. Travel may resume at sunrise on Monday or the day following a holiday. ()

02. Black-Coded Routes. Loads not over twelve (12) feet wide, one hundred twenty (120) feet long, and fifteen (15) feet high may travel twenty-four (24) hours per day, seven (7) days per week. Loads in excess of any of the preceding dimensions are required to follow the Pilot/Escort Vehicle Travel and Vertical Clearance of Structures Map restrictions and are limited to traveling before 4:00 p.m. on the day preceding a holiday. Travel may be resumed at sunrise on the day following the holiday. ()

03. Interstate. Loads not over twelve (12) 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; otherwise, follow the Pilot/Escort Vehicle Travel and Vertical Clearance of Structures Map for restrictions. ()

04. Holidays. The following days are designated as holidays: ()

a. New Year's Day; ()

b. Memorial Day; ()

c. Independence Day; ()

d. Labor Day; ()

e. Thanksgiving; and ()

f. Christmas. ()

05. Movement of Buildings. Excessively oversize loads may have additional restrictions to time of travel applied. At the discretion of the Department, movement of loads may be approved between 2 a.m. and sunrise to avoid traffic issues. ()

06. Special Circumstances. Other time of travel restrictions may be noted on the permit due to special circumstances. ()

07. Overlength Restrictions. Oversize vehicles operating under the authority of a special permit that exceeds 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. ()

08. Heavy Commuter Traffic Restrictions. The movement of oversize permitted vehicles or loads which are more than thirteen (13) feet in width are prohibited from movement on State Roadways at times of heavy commuter traffic. Unless otherwise defined on the permit, the times of heavy commuter traffic will be 6:00 a.m. to

9:00 a.m., and 4 p.m. to 6:30 p.m. local time, 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 will appear either on the face of the permit or in the attachments for annual permits. The location of heavy commuter occurs at the identified mile posts or within one (1) mile of the city limits of the following cities: ()

a. Boise valley - I-84, MP 26 to MP 59; ()

b. Coeur d'Alene – I-90, MP 0 to MP 17; ()

c. Eagle; ()

d. Emmett; ()

e. Garden City; ()

f. Idaho Falls – I-15 MP 115 to MP 121; ()

g. Middleton; ()

h. Pocatello valley – I-15 MP 67 to MP 74 and I-15B MP 0 to MP 5.5 and I-86 MP 58 to MP 63 and US-30 MP 331 to MP 336 and US 91 MP 100 to MP 103 and US 91 MP 77 to MP 82; ()

i. Star; and ()

j. Twin Falls - US 93 MP 41 to MP 53. ()

09. Heavy Commuter Lane Restriction. Authorized oversize permitted vehicles operating during hours of heavy commuter traffic will be restricted to the furthest right-hand lane. ()

10. Emergency Vehicles. Emergency movement of vehicles/loads responding to imminent hazards to persons or property will be exempt from the provisions of this section. ()

11. Additional Department Approval and Allowance for Approval Time. Department approval may require up to twenty-four (24) working hours. Additional Department approval is required when vehicles or loads exceed. ()

a. Sixteen (16) feet wide on red coded and black coded routes; ()

b. Eighteen (18) feet wide on interstate highways; ()

c. Sixteen (16) feet high on any route; or ()

d. One hundred twenty (120) feet long on any route other than the interstate; ()

e. One hundred fifty (150) feet long on the interstate. ()

306. PILOT/ESCORT VEHICLES.

01. Vehicle Requirements. Pilot/escort vehicle(s) will be furnished by the permittee and will be either passenger car(s), truck(s), or vehicles authorized by the Commercial Vehicle Services Office, however, will not exceed sixteen (16,000) pounds. The truck(s) used as pilot/escort vehicle(s) will 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 will not qualify as pilot/escort vehicles. ()

02. Loads Over Sixteen Feet High. Height poles are necessary in the front of the pilot/escort vehicles leading all loads over sixteen (16') feet high with a non-metallic height pole deployed. ()

03. Single Trip and Annual Permits. A pilot car is required for a single trip any time it is so stated in the escort section or restriction section of the permit. Annual Permit holders will require a pilot car in accordance with the Pilot/Escort Vehicle Travel and Vertical Clearance of Structures Map in relation to their size and route. ()

04. Oversize Load Signs. All pilot/escort vehicles while escorting an oversize load will display a sign on the roof top of the vehicle having the words OVERSIZE LOAD. Such signs will not be displayed and will be considered illegal except when the pilot/escort vehicle is actually piloting/escorting an oversize load. ()

05. 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. ()

06. Oversize Load Lights. Flashing or rotating amber lights must be displayed on the pilot/escort vehicle at each end of the necessary 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 will meet the minimum standards outlined in section 7 of this rule and will always be on during escorting movements. ()

07. Single Light. As an alternative to subsection 6 of this section, 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 will always be on during escorting movements. ()

08. Pilot/Escort Lights On During Movement of Escorted Load. The pilot/escort vehicle's headlights and taillights will be on while escorting the permitted load. ()

09. Required Equipment to be Carried in a Pilot/Escort Vehicle. A pilot/escort vehicle will carry the following items of equipment in operable and good working condition 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 will 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 will 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 driver's license. ()

h. Two-Way Radio. ()

i. Hardhat. ()

j. Flashlight. ()

k. First Aid Kit. ()

10. Two-Way Radio. On all movements necessitating a pilot/escort vehicle, both the towing unit and

the pilot/escort vehicle(s) will be equipped with two-way radio equipment licensed under Federal Communications Commission regulations adequate to always provide reliable voice communication between the drivers thereof during the movement of the piloted/escorted vehicle and/or load. Transmitting and receiving capabilities of the radio equipment used will 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. ()

11. 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 travel way lane. ()

12. 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 will be necessary 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. ()

13. 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. ()

14. 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. ()

15. Spacing. Approximately one thousand (1,000') feet will 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. ()

307. NEZ PERCE – CLEARWATER FOREST SAFETY AND TRAVEL REQUIREMENTS.

01. Forest Service Oversight. Pursuant to 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). The Forest Service has issued the following written criteria to determine which "oversize" loads will be subject to Forest Service review: ()

a. 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. ()

b. Load movement requires longer than twelve (12) hours to travel through the designated mileposts. ()

c. Load movement requires physical modification of the roadway or adjacent vegetation to facilitate passage beyond normal highway maintenance. ()

02. Additional Safety Requirements. For loads meeting any of the criteria this section 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: ()

a. Ambulances and possible law enforcement escorts to ensure public safety. ()

b. Safety lighting will be addressed to not create a safety hazard to the traveling public. ()

c. Loads cannot utilize turnouts, which are designated for recreational vehicles for non-emergency parking. ()

d. Time of travel will be determined based on traffic volume and best interest of the public. Nighttime movement may be required and/or movement may be restricted during holidays or weekends. ()

e. Loads require a vehicle safety inspection by the Idaho State Police or equivalent agency of another jurisdiction prior to issuance of a permit. ()

f. The department will monitor the loads as they travel the highway and ensure only one (1) load will operate on this section of highway at any one time. ()

308. 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. ()

02. 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. ()

03. 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 the number of axles and computed by applying the formula $W = 560 ((LN/N-1) + 12N + 36)$. ()

04. 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 the number of axles and computed by applying the formula $W = 600 ((LN/N-1) + 12N + 36)$. ()

05. 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 the number of axles and computed by applying the formula $W = 640 ((LN/N-1) + 12N + 36)$. ()

06. 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 the number of axles and computed by applying the formula $W = 675 ((LN/N-1) + 12N + 36)$. ()

07. 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 the number of axles and computed by applying the formula $W = 755 ((LN/N-1) + 12N + 36)$. ()

08. 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 the number of axles and computed by applying the formula $W = 825 ((LN/N-1) + 12N + 36)$. ()

309. 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. ()

310. QUARTERLY ROAD USE FEE REPORTS FOR ANNUAL OVERWEIGHT PERMITS.

01. Quarterly Reporting. To comply with Section 49-1001, Idaho Code, permittees must make quarterly reports of laden only mileage to the department for the movements of non-divisible vehicle/loads, at the appropriate permitted weight level of the annual special permits. These fees are in addition to the registration fees. Mileage and road use fees for single trip special permits are calculated and collected at the time of issuance and are not reported quarterly. Reporting is required as follows: ()

a. The department will generate an online quarterly report form for each valid annual special permit issued. ()

b. The permittee must report each quarter's information on the department's form with all requested information completed on or before the specified due date even when reporting zero (0) miles traveled. ()

c. If the customer does not receive a quarterly report form or report their information online, it is the customer's responsibility to notify the department allowing adequate time to submit the report before the due date. ()

d. Any report transmitted through the US Postal Service is considered filed and received by the department on the date shown by the post office cancellation mark stamped on the envelope or wrapper containing the report. A postage meter cancellation is not considered as a post office cancellation mark. ()

e. If the quarterly report form due date falls on a Saturday, Sunday, or a federally recognized holiday, the due date will be extended to the next business day. ()

f. If a quarterly report is not submitted the account will be suspended. ()

311. OVERSIZE LOADS.

01. Continuous Operation. Special permits may be issued for continuous operation to haul or transport non-divisible 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 to be issued for oversize loads only. ()

b. Permits for continuous operation will be issued to one (1) specified power unit. The permittee may tow various units with the specified power unit, either as towaway vehicles or trailers, hauling oversized loads. Oversize loads will be non-divisible 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. ()

c. Maximum size of loads or vehicles transported under the authority of an annual oversize for black and interstate routes will 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 twenty (120') feet including load overhang. Annual oversize permits for red-coded routes will be limited to a width of twelve feet six inches (12'6"). A current Pilot/Escort Vehicle Travel and Vertical Clearance of Structures Map will accompany such permits for extended operations and is considered part of the permit. ()

d. Divisible weight permits can be used in conjunction with non-divisible oversize permits if the weights do not exceed in Section 49-1001, Idaho Code, and the length does not exceed multiple Overwidth loads on single or double trailers. ()

i. Multiple Overwidth Loads on Single or Double Trailers. Multiple non-divisible loads may be transported on double trailer combinations not exceeding eighty (80') feet combination length and single trailers not exceeding fifty-three (53') feet exclusive of load overhang. ()

312. 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 will be construed to be an implement of husbandry and no permit is necessary. 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 require a special permit to move, except for the following situations: ()

a. The implement is being moved from one (1) farm operation to another farm operation. ()

b. A farmer, employee or relative of the owner of the implement, or equipment dealer is transporting implements of husbandry or equipment for the purpose of: ()

i. 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 ()

ii. 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. 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 will 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 Travel 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. ()

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, will 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). ()

313. REMOVAL OF DISABLED VEHICLES.

01. Permits Issued. Annual Disabled Vehicle permits will be issued to wrecker trucks or other vehicles

used for the removal, including the first and secondary movement of disabled vehicles and their unladen return. ()

02. Permitted Vehicle. The permitted vehicle involved in the removal of disabled vehicles will be the proper class of vehicle and will have adequate gross vehicle weight and traction to control the combination of wrecker and attached disabled vehicles, and will provide brakes to the trailer axles and stop signal and clearance lights to such towed disabled vehicle. ()

03. 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 state roadways route is posted with a weight restriction. The current Route Capacity Map is available to the public online. 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 axles must be fully deployed when exceeding adjacent 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 as 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 the 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. 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 will not exceed eight hundred (800) pounds per inch width of tire nor the maximum weights authorized. ()

04. Time of Travel Restrictions. Time of travel restrictions will be waived during the first movement of the disabled vehicle when necessary to clear the travel way. Disabled vehicles that are oversize and moving at night will be required to operate in accordance with the lighting requirements as listed in Section 007 of this rule. A front pilot/escort vehicle will be required when disabled vehicles exceeding ten (10’) feet wide and is being moved at night. ()

05. First Movement. A disabled vehicle permit will cover the wrecker for the first movement of a disabled vehicle from the point at which the disabled vehicle became disabled to a location (i.e. towing company, repair, or company facility) where it can be safely secured. ()

06. Secondary Movement. A disabled vehicle permit will cover a wrecker for secondary movements of disabled vehicles as long as any vehicle combinations have been separated and the wrecker plus the portion of the disabled vehicle do not exceed allowable weight or size limits. ()

07. Replacement Vehicle. The permitted vehicle involved in the removal of a disabled vehicle will be allowed to tow a functional replacement vehicle to the point of disablement, to replace the disabled vehicle. ()

08. Height Restrictions. The disabled vehicle height will not exceed the height of fifteen (15’) feet on the first movement. ()

314. MANUFACTURED HOMES, MODULAR BUILDINGS, AND OFFICE TRAILERS.

01. Registration and Licensing Requirements. All manufactured homes moved on their own axles on any state roadways are 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 will 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 will 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 will carry a minimum amount of seven hundred and fifty thousand dollars (\$750,000) insurance coverage and have proper authority. ()

03. Paneling of Open Sides. Paneling must be rigid material, or six (6) mil plastic sheathing (or stronger) backed by a grillwork to prevent billowing and fully enclose open sides of sections in transit. ()

04. Interior Loading. If furnishings or other loose objects are being transported within the unit, they must be secured in a position safe for traveling. ()

05. Construction. Modular buildings will 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 will be constructed in accordance with Federal HUD Manufactured Home Construction and Safety Standards. ()

06. Towed On Own Axles. Manufactured Homes, Modular Buildings, and Office Trailers being towed on their own axles must have the following requirements: ()

- a.** Connection Device must be in compliance with Federal Motor Carrier Safety Regulations, 49 CFR part 393. ()
- b.** Length cannot exceed eighty (80') feet including tongue. ()
- c.** Width will be limited to a maximum of sixteen (16') feet at the base and will not exceed eighteen (18') feet overall width including the eaves. ()
- d.** The maximum allowable load for any vehicle tire operated on any public highway will 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). ()
- e.** Running gear assembly, the entire system including frame, drawbar, and coupling mechanism, brake systems, axles, and lights, will be in compliance with CFR Title 24 for the year the manufactured home was built. In addition, all tires and lights used in transportation of manufactured homes under this category will be in compliance with Federal Motor Carrier Safety Regulations, part 393. ()
- f.** Sixteen (16) foot wide (at the base) manufactured homes will be required to have a minimum of four (4) axles. ()
- g.** Sixteen (16) foot wide (at the base) manufactured homes will be required to have brakes on a minimum of three (3) axles. ()
- h.** The unit will have stop lights, turn signals, and taillights. ()
- i.** Safety Chains. Two (2) safety chains will 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 will be three-eighths (3/8) inch diameter steel. Chains will 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. ()

07. Tow Vehicles. Tow vehicles for manufactured homes, modular buildings, and office trailers will comply with the following minimum requirements:

Manufactured Homes and Office Trailers Width	Tire Width	Drive Axle Tire Rating	Min. Unladen Weight	Rear Axle Rating
<u>Over 8 feet to 10 feet</u>	<u>7.00 inches</u>	<u>6 Ply</u>	<u>6,000#</u>	<u>None</u>
<u>Over 10 feet to 12 feet</u>	<u>8.00 inches</u>	<u>8 Ply</u>	<u>8,000#</u>	<u>15,000#</u>
<u>Over 12 feet</u>	<u>8.25 inches</u>	<u>10 Ply</u>	<u>12,000#</u>	<u>15,000#</u>

- a.** Brakes will be in compliance with Federal Motor Carrier Safety Regulations part 393. ()
- b.** Rear axle will have a minimum of a single axle with dual mounted tires. ()
- c.** Connection Device will be in compliance with Federal Motor Carrier Safety Regulations, part 393. ()
- d.** Must be able to maintain a minimum speed of twenty-five (25) mph. ()

e. Operators of vehicles towing manufactured homes, modular buildings and office trailers over ten (10') feet wide at the base will have a class A or B Commercial Driver's License, as appropriate. ()

f. When towing manufactured homes, modular buildings, or office trailers on their own axles will be limited to a maximum of sixty (60) miles per hour. ()

08. **Load Size.** Manufactured home, modular building, or office trailer loads will be limited to the following dimensions: ()

a. Length cannot exceed eighty (80') feet. ()

b. Width at the base of building cannot exceed sixteen (16') feet. ()

c. Eaves cannot exceed eighteen (18') feet. ()

09. **Hauling Equipment.** Vehicles used to haul manufactured homes, modular buildings, and office trailers will be combinations designed to meet the requirements of Federal Motor Carrier Safety Regulations for vehicles engaged in interstate commerce. Such vehicles will be of structural capacity to safely accommodate the loading at all times. ()

a. The unit will have stop lights, turn signals, and taillights that meet the requirements of Federal Motor Carrier Safety Regulations, part 393. ()

10. **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 will 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 will be at least four (4') feet apart. Equivalent methods of fastening, such as chains or binders, may be used as alternatives. ()

315. OVERWEIGHT PERMITS REQUIRING BRIDGE ANALYSIS.

01. **Department 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 Department 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. 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 may be requested when an engineering analysis is required. ()

02. **Single Axle Weight Restriction.** Bridge approval is required when a single axle or steer axle is over thirty-five thousand (35,000) pounds. ()

316. BRIDGE ANALYSIS CRITERIA AND TIME FRAMES.

01. **Timelines.** The Department may take up to three (3) 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. ()

02. **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. ()

03. 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. ()

04. 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. ()

05. 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. ()

06. Extenuating Circumstances. The Department may under extenuating circumstances require that a bridge analysis be completed by a third party. ()

317. – 999. (RESERVED)

IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT
39.03.02 – RULES GOVERNING MOVEMENT OF DISABLED VEHICLES
DOCKET NO. 39-0302-2301 (ZBR 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 and 49-201, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 line with the governor’s [Zero-Based Regulation Executive Order](#), the department is seeking to combine the following commercial vehicle permits rules into a single rule: 39.03.01, 39.03.02, 39.03.03, 39.03.04, 39.03.05, 39.03.06, and 39.03.07. The proposed new title for this single rule is “39.03.01 - Rules Governing Special Permits.” The department proposes a complete repeal of 39.03.02, 39.03.03, 39.03.04, 39.03.05, 39.03.06, and 39.03.07.

Current rule 39.03.02 prescribes eligibility and conditions for wrecker-type vehicles to obtain special permits allowing for the removal of disabled vehicles.

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 5, 2023, Idaho Administrative Bulletin, [Vol. 23-7, pages 104-105](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 Brendan Floyd at 208-334-8474.

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 25, 2023.

DATED this 1st Day of September 2023.

Brendan Floyd
Policy Specialist
Idaho Transportation Department
11331 W. Chinden Blvd.
Boise, ID 83714
208-334-8474
Brendan.floyd@itd.idaho.gov

IDAPA 39.03.02 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

39.03.03 – RULES GOVERNING SPECIAL PERMITS – GENERAL CONDITIONS AND REQUIREMENTS

DOCKET NO. 39-0303-2301 (ZBR 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 and 49-201, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 line with the governor's [Zero-Based Regulation Executive Order](#), the department is seeking to combine the following commercial vehicle permits rules into a single rule: 39.03.01, 39.03.02, 39.03.03, 39.03.04, 39.03.05, 39.03.06, and 39.03.07. The proposed new title for this single rule is "39.03.01 - Rules Governing Special Permits." The department proposes a complete repeal of 39.03.02, 39.03.03, 39.03.04, 39.03.05, 39.03.06, and 39.03.07.

Current rule 39.03.03 sets forth vehicle lighting and flagging requirements, issuance authority, permittee responsibilities, and various other permit conditions and requirements in addition to the permit fee schedule describe below.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: Current rule 39.03.03 provides that certain permits will impose a road use fee, as set forth through Section 49-1004(2), Idaho Code, and includes a schedule of permit fees through current section 39.03.03.910.04.

FISCAL IMPACT: The following is a specific 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 5, 2023, Idaho Administrative Bulletin, [Vol. 23-7, pages 104-105](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 Brendan Floyd at 208-334-8474.

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 25, 2023.

DATED this 1st Day of September, 2023.

Brendan Floyd
Policy Specialist
Idaho Transportation Department
11331 W. Chinden Blvd.
Boise, ID 83714
208-334-8474
Brendan.floyd@itd.idaho.gov

IDAPA 39.03.03 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

39.03.04 – RULES GOVERNING SPECIAL PERMITS – OVERWEIGHT NON-REDUCIBLE

DOCKET NO. 39-0304-2301 (ZBR 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 and 49-201, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 line with the governor's [Zero-Based Regulation Executive Order](#), the department is seeking to combine the following commercial vehicle permits rules into a single rule: 39.03.01, 39.03.02, 39.03.03, 39.03.04, 39.03.05, 39.03.06, and 39.03.07. The proposed new title for this single rule is "39.03.01 - Rules Governing Special Permits." The department proposes a complete repeal of 39.03.02, 39.03.03, 39.03.04, 39.03.05, 39.03.06, and 39.03.07.

Current rule 39.03.04 sets forth conditions and requirements for vehicles or loads which are in excess of the sizes or weights allowed by Sections 49-1001, 49-1002 or 49-1010, 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: 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 5, 2023, Idaho Administrative Bulletin, [Vol. 23-7, pages 104-105](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 Brendan Floyd at 208-334-8474.

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 25, 2023.

DATED this 1st Day of September, 2023.

Brendan Floyd
Policy Specialist
Idaho Transportation Department
11331 W. Chinden Blvd.
Boise, ID 83714
208-334-8474
Brendan.floyd@itd.idaho.gov

IDAPA 39.03.04 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

39.03.05 – RULES GOVERNING SPECIAL PERMITS – OVERSIZE NON-REDUCIBLE

DOCKET NO. 39-0305-2301 (ZBR 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 and 49-201, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 line with the governor's [Zero-Based Regulation Executive Order](#), the department is seeking to combine the following commercial vehicle permits rules into a single rule: 39.03.01, 39.03.02, 39.03.03, 39.03.04, 39.03.05, 39.03.06, and 39.03.07. The proposed new title for this single rule is "39.03.01 - Rules Governing Special Permits." The department proposes a complete repeal of 39.03.02, 39.03.03, 39.03.04, 39.03.05, 39.03.06, and 39.03.07.

Current rule 39.03.05 sets forth conditions and requirements for vehicles or loads that exceed sizes allowed by Sections 49-940, 49-1001, 49-1002, 49-1004, or 49-1010, 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: 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 5, 2023, Idaho Administrative Bulletin, [Vol. 23-7, pages 104-105](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 Brendan Floyd at 208-334-8474.

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 25, 2023.

DATED this 1st Day of September, 2023.

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IDAPA 39.03.05 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. 39-0306-2301 (ZBR 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 and 49-201, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 line with the governor's [Zero-Based Regulation Executive Order](#), the department is seeking to combine the following commercial vehicle permits rules into a single rule: 39.03.01, 39.03.02, 39.03.03, 39.03.04, 39.03.05, 39.03.06, and 39.03.07. The proposed new title for this single rule is "39.03.01 - Rules Governing Special Permits." The department proposes a complete repeal of 39.03.02, 39.03.03, 39.03.04, 39.03.05, 39.03.06, and 39.03.07.

Current rule 39.03.06 sets forth conditions and requirements for 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, 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: 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 5, 2023, Idaho Administrative Bulletin, [Vol. 23-7, pages 104-105](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 Brendan Floyd at 208-334-8474.

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 25, 2023.

DATED this 1st Day of September, 2023.

Brendan Floyd
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IDAPA 39.03.06 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

39.03.07 – RULES GOVERNING SPECIAL PERMITS FOR REDUCIBLE LOADS

DOCKET NO. 39-0307-2301 (ZBR 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 and 49-201, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 line with the governor's [Zero-Based Regulation Executive Order](#), the department is seeking to combine the following commercial vehicle permits rules into a single rule: 39.03.01, 39.03.02, 39.03.03, 39.03.04, 39.03.05, 39.03.06, and 39.03.07. The proposed new title for this single rule is "39.03.01 - Rules Governing Special Permits." The department proposes a complete repeal of 39.03.02, 39.03.03, 39.03.04, 39.03.05, 39.03.06, and 39.03.07.

Current rule 39.03.07 sets forth conditions and requirements the movement of vehicles and/or loads that are in excess of the sizes allowed by Sections 49-1004 and 49-1010, 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: 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 5, 2023, Idaho Administrative Bulletin, [Vol. 23-7, pages 104-105](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 Brendan Floyd at 208-334-8474.

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 25, 2023.

DATED this 1st Day of September, 2023.

Brendan Floyd
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IDAPA 39.03.07 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT
39.03.08 – RULES GOVERNING SELF-PROPELLED SNOWPLOWS
DOCKET NO. 39-0308-2301 (ZBR CHAPTER REWRITE)
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 and 49-201, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

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

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

This rule establishes visibility requirements for department-operated snowplows.

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 3, 2023, Idaho Administrative Bulletin, [Vol. 23-5, pages 174-175](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 Brendan Floyd at 208-334-8474.

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 25, 2023.

DATED this 1st Day of September, 2023.

Brendan Floyd
Policy Specialist
Idaho Transportation Department
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0308-2301
(ZBR Chapter Rewrite)

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~~ PURPOSE.

~~01. Title. This rule is titled IDAPA 39.03.08, "Rules Governing Self-Propelled Snowplows," IDAPA 39, Title 03, Chapter 08.~~ (3-31-22)

~~02. Scope. Self-propelled snowplows cannot comply with the safety requirements as other oversize loads due to the nature of their operation. Therefore, t~~ This rule is promulgated to state the regulations, safety, and standardizations 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. (3-31-22)()

002. -- ~~009~~ 099. (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. (3-31-22)

~~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.~~ (3-31-22)

~~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.~~ (3-31-22)

~~021. 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. ()

~~032. Warning Flags.~~ An eighteen (18") inch by eighteen (18") inch red or fluorescent orange flag ~~shall~~ will be mounted near the extremities of the blade if it exceeds eight feet six inches (8'6") inches in width. (3-31-22)()

~~043. 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~~ will be mounted near the extremities of the blade if the blade exceeds eight feet six inches (8'6") inches in width. (3-31-22)()

~~054. Headlamps, Turn Signals, and Flashing Lights.~~ Headlamps, turn signals, and flashing lights ~~shall~~ will be mounted on snow removal equipment at sufficient height to clear all snow removal apparatus. (3-31-22)()

~~065. Visibility Requirements.~~ Flashing identification lights on snow removal equipment ~~must~~ will be amber or red colored, and mounted on the cab or truck bed. They ~~shall~~ will 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~~ will 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. ~~(3-31-22)~~()

076. **Lights to Meet Idaho Code Requirements.** Tail lamps, stop lamps, and clearance lamps on snow removal equipment ~~must~~ will meet standards specified in Idaho Code. ~~(3-31-22)~~()

101. – 999. (RESERVED)

IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

39.03.40 – RULES GOVERNING JUNKYARDS AND DUMPS

DOCKET NO. 39-0340-2301 (ZBR CHAPTER REWRITE)

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 and 49-201, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

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

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

This rule provides guidelines for the control of junkyards and dumps within one-thousand (1,000) feet of the nearest edge of the right-of-way for interstate, primary freeways, and primary highways of the state of Idaho pursuant to Chapters 1 and 19, Title 40, 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: 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 7, 2023, Idaho Administrative Bulletin, [Vol. 23-6, pages 84-85](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 Brendan Floyd at 208-334-8474.

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 25, 2023.

DATED this 1st Day of September, 2023.

Brendan Floyd
Policy Specialist
Idaho Transportation Department
11331 W. Chinden Blvd.
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0340-2301
(ZBR Chapter Rewrite)**

39.03.40 – RULES GOVERNING JUNKYARDS AND DUMPS

000. LEGAL AUTHORITY.

Under authority of Sections 49-313(4), 40-1919, 40-1920, 40-1921, and 40-312, Idaho Code, the Idaho Transportation Board adopts this the following rule under the authority of Section 40-312, Idaho Code governing junkyards and dumps. (3-31-22)()

001. TITLE AND SCOPE/PURPOSE.

This rule ~~is titled IDAPA 39.03.40, “Rules Governing Junkyards and Dumps,” and~~ provides guidelines for the control of junkyards and dumps within one thousand (1,000) feet of the nearest edge of the right-of-way for interstate, primary freeways and primary highways of the state of Idaho ~~pursuant to Chapters 1 and 19, Title 40, Idaho Code.~~ (3-31-22)()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Abandoned Junkyard. A junkyard that was operated as a business enterprise in the past, now existing with inventory, but without proprietorship or claim of ownership. The underlying fee title holder has no interest in the inventory. ()

02. Acceptable Fencing Materials. Steel or other metals, durable woods, or other woods treated with a preservative or walls of masonry. ()

03. Acceptable Planting Materials. Shrubs, trees, flowering plants and foliage. ()

04. Destroyed Junkyard. A junkyard that was operated as a business enterprise in the past that has been partially or totally destroyed by act of God or other means; and where the proprietor is not presently buying or selling junk. ()

05. Discontinued Junkyard. A junkyard that was operated as a business enterprise in the past and where the proprietor is retaining the inventory for the present, but is not actively engaged in buying or selling junk. ()

06. Industrial Activities. Those permitted only in industrial zones, or in less restrictive zones by the nearest zoning authority within the State, except that none of the following ~~shall will~~ be considered industrial activities. (3-31-22)()

a. Outdoor advertising structures. ()

b. Forest, farms and ranches. ()

c. Activities normally and regularly in operation less than three (3) months of the year. ()

d. Transient or temporary activities. ()

e. Activities not visible from the traffic lanes of the main traveled way. ()

f. Activities more than three hundred (300) feet from the nearest edge of the main traveled way. ()

g. Activities conducted in a building principally used as a residence. ()

h. Railroad tracks, minor sidings and passenger depots. ()

i. Junkyards, as defined in Section 136, Title 23, U.S.Code. ()

07. Junkyard. A place of business which is maintained, used, or operated for storing, keeping, buying, or selling ten (10) or more wrecked, scrapped, ruined, or dismantled ~~motor~~ vehicles or other types of machines; or equivalent amounts of old scrap copper, brass, rope, rags, batteries, paper, trash, junk, rubber, debris, waste, iron, steel, and other old or scrap ferrous or non-ferrous material or any combination of the above. (3-31-22)()

08. Non-Conforming Junkyard. One (1) which was lawfully established, but which does not comply with the provisions of state law or state regulations passed at a later date or which later fails to comply with state regulations due to changed conditions. ~~An example of changed conditions would be a junkyard lawfully in existence in an area which at a later date becomes non-industrial and thus subject to control, or a junkyard established on a non-primary highway later upgraded to a primary highway.~~ Illegally established or maintained junkyards are not non-conforming junkyards. (3-31-22)()

09. Screening. The use of any vegetative planting, fencing, ornamental wall of masonry, or other architectural treatment, earthen embankment, or a combination of any of these which will render invisible any deposit of junk from the main traveled way. ()

10. Unzoned Industrial Area. The land occupied by the regularly used building, parking lot, storage or processing area of an industrial activity, and that land within one thousand (1,000) feet thereof which is: ()

a. Located on the same side of the highway as the principal part of said activity. ()

b. Not predominately used for residential or commercial purposes. ()

c. Not zoned by state or local law, regulation or ordinance. ()

011. -- 099. (RESERVED)

100. APPLICATIONS, LICENSES, AND PERMITS.

01. General. ()

a. A license or permit ~~shall~~ will be issued to any person for the operation of a junkyard or dump when such person has made application for and obtained approval for such license or permit on the form provided for that purpose by the Department. (3-31-22)()

b. Any person operating a junkyard or dump ~~shall~~ will submit a basic plan for screening the same, together with his application, which ~~shall~~ will first be approved by the Department, before the installation of such screening and before a license or permit for the operation of such junkyard or dump ~~shall~~ will be issued. (3-31-22)()

c. All junkyards and dumps requiring screening by the owner so as not to be visible from the roadway by motorists using the roadway ~~shall~~ will provide such screening, which may include shrubs, trees, flowering plants, foliage, fencing, buildings, or some other type of screening as ~~shall~~ will first have been approved by the Department. (3-31-22)()

d. Every junkyard or dump ~~shall~~ will be operated and maintained in accordance with the plan for screening which has been approved by the Department for the issuance of the license or permit. Failure of any person to so operate or maintain said junkyard or dump ~~shall~~ will result in the revocation of the license or permit issued. (3-31-22)()

e. Applications for junkyard licenses or dump permits may be secured at the Idaho Transportation Department, ~~3311 West State Street, Boise, Idaho 83707~~ 11331 W Chinden Blvd, Boise, Idaho 83714, or at the following District offices: District One, 605 Prairie, Coeur d'Alene, Mailing address -- P.O. Box D, Coeur d'Alene,

Idaho 83814; District Two, 26th and North and South Highway, Lewiston, Mailing address -- P.O. Box 837, Lewiston, Idaho 83501; District Three, 8150 Chinden Blvd., Boise, Mailing address -- P.O. Box 8028, Boise, Idaho 83707; District Four, 216 Date Street, Shoshone, Mailing address -- P.O. Box 2-A, Shoshone, Idaho 83352; District Five, 5151 South 5th, Pocatello, Mailing address -- P.O. Box 4700, Pocatello, Idaho 83201; District Six, 206 North Yellowstone, Rigby, Mailing address -- P.O. Box 97, Rigby, Idaho 83442. (3-31-22)()

02. Conformity. ()

a. A non-conforming junkyard may continue as long as it is not abandoned, destroyed or voluntarily discontinued. Once a junkyard is abandoned, destroyed or voluntarily discontinued for a period of six (6) months or more, it becomes subject to laws and rules of a new junkyard. ()

b. Junkyards ~~shall~~ will be allowed in areas zoned industrial by local zoning ordinances, except that where such ordinances create several classes or zones of industrial use and one (1) or more classes or zones do not permit junkyards, local zoning ~~shall~~ will control. (3-31-22)()

101. -- 199. (RESERVED)

200. SCREENING.

01. General Screening Requirements. ()

a. The screening ~~shall~~ will be located on the owner's land and not on any part of the highway right-of-way. (3-31-22)()

b. The screen ~~shall~~ will be in place prior to the time the junk is deposited. (3-31-22)()

c. At no time after the screen is established ~~shall~~ will the junk be stacked high enough to be visible above the screen. No junk ~~shall~~ will be placed outside of the screened areas or in the areas not covered by license. (3-31-22)()

02. Screening Plan. ()

a. The screening plan should provide a practical irrigation or watering system where necessary. ()

b. The screening plan should provide a replacement and fertilization program. ()

c. The screening plan should provide for landscaping that is relatively maintenance free. ()

d. The screening plan can provide a living screen which may be used in conjunction with a fence or wall. ()

201. FENCES.

01. Location. Fences must be located in such a manner as to not be hazardous to the traveling public. ()

02. Uniformity. Construction ~~shall~~ will be uniform and no patch work type of construction ~~shall~~ will be permitted. (3-31-22)()

03. Required Painting. Fences ~~shall~~ will be painted where the composition is such that painting is required. The paint used ~~shall~~ will be of such color so as to blend into the environs of the highway right-of-way. (3-31-22)()

04. Specifications. Fences ~~shall~~ will be constructed as specified in Department's "Standard Drawings."

(3-31-22)()

05. Strength. Fences ~~shall~~ will be designed and constructed to withstand adverse wind pressures.

(3-31-22)()

06. Gate Openings. Fences ~~shall~~ will have gates that are kept closed except for ingress and egress of moving vehicles or have gateways so constructed to screen the inventory and operation from the highway user at all times.

(3-31-22)()

07. Visibility. Some of the types of fences acceptable to preclude “see through” are: ()

a. Chain link type with aluminum, steel, plastic or wooden slat inserts. ()

b. Wooden types of basket weave, palisade, louver, or other suitable design. ()

c. Wall of masonry including plain or ornamental concrete block, brick, stone or other suitable masonry material. ()

d. Any other design of fencing constructed of other materials may be submitted for consideration. ()

202. PLANTING MATERIALS.

01. Species. Plant materials indicated on the plans ~~shall~~ will specify the common and botanical name of the plant materials used, the size at the time of planting and the spacing between plants.

(3-31-22)()

02. Growth and Conformity. Plant materials should be native to the area which grow to an appropriate height within a three (3) year period and are long-lived. The plantings should complement the existing highway and adjacent land use environmental condition. ()

03. Caretaking. Plant material ~~shall~~ will be watered, cultivated, or mulched, and given any ~~required~~ maintenance including spraying for insect control, to keep the planting material in a good healthy condition.

(3-31-22)()

04. Replacement. Dead plant material will be removed immediately and ~~shall~~ will be replaced during the next spring or fall planting season following death. The replacement plants ~~shall~~ will be at least as large as the initial planting.

(3-31-22)()

203. EARTHEN EMBANKMENTS.

Such as berms or mounds may be considered. ()

01. Conformity. After grading, landscaping must be done to maintain a natural environmental appearance. ()

02. Mix. May be used in conjunction with fences and plant materials. ()

204. -- 299. (RESERVED)

300. ADMINISTRATIVE HEARINGS.

~~Any person desiring an administrative hearing before the Idaho Transportation Board on any question involving this rule or any person desiring to appeal any administrative decision made by the Department of Transportation under this rule shall do so in accordance with the Department of Transportation's administrative procedure manual and as provided by law.~~ (3-31-22)

301.—399. (RESERVED)

400. PENALTIES.

Any person violating the provisions of this regulation or operating a junkyard without a license or a dump without a permit as provided for herein, ~~shall~~ will be subject to the penalties provided in Section 40-1926, Idaho Code. (3-31-22)()

401. -- 999. (RESERVED)

IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

39.03.42 – RULES GOVERNING HIGHWAY RIGHT-OF-WAY ENCROACHMENTS ON STATE RIGHTS-OF-WAY

DOCKET NO. 39-0342-2301 (ZBR CHAPTER REWRITE)

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 and 49-201, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

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

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

This rule establishes standards and guidelines for encroachments on state highway rights-of-way. Statutes covering these provisions only set forth broad requirements for the department, which necessitates the establishment of specific provisions in Administrative 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(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 7, 2023, Idaho Administrative Bulletin, [Vol. 23-6, pages 84-85](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 Brendan Floyd at 208-334-8474.

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 25, 2023.

DATED this 1st Day of September 2023.

Brendan Floyd
Policy Specialist
Idaho Transportation Department
11331 W. Chinden Blvd.
Boise, ID 83714
208-334-8474
Brendan.floyd@itd.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0342-2301
(ZBR Chapter Rewrite)

39.03.42 – RULES GOVERNING HIGHWAY RIGHT-OF-WAY
ENCROACHMENTS ON STATE RIGHTS-OF-WAY

000. LEGAL AUTHORITY.

The Idaho Transportation Board adopts this rule under the authority of Sections 40-310, and 40-312, and per the requirements of Sections 40-311, 40-313, 49-202(19), (23) and (28), and 49-221, Idaho Code. ()

001. ~~SCOPE PURPOSE.~~

This rule establishes standards ~~and guidelines~~ for encroachments on state highway rights-of-way. (3-31-22)()

002. ADMINISTRATIVE APPEAL.

01. **Commencement.** Applicants may appeal denied permits, or permits granted with conditions that the applicant believes to be unreasonable, in writing to the Department’s District Engineer within thirty (30) days of receipt of written notification of the denial or grant of the permit. The appeal process commences on the date the Department’s District office receives written notification of appeal from the applicant. ()

02. **Process Hold.** If at any time during the appeal process it is determined that insufficient documentation was submitted with the appeal, all parties ~~shall will~~ be notified that the appeal process is placed on hold until the necessary documentation is supplied. (3-31-22)()

03. **Appeal Process.** The District will have thirty (30) working days to review the appeal. If the District Engineer does not rule on the appeal within the thirty (30) day period, the denial of the permit ~~shall will~~ be deemed overturned and the permit ~~shall will~~ be issued, or the contested permit conditions stricken. Notice of the decision of the District Engineer ~~shall will~~ be issued by certified mail within seven (7) days of the ruling. Otherwise, if the District Engineer does not overturn the original denial or strike the contested provisions from the permit, upon receipt of a written request from the applicant within twenty-one (21) days of the date of the denial of the appeal, it ~~shall will~~ be forwarded to the Department’s legal section to initiate an appeal to the Idaho Transportation Board. The appeal will be processed in accordance with the Idaho Administrative Procedure Act and IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General.” (3-31-22)()

003. -- 009. (RESERVED)

010. DEFINITIONS.

~~01. **Shall/Will, Should, May.** The use of “shall” or “will,” “should,” and “may” denote the following conditions: (3-31-22)~~

~~a. **Shall/Will.** A mandatory condition or requirement. (3-31-22)~~

~~b. **Should.** An advisory or recommended condition, or usage, but not mandatory. (3-31-22)~~

~~e. **May.** A permissive condition. No requirement is mandated. (3-31-22)~~

021. **Access.** The ability to enter or leave a public highway or highway right-of-way from an abutting private property or another public highway or public highway right-of-way. ()

032. **ADT.** Average Daily Traffic. The total volume of traffic during a given time period in whole days greater than one (1) day and less than one (1) year divided by the number of days within that time period. ()

043. **Applicant.** Agency, owner, or an authorized representative of the property owner, or utility facility applying for a permit to encroach within state highway rights-of-way. ()

054. **Appraisal.** A written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of monetary value for a specific property based on a specific use, as of a specific date, supported by the presentation and analysis of relevant market information. ()

065. **Approach.** A connection between the outside edge of the shoulder or curb line and the abutting property at the highway right-of-way line, intended to provide access to and from said highway and the abutting property. An approach may include a driveway, alley, street, road or highway. ()

076. **Approach Flare.** The approved radius connecting the edge of the approach to the edge of the highway. The term “approach radius” is interchangeable with “approach flare.” ()

087. **Approach Transition.** The area from the edge of an urban approach sloped to match the curb and border area elevations. The term “approach apron” is interchangeable with “approach transition.” ()

098. **Approach Skew Angle.** For all approaches, the angle of deflection between a line perpendicular to the highway centerline and the approach centerline. ()

109. **Approach Width.** The distance between the outside edges of the approach measured perpendicular to the approach centerline along the curb line or the edge of pavement, excluding flares, transitions and radii. ()

140. **Authorized Representative.** Any applicant, other than the property owner, having notarized written verification signed by the owner giving authorization to act on the owner’s behalf. ()

121. **Auxiliary Lane.** The portion of the roadway adjoining the traveled way used for speed change, turning, storage for turning, weaving, truck climbing, and other purposes supplementary to through-traffic movement. ()

~~**13.** **Board.** The Idaho Transportation Board, as established by Title 40, Chapter 3, Idaho Code.~~
(3-31-22)

142. **Border Area.** The area between the outside edge of the shoulder or back of curb and the highway right-of way line. ()

153. **Boulevard Approach.** A two-way approach intended for high ADT volumes of large commercial vehicles, having a maximum width of eighty-four (84) feet in which opposing traffic is separated by a raised four (4) foot wide non-traversable median. ()

164. **Capacity.** The maximum number of vehicles that can reasonably be expected to travel along a lane of a highway during a given time period under prevailing roadway and traffic conditions. ()

175. **Clear Zone.** An area outside the traveled way, auxiliary lanes and shoulders that is constructed and maintained as free from physical obstructions as practical, for use as a recovery area by errant vehicles. ()

186. **Commercial Approach.** An approach serving a business or businesses. ()

197. **Conduit.** A tube or trough for receiving and protecting utility-related structures including, but not limited to, electrical wires, fiber optic cable, and fluids. ()

2018. **Construction.** The building of new facilities or the modification of existing facilities. Does not include maintenance. ()

2419. **Corner Clearance.** The distance along the curb line or outside edge of the shoulder measured from the beginning or end of the intersecting roadway flare to the nearest edge of the adjacent approach, excluding flares or transitions. ()

- ~~22. Department. The Idaho Transportation Department (ITD). (3-31-22)~~
- 230.** **Distance Between Approaches.** The distance measured along the curb line or outside edge of the shoulder between the nearest edges of adjacent approaches, excluding the flares, transitions or radii. ()
- ~~24. District. An administrative and maintenance subdivision of the Idaho Transportation Department encompassing a particular geographical region of the state of Idaho, per Section 40-303, Idaho Code. (3-31-22)~~
- ~~25. District Engineer. The administrator of an Idaho Transportation Department administrative district, or a delegated representative. (3-31-22)~~
- 261.** **District Route.** A state highway that accommodates trips of limited mobility and provides high levels of access to communities, to include distributing trips to geographical areas and serving major commercial and industrial districts. District routes may provide intra-community continuity and connection, to include local bus routes, but should not be used to provide direct access to residential lots. ()
- 272.** **Economic Opportunity.** Facilitate the increase in Idaho Gross Domestic Product, job creation, increased business, revenue; improve the efficiency in which goods are transported; and reduction in travel times for commuting, commerce, recreation, and tourism. ()
- 283.** **Emergency.** Any unscheduled work required to correct or prevent a hazardous situation that poses an imminent threat to life or property. ()
- 294.** **Encroachment.** Any authorized or unauthorized use of highway right-of-way or the air space immediately above the highway right-of-way. ()
- ~~3025. Encroachment Permit. Written authorization from the Department to use state highway right-of-way or the airspace above it under the conditions set forth in the permit. ()~~
- ~~3426. Expressway. A segment of a highway designated by the Idaho Transportation Board for use as a through highway, with partially controlled access, accessible only at locations specified by the Idaho Transportation Department, and characterized by medians, limited at-grade intersections, and high speeds. An existing segment of state highway may only be designated as an expressway if payment is made to adjacent property owners for the restriction of existing access rights. ()~~
- ~~32. Farming. Any activity associated with crops, including seed. (3-31-22)~~
- ~~33. FHWA. The Federal Highway Administration, a division of the U. S. Department of Transportation. (3-31-22)~~
- 3427.** **Fiber Optic Cable.** A cable containing one (1) or more glass or plastic fibers that has the ability to transmit light along its axis. ()
- ~~3528. Field Approach. An approach that serves only non-residential agricultural property, including farmyards. ()~~
- 3629.** **Flare Tangent Distance.** The distance of the approach radius measured along the edge of pavement. ()
- 370.** **Freeway.** A segment of a highway designated by the Idaho Transportation Board for use as a through highway, with fully controlled access, accessible only by interchanges (ramps), and characterized by medians, grade separations at cross roads, and ramp connections for entrance to and exit from the traveled way. An existing non-Interstate segment of state highway may only be designated as a freeway if payment is made to adjacent property owners for the restriction of existing access rights. ()
- 381.** **Frontage Road.** A road auxiliary to and located to the side of the highway for service to abutting

properties and adjacent areas for the purpose of controlling access to the highway. ()

392. Frontage Boundary Line. A line perpendicular to the highway centerline that begins at the point of intersection of the abutting property line and the highway right-of-way line. ()

4033. Full Control of Access. Any section of a highway system where access is prohibited except for interchange connections. ()

~~**41. Government Agency.** As used in these rules, the term includes federal, state, county, city, or local highway jurisdictions. (3-31-22)~~

4234. Highway Right-of-Way. Property used for highway purposes, open to the public, and under the jurisdiction of a government agency. Such property may be owned by the government agency in fee simple or be subject to an easement for highway purposes. ()

4335. Imminent Threat. Includes major traffic control deficiencies or safety situations that are likely to result in serious injury or loss of life. ()

4436. Interstate Highway. As identified by federal code, a segment of the Dwight D. Eisenhower National System of Interstate and Defense Highways consisting of an FHWA-approved freeway. ()

4537. Joint-Use Approach. An approach constructed at a common boundary between adjacent properties that abut the highway. A joint-use approach is equally owned and shared as common access by both property owners. ()

~~**46. Landscaping.** Any action taken to change the features or appearance of the highway right-of-way or abutting property with plants, soil, rock and related material. (3-31-22)~~

4738. Loaded Payroll Rate. A rate of compensation that includes hourly wages plus the associated employer overhead and benefit costs. ()

4839. Local Highway Agency. Any city, county, highway district or other local board or body having authority to enact regulations, resolutions, or ordinances relating to traffic on the highways, highway rights-of-way and streets within their respective jurisdiction. ()

490. Local Road. A city, county or highway district highway whose primary function is to provide access to adjacent properties. ()

5041. Median. The portion of a divided highway or approach that separates opposing traveled ways. Medians may be raised, flush, or depressed relative to the roadway surface, and may be landscaped or paved. ()

5142. Median Opening. A paved area bisecting opposite directions of a divided roadway that is designed to permit traffic to cross at least one (1) direction of travel. ()

5243. MUTCD. The Manual on Uniform Traffic Control Devices for Streets and Highways, latest edition, as adopted by the Idaho Transportation Board in accordance with Section 49-201(3), Idaho Code. A manual written by the Federal Highway Administration that sets national minimum standards for signing, striping, and traffic control devices. ()

~~**53. Non Standard Approach.** Any approach that does not meet Department standards. (3-31-22)~~

~~**54. Performance Bond.** A statutory bond, issued by a surety company authorized to do business in the state of Idaho, that guarantees performance of work in accordance with permit requirements. (3-31-22)~~

5544. Permittee. Person or persons, utility facilities, and other agencies granted permission to encroach within the highway right-of-way for authorized purposes other than normal travel. ()

5645. Private Approach. Every privately owned traveled way that is used for ingress to and egress from the highway right-of-way and an abutting property. ()

5746. Property Line Clearance. The distance measured along the curb line or outside shoulder edge from the frontage boundary line to the nearest edge of the approach width, excluding flares, transitions and radii. ()

5847. Public Approach. Any approach that serves the public without restriction and is maintained by a government agency. ()

~~59. Public Highway.~~ Any highway open to public use and maintained by a government agency. (3-31-22)

~~60. Public Highway Agency.~~ The state transportation department, any city, county, highway district, or any other state agency, or any federal or Indian reservation, which has jurisdiction over public highway systems and highway rights-of-way. (3-31-22)

6148. Regional Route. A state highway that accommodates trips of moderate length with a lower level of mobility than a Statewide Route and that provides moderate access to communities, to include providing mobility for people and freight through and between communities and major activity centers of the region. ()

6249. Roadside. Any area beyond the main traveled way that may or may not be within the highway right-of-way. ()

6350. Roadway. That portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of sidewalks, shoulders, berms and other portions of the rights-of-way. ()

6451. Rural. State highway rights-of-way and right-of-way corridors outside the limits of Urban and Transitional areas. ()

6552. Setback. The horizontal distance between the highway right-of-way line and permanent fixtures, including but not limited to gas pump islands, signs, display stands and buildings, measured at right angles to the highway centerline. ()

6653. Shoulder. The portion of the right-of-way contiguous with the traveled way that accommodates stopped vehicles, emergency use, and lateral support of the sub-base, base, and surface courses. ()

6754. Signal Spacing. The distance between signalized intersections measured from the center of intersection to the center of intersection. ()

6855. Slope. Slope is expressed as a non-dimensional ratio between vertical and horizontal distance. For side slopes, the vertical component is shown first, then the horizontal. ()

~~6956. Speed.~~ The rate of vehicular travel as measured in miles per hour. All speeds used in this document ~~shall~~will be the eighty-fifth percentile speed as determined by an engineering study. (3-31-22)()

7057. State Highway System. The principal highway corridors in the state, including connections and extensions through cities and roads to every county seat in the state, as approved by the Idaho Transportation Board and officially designated as a state highway. ()

7158. Statewide Route. A state highway that provides the highest level of mobility and speeds over long distances. Access from a statewide route to communities and major activity centers should be by way of public roads with spacing that supports mobility and speed. ()

7259. Stopping Sight Distance. The sum of: ()

a. The brake reaction distance, which is the distance traveled by the vehicle from the instant the driver perceives an object necessitating a stop, to the moment the brakes are applied; and ()

b. The braking distance, which is the distance the vehicle travels from the moment the brakes are applied until the vehicle comes to a complete stop. ()

~~7360.~~ **Structure.** Includes, but is not limited to, bridges, culverts, siphons, headwalls, retaining walls, buildings and any incidental construction not otherwise defined herein. ()

~~7461.~~ **Subdivision.** A division of real property into three (3) or more separately platted parcels. ()

~~7562.~~ **Temporary Encroachment.** Any encroachment that is not approved as a permanent placement within the highway right-of-way. ()

~~76.~~ **Traffic.** ~~Pedestrians, bicycles, animals, vehicles, streetcars, buses and other conveyances, either singly or together, that use the highway right-of-way for the purpose of travel.~~ (3-31-22)

~~7763.~~ **Traffic Control Device.** Any marking or device whether manually, electronically, or mechanically operated, placed or erected by an authority of a government agency or official having jurisdiction, for the purpose of regulating, warning or guiding traffic. ()

~~7864.~~ **Traffic Impact Study.** A comprehensive analysis of the anticipated transportation network conditions with and without an applicant's proposed new or modified access, including an analysis of mitigation measures. ()

~~7965.~~ **Transitional.** State highway rights-of-way and right-of-way corridors within the area of city impact of any incorporated city, or areas designated as an area of city impact by city or county comprehensive plans. ()

~~8066.~~ **Traveled Way.** The portion of the roadway for the movement of vehicles, exclusive of shoulders. ()

~~8167.~~ **Travel Lane.** That portion of the traveled way designated for use by a single line of vehicles. ()

~~8268.~~ **Trenching.** A method in which access is gained by excavation from ground level to the required underground depth for the installation, maintenance, removal, or inspection of a cable, casing, conduit or pipe. The excavation is then back filled with approved material and the surface is then returned to a condition specified by the Department. ()

~~8369.~~ **Turnouts.** Roadside areas immediately adjacent to highways which may be utilized by vehicles for purposes of short-term parking or turning. They are extensions of the traveled way. ()

~~8470.~~ **Unauthorized Encroachment.** Any encroachment that has been placed, modified, or maintained, or removed within the highway right-of-way without authorization by the Department. ()

~~8571.~~ **Urban.** State highway rights-of-way and right-of-way corridors within the limits of any incorporated city. ()

~~8672.~~ **Utility Facility.** All privately, publicly or cooperatively owned systems used for the production, transmission, or distribution of communications, cable television, power, electricity, light, heat, petroleum products, ore, water, steam, waste, irrigation, storm water not connected with highway drainage, and other similar items, including communication towers, guy wires, fire and police signal systems, and street lighting systems, that directly or indirectly serve the public or comprise part of the distribution systems which directly or indirectly serve the public. ()

~~8773.~~ **Utility Locating Service.** Any locally or regionally recognized service that locates and maintains

records of existing utility facilities. ()

~~88. **Vehicle.** Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon rails or tracks. (3-31-22)~~

~~8974. **Vision Triangle.** An area delineated by extending perpendicular lines along the face of curb or edge of pavement from their point of intersection forty (40) feet in either direction and by a height between three (3) feet and ten (10) feet above the existing centerline highway elevation. ()~~

~~9075. **Volume.** The number of vehicles estimated to use a certain type of travel lane during a twelve-month period. A highway with “high” volumes is at or near capacity; a highway with “medium” volumes is at or near fifty percent (50%) of capacity. ()~~

~~9176. **Warrant.** An evaluation of need based on an engineering study. ()~~

~~92. **Working Day.** Any day except for Saturday, Sunday and any holiday as defined in Section 67-5302(15), Idaho Code. (3-31-22)~~

011. -- 099. (RESERVED)

100. GENERAL.

01. Access Control. ()

a. The Department shall/will retain the authority to issue all encroachment permits on the State Highway System. (3-31-22)()

b. No change may be made to the control of access on any Interstate Highway without the approval of the Idaho Transportation Board and Federal Highway Administration (FHWA). (3-31-22)()

02. Safety Requirements. ()

a. It is the permittee’s responsibility to provide for safe, efficient passage and protection of vehicles, pedestrians, and workers during any permitted work within the highway right-of-way. ()

b. The permittee shall/will submit, for Department approval, a traffic control plan for the installation, maintenance, or removal of any state highway right-of-way encroachment. The permittee shall/will provide advance notification to the Department prior to implementing any traffic control. (3-31-22)()

c. During the progress of the work, barricades, signs and other traffic control devices shall/will be erected and maintained by the permittee in conformance with the current “Manual on Uniform Traffic Control Devices.” The permittee shall/will be required to meet the minimum requirements of the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD), as adopted by the Department. (3-31-22)()

d. All flaggers working on the State Highway System shall/will be certified in or recognized by the state of Idaho. They shall/will carry on their person a current flagger identification card that is recognized by the state of Idaho. All traffic control devices used on the State Highway System shall/will comply with current FHWA crash criteria. (3-31-22)()

e. When required, a striping plan for the placement of temporary and permanent pavement markings shall/will accompany the approved permit to use the right-of-way. Materials, placement, and removal of all pavement markings shall/will conform to current Department specifications and standards. (3-31-22)()

03. Maintenance of Encroachments. Once an encroachment has been constructed by the permittee to Department standards, maintenance of the encroachment, unless otherwise provided, shall/will be as follows: (3-31-22)()

- a. Paved public approach - State maintains to the right-of-way line. ()
- b. Paved private approach - State maintains to end of radii, permittee maintains beyond the radii. ()
- c. Gravel public approach. State installs an asphalt wedge sufficient to protect the roadway pavement edge (three (3) to six (6) feet back from the edge of road for the width of the approach). It is desirable to pave the approach to the right-of-way line when the road is reconstructed. State maintains to the right-of-way line. ()
- d. Gravel private approach. The permittee maintains beyond the wedge. ()
- e. Gravel turnouts. State maintains turnouts, other than mailbox turnouts, to the right-of-way line. The permittee maintains mailbox turnouts. ()
- f. Maintenance of all other encroachments shall will be the responsibility of the permittee. (3-31-22)()

101. -- 199. (RESERVED)

200. APPLICATIONS AND PERMITS.

01. Required. To help preserve the highways as constructed and provide responsible growth where allowed, any individual, business, or other entity planning to add, modify, change use, relocate, maintain, or remove an encroachment on the state highway or use highway right-of-way for any purpose other than normal travel, shall will obtain a permit to use state highway right-of-way. Encroachment permits approved by the Department are required for private and public approaches (driveways and streets), utilities and other miscellaneous encroachments. (3-31-22)()

02. Work Prior to Approval. No activities shall will be allowed on State highway rights-of-way until an approved permit has been issued by the Department or a delegated local highway agency. In an emergency, that effects highway operations and motorist safety, approval may be given by the Department or a delegated highway agency in advance of processing the permit. (3-31-22)()

03. Local Highway Agency Authority. The department may delegate authority to a local highway agency to issue permits to use state highway rights-of-way if adequate local ordinances are in place and are enforceable. The Department shall will retain final approval for all permits issued by a local highway agency on the State Highway System. (3-31-22)()

04. Administration. Permitting process shall will be administered by the Department or their delegated representative, within the representative's respective jurisdiction. Department District offices are located in Coeur d'Alene, Lewiston, Boise, Shoshone, Pocatello and Rigby. (3-31-22)()

05. Application Forms. All applications to use State highway right-of-way shall will be made on approved Department forms. (3-31-22)()

06. Applicant to Be Informed. Applicants shall will be informed of Department policies and regulations concerning encroachments. (3-31-22)()

07. Payment for Impacted Highway Features. Applicants shall will pay for any changes or adjustments of highway features or fixtures brought about by actions, operations or requirements caused by the applicant. (3-31-22)()

08. Encroachment Conflicts. Conflicts between proposed encroachments and highway maintenance or construction projects, utilities or other encroachments shall will be resolved before an application is approved. (3-31-22)()

09. Review Process. The review process shall will commence on the day the applicant submits the signed application and makes payment of the initial application fee(s). If the Department determines there is insufficient documentation to process the application, the process will be placed on hold until such documentation has been received. All applications for encroachment permits shall will be reviewed and evaluated for current access control requirements, deed restrictions, safety and capacity requirements, design and location standards, or an approved variance of these standards, environmental impacts, location conflicts, long-range planning goals, and the need for an appraisal. A time table for the review process is available at the Idaho Transportation Department Headquarters Office or any District Office. (3-31-22)()

10. Department Held Harmless. In accepting an approved permit, the permittee, their successors and assigns, shall will agree to hold harmless and defend, regardless of outcome, the state from the expenses of and against all suits or claims, including costs, expenses and attorney fees that may be incurred by reason of any act or omission, neglect or misconduct of the permittee or its contractor in the design, construction, maintenance or operation of the encroachment. (3-31-22)()

11. Permit Requirements. All permits shall will specify approach location and use, and be accompanied by approved traffic control plans, design details and specifications that address dust control, site reclamation, environmental protection and work site safety. The applicant shall will be required to submit construction plans stamped by an engineer licensed in the state of Idaho to the Department for approval. (3-31-22)()

12. Void Application. Once an application is submitted, if the permitting process is not completed within one (1) year as a result of inactivity on the applicant's part, the application shall will be considered void. (3-31-22)()

13. Denial of Application. Applications for encroachments not allowed shall will be verbally denied. If the applicant insists on proceeding with the application, the non-refundable fee shall will be accepted and a permit denial issued by certified letter. Upon receipt of the denial letter, the applicant can appeal the Department's action. (3-31-22)()

201. PERMIT COMPLIANCE AND EXPIRATION.

01. Permitted Work. If work does not begin immediately, the permittee shall will notify the Department or local highway agency five (5) working days prior to commencing such work. Local highway agency shall will promptly notify the Department, when applicable. (3-31-22)()

02. Work Site Documents. The permittee or contractor for the permittee, shall will maintain a copy of the approved permit, all special provisions and any related documents, at the work site while work is in progress. (3-31-22)()

03. Completion of Work. All permitted work shall will be completed and available for final inspection within thirty (30) days after construction begins, unless otherwise stated in the special provisions of the permit. If the permitted work is not completed within one (1) year of permit issuance, the permit shall will be considered void. At the discretion of the Department, a one-time extension not to exceed six (6) months may be granted if requested in writing by the permittee prior to permit expiration. New applications shall will be required for additional work following permit expiration. (3-31-22)()

04. Temporary Encroachments. Temporary encroachment permits shall will have an effective time period not to exceed one (1) calendar year and shall will be removed within ten (10) days following permit expiration. (3-31-22)()

202. -- 299. (RESERVED)

300. GENERAL REGULATIONS FOR APPROACHES.

01. Required. All new or additional approaches, or the modification in design or use, relocation or removal of existing approaches require an approved State highway right-of-way use permit and shall will meet all access control requirements that correspond to the state highway being affected. (3-31-22)()

02. General. Requests for approaches shall will be reviewed and considered for approval based on the needs of the total development, regardless of the number of individual parcels it contains. (3-31-22)()

03. Joint-Use Approach. Only an owner of property abutting the state highway right-of-way, or their designated representative, can apply for access. Applications for a joint-use approach that serves two (2) or more abutting properties sharing common boundary lines shall will be accompanied by a legal recorded joint-use access agreement and shall will be signed by all deeded owners or authorized representatives. (3-31-22)()

04. Applicable Standards. The location, design, and construction of all approaches shall will comply with Department standards. Information regarding applicable standards is available at Department headquarters and all District offices listed in Subsection 003.01. (3-31-22)()

05. Approach Locations. Approaches shall will be located where the highway alignment and profile meet approved geometric standards, where they do not create undue interference with or hazard to the free movement of normal highway or pedestrian traffic, and where they do not restrict or interfere with the placement or proper function of traffic control signs, signals, lighting or other devices. (3-31-22)()

06. Denial of Approach Application. Failure to comply with these requirements may be sufficient cause for the Department to deny an approach application, prohibit specific approach usage, or remove an existing approach. ()

07. New Approaches in Highway Construction. Applications for an encroachment located within a state highway construction project shall will be processed by the Department. (3-31-22)()

08. Modification of Approaches by Department. The Department reserves the right to make any modifications, additions, repairs, relocations, or removals to any approach or its appurtenances within the highway right-of-way, when necessary for maintenance, rehabilitation, reconstruction or relocation of the highway and/or to provide proper protection of life and property on, or adjacent to, the highway. ()

09. Modification of Approaches by Permittee. Modifications of approach use, construction, or design shall will include but not be limited to width, grade, surface type, landscaping, and drainage. Such modifications by the permittee require Department approval. (3-31-22)()

301. -- 399. (RESERVED)

400. LOCATION AND DESIGN STANDARDS FOR APPROACHES.

01. Required. Location, design, construction and operations of all approaches shall will comply with current Department geometric standards and design principles. (3-31-22)()

02. Guidelines. The following access management guidelines shall will be considered on all approach applications: (3-31-22)()

a. Design approaches for current and future property access requirements; and ()

b. Reduce conflicts associated access points through the application of channelization, auxiliary lanes, joint-use approaches, frontage and other local roads, restricted on-street parking and off-street traffic circulation. ()

03. Signal and Approach Spacing. In order to maintain system capacity, safety and efficiency, maximize signal progression and minimize delays to the traveling public, all approaches and signals shall will be spaced in accordance with the following standards: (3-31-22)()

a. All traffic signal locations shall will meet Department signal warrant requirements and a signal operational analysis; (3-31-22)()

b. Location preference ~~shall~~will be given to State highways that meet or may be reasonably expected to meet signal warrants within five (5) years; and (3-31-22)()

c. Minimum recommended distances between approaches and signals are as follows:

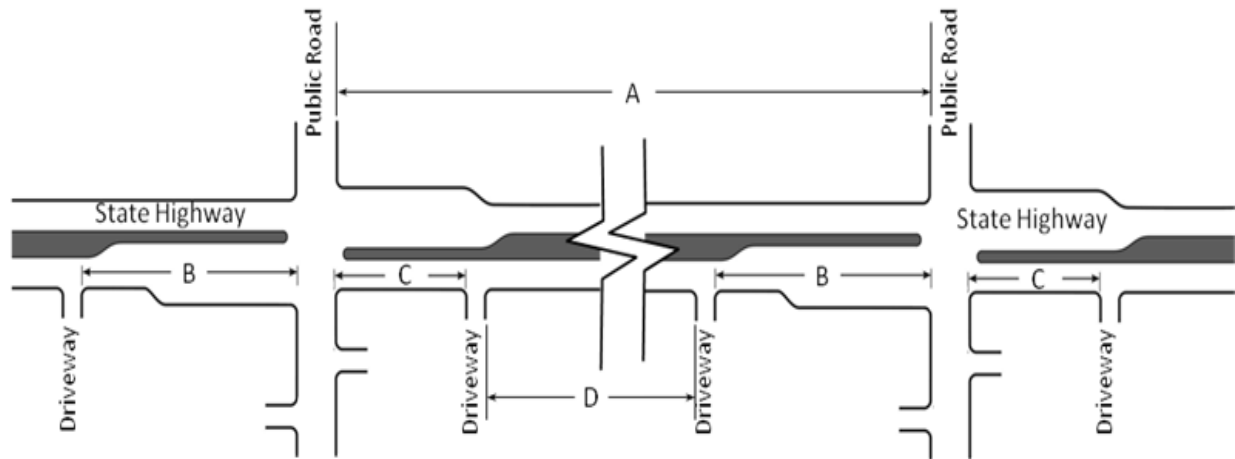
TABLE 1 – ACCESS SPACING*						
HIGHWAY TYPE	AREA TYPE	Signalized Road Spacing	Public Road Spacing (A)	Driveway Distance Upstream From Public Road Intersection (B)	Driveway Distance Downstream From Unsignalized Public Road Intersection (C)	Distance Between Unsignalized Accesses Other Than Public Roads (D)
Interstate	All	Accessible only by interchanges (ramps) and requires approval by the Board and Federal Highway Administration.				
Freeway	All	Accessible only by interchanges (ramps).				
Expressway	All	Accessible only at locations specified by the Department.				
Statewide Route	Rural	5,280 ft	5,280 ft	1,000 ft	650 ft	650 ft
	Transitional	5,280 ft	2,640 ft	760 ft	500 ft	500 ft
	Urban >35 mph	2,640 ft	1,320 ft	790 ft	500 ft	500 ft
	Urban ≤35 mph	2,640 ft	1,320 ft	790 ft	250 ft**	250 ft**
Regional Route	Rural	5,280 ft	2,640 ft	1,000 ft	650 ft	650 ft
	Transitional	2,640 ft	1,320 ft	690 ft	360 ft**	360 ft**
	Urban >35 mph	2,640 ft	660 ft	660 ft	360 ft**	360 ft**
	Urban ≤35 mph	2,640 ft	660 ft	660 ft	250 ft**	250 ft**
District Route	Rural	2,640 ft	1,320 ft	760 ft	500 ft	500 ft
	Transitional	2,640 ft	660 ft	660 ft	360 ft**	360 ft**
	Urban >35 mph	1,320 ft	660 ft	660 ft	360 ft**	360 ft**
	Urban ≤35 mph	1,320 ft	660 ft	660 ft	250 ft**	250 ft**

*Distances in table are minimums based on optimal operational and safety conditions such as adequate sight distance and level grade. Definitions of spacing designated by (A), (B), (C), and (D) are represented on Figure 1.

** Where the public road intersection or private access intersection is signalized, the distances in the table are for driveways restricted to right-in/right-out movements only. For unrestricted driveways the minimum distance ~~shall~~will be 500 feet from a signalized intersection.

(3-31-22)()

Figure 1:



d. The District Engineer shall will have the authority to deny an encroachment permit or require the applicant to provide a Traffic Impact Study when an on-site review indicates that the optimal conditions (such as sight distance and queue length) assumed in Table 1 do not exist, and that operational or safety problems may result from the encroachment spacing. (3-31-22)()

e. The District Engineer shall will have the authority to approve a decrease in the minimum access spacing distances set forth in Table 1, provided that the basis for any exception is justified and documented. The basis for the exception may include overriding economic opportunity considerations. For any exception that would result in a decrease in access spacing of more than ten percent (10%) of the distances set forth in Table 1, a Traffic Impact Study will be required in order to determine whether auxiliary lanes or other appropriate mitigation must be included in the permit's conditions. (3-31-22)()

f. Unless the requirement is waived by the District Engineer, a Traffic Impact Study shall will also be required when a new or expanded development seeks direct access to a state highway, and at full build out will generate one hundred (100) or more new trips during the peak hour, the new volume of trips will equal or exceed one thousand (1000) vehicles per day, or the new vehicle volume will result from development that equals or exceeds the threshold values in Table 2. If the District Engineer waives the requirement for a Traffic Impact Study, the basis for such waiver shall will be justified and documented. (3-31-22)()

g. When required, the Traffic Impact Study shall will document access needs and impacts and whether any highway modifications are necessary to accommodate the new traffic volumes generated by the development. Such modifications could include, for example, turn lanes, additional through lanes, acceleration or deceleration lanes, medians, traffic signals, removal and/or consolidation of existing approaches, approaches limited to right-in/right-out access only, etc. (3-31-22)()

h. If a District Engineer denies an encroachment permit application and the denial is appealed to the board, the board or its delegate shall will have the authority to approve exceptions to the access and signal spacing distances in Table 1 if, in the judgment of the board, overriding economic considerations cause the exceptions to be in the best interests of the public. (3-31-22)()

Table 2	
LAND USE TYPE	THRESHOLD VALUE
Residential	100 Dwelling Units
Retail	35,000 square feet
Office	50,000 square feet
Industrial	70,000 square feet
Lodging	100 rooms
School (K-12)	All (Sections 67-6508 & 67-6519, Idaho Code)

()

04. Corner Clearance.

()

a. Approaches should be located as far as practical from intersections: to preserve visibility at the intersection, to permit safe vehicle movement, and to accommodate the installation of traffic signs, signals and lighting where required. ()

b. Approach transitions or flares shall/will not encroach upon curbs or pavement edges forming the corner radii of the intersection. (3-31-22)()

c. Minimum corner clearances between signalized and unsignalized urban and rural intersections shall/will comply with current Department standards. (3-31-22)()

05. Approach Alignment. Whenever possible, all new or relocated approaches shall/will intersect the state highway at right angles and shall/will be aligned on centerline with existing approaches to facilitate highway safety and the development and use of turn lanes and/or signals. Approach skew angles shall/will be in conformance with current Department standards. (3-31-22)()

06. Width and Radius.

()

a. An approach shall/will be wide enough to properly serve the anticipated type and volume of traffic. Minimum widths should be used only when space limitations apply. (3-31-22)()

b. An approach that is adjacent to a public alley may include the alley as part of the approach if approved by the local jurisdiction, however, the width of the combined approach shall/will not exceed forty (40) feet. (3-31-22)()

c. Commercial approaches with volumes exceeding fifty (50) vehicles per hour during a total of any four (4) hours per day should be designed to public road standards. ()

d. A Boulevard Approach may be required to improve operation and/or aesthetics of commercial approaches and some public highways, when warranted, by a combination of vehicle length and higher traffic volumes. The approach shall/will be designed to serve the traffic with a right-turn lane, a left-turn lane, a median, and one (1) or more entrance lanes. (3-31-22)()

e. Minimum and maximum recommended approach widths and radii are as follows:

APPROACH USE	< 35 MPH		≥ 35 MPH		RADII	
	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum
Single Residential, Farmyard, Field	12ft	40ft	20ft	40ft	20ft	30ft
Multiple Residential	28ft	40ft	28ft	40ft	20ft	30ft
Commercial (One-Way)	15ft	30ft	20ft	30ft	30ft	40ft
Commercial (Two-Way)	25ft	40ft	25ft	40ft	30ft	40ft
Boulevard Approach	84ft	84ft	84ft	84ft	Contact Department	
Joint-Use Residential/Farm	25ft	40ft	25ft	40ft	20ft	30ft
Joint-Use Commercial	12ft	40ft	20ft	40ft	30ft	40ft
Public Highways	28ft	N/A	28ft	N/A	30ft	50ft

()

07. Property Line Clearance.

()

a. In curbed sections, there shall will be a minimum property line clearance of six (6) feet to accommodate approach transitions. Approaches shall will be constructed so that all approach flares and any extensions of the approach remain within applicant’s property. (3-31-22)()

b. In rural or uncurbed sections, property line clearances shall will be equal to approach radius. Approaches shall will be constructed so that all approach radii remain within applicant’s property. (3-31-22)()

c. Approach transitions or radii may be allowed to abut the adjacent property line when required for proper utilization of property. Joint-use approaches shall will be required whenever property frontage is insufficient to include full width of the approach, including both radii. (3-31-22)()

08. Setback.

()

a. Improvements intended to serve patrons on private property adjacent to state highway right-of-way shall will be setback from the highway right-of-way line so that stopping, standing, parking or maneuvering of vehicles on the right-of-way is not necessary. A minimum setback of fourteen (14) feet from state highway right-of-way line is recommended, unless a greater minimum is established by an engineering study. When an ordinance requires a certain number of parking spaces per square footage of building, the parking spaces shall will not be included within state highway right-of-way. (3-31-22)()

b. Traffic movements into and out of a business shall will be designed, whenever possible, to utilize existing local roads. Existing approaches along traveled way should serve as exits only from the business onto the state highway. Entrance to the property should be made from a local road. (3-31-22)()

09. Sight Distance. Any encroachment, including but not limited to hedges, shrubbery, fences, walls, or other sight obstructions of any nature, that constitutes a traffic hazard within the “vision triangle” of vehicle operators at the intersection of roads with other roads, private approaches, alleys, bike or pedestrian paths, or railroad

crossings shall/will be removed. (3-31-22)()

10. Transitions and Flares. ()

a. In curb and gutter sections, the transition connecting the edge of the approach to the curb shall/will meet minimum Department standards. (3-31-22)()

b. In sections not having a curb and gutter, approach flares should connect the outside edge of the approach to the outside edge of the roadway shoulders and shall/will meet minimum Department standards. The approach flare tangent distance should not exceed twenty (20) feet unless a larger radius is warranted by an engineering study. (3-31-22)()

c. The distance between approaches shall/will be such that the curb approach transition or radii of the one (1) approach does not encroach upon the transition or radii of the adjacent approach. (3-31-22)()

11. Grade. ()

a. If the maximum allowable slope is not great enough to bring the approach to the level of the sidewalk or back of curb, a depressed sidewalk should be installed, when required. If sidewalks exist, the connection between the original sidewalk and the depressed sidewalk shall/will be made through a transition area with a slope no steeper than twelve horizontal to one vertical (12:1) from the longitudinal grade of the original sidewalk. All new curbs or sidewalks should be constructed to the line and grade of the existing curb or sidewalk with every effort to construct a sidewalk that is uniformly graded and free of dips. (3-31-22)()

b. To accommodate emergency service vehicles, the Department recommends a maximum approach grade of plus or minus ten percent ($\pm 10\%$). ()

12. Border Area. ()

a. Border area work (including grading, seeding and landscaping) shall/will insure that adequate sight distance, proper drainage, desirable slopes for maintenance operations, and a pleasing appearance are provided. The border area shall/will be free of encroachments and designed as needed to prevent vehicular use through the incorporation of appropriate methods such as ditching, special grading, use of concrete or bituminous curbs, fencing, guard rail, and guide posts. The design or devices should not impair adequate sight distance or constitute a hazard to pedestrians, bicycles, or vehicles. (3-31-22)()

b. The maximum slope beyond the outside edge of shoulder, back of curb, or back of sidewalk to the right-of-way line shall/will meet minimum Department standards. The creation of ponds, pools, or drainage/evaporation swales within the highway right-of-way shall/will be prohibited. (3-31-22)()

13. Drainage. ()

a. All approaches shall/will be graded so that private properties abutting the highway right-of-way do not drain onto the traveled way, do not impair the drainage within the right-of-way, alter the stability of the roadway subgrade or materially alter the drainage of areas adjacent to the right-of-way. Post-development drainage flows shall/will not exceed predevelopment drainage flows. (3-31-22)()

b. Culverts and drop inlets shall/will be installed where required and shall/will be the type and size specified by the Department. Where the border area is regraded, landscaped or reclaimed (seeded), it shall/will have sufficient slope, ditches, culverts, and drop inlets for adequate drainage. Slopes, where practical, should be a six-horizontal-to-one vertical (6:1) maximum. (3-31-22)()

14. Base and Surfacing. ()

a. It shall/will be the responsibility of the permittee to supply, place and properly compact the approach fill and base material. All base and surfacing materials and compaction requirements shall/will meet minimum Department design and construction standards. (3-31-22)()

b. All rural private, commercial and public approaches shall will be paved to the right-of-way line or to the back of the approach radius. Farmyard and field gravel approaches that are occasionally used shall will be paved a minimum of five (5) feet from the edge of pavement. (3-31-22)()

c. In curb and gutter areas, approaches shall will be paved to the right-of-way line. (3-31-22)()

401. MEDIANS.

01. Median Placement. The placement of medians shall will meet the following considerations: (3-31-22)()

a. Where a traffic engineering study indicates that medians would be beneficial to control access, maintain street capacity, and improve traffic safety. ()

b. When medians are selected, non-traversable medians are the preferred median type; however, traversable medians in urban areas may be considered to accommodate emergency vehicles. ()

c. Pedestrian/bicycle safety shall will be given consideration in the choice and design of medians in areas that are frequently used by pedestrians/bicycles. (3-31-22)()

d. construction requirements for all new or modified public approaches to the state highway right-of-way, including private approaches to subdivisions and businesses, shall will be reviewed for the need to place medians on the state highway. (3-31-22)()

e. Channelization formed by raised curbs, solid painted islands, left turn lanes, or other traffic control installations may be required to create a mandatory right-in/right-out and/or left-in/left-out approach condition. ()

02. Median Openings. Median openings shall will be as follows: (3-31-22)()

a. Placed on multi-lane state highways at all signalized intersections, at locations which currently meet the criteria for a signal warrant and fulfill traffic signal coordination requirements, at locations that are anticipated to meet future traffic signal considerations, and at locations where there will be no significant reduction in safety or operational efficiency. ()

b. Designed with a left turn lane and sufficient storage for left turning traffic. ()

c. Median openings allowing U-turns shall will be provided only at locations having sufficient roadway width. (3-31-22)()

402. AUXILIARY LANES.

Review Required. Reviews shall will be conducted to determine the need to provide turn lanes, deceleration lanes and acceleration lanes on the state highway prior to issuing an approach permit. Consideration of auxiliary lanes shall will meet the following conditions: (3-31-22)()

01. Traffic Engineering Study. A traffic engineering study shall will be made that considers highway operating speed, traffic volumes, projected turning movement volumes, availability of passing opportunities, sight distance, and collision history. (3-31-22)()

02. Auxiliary Lanes to Enhance Roadside Business. Auxiliary lanes shall will not be constructed to enhance a new roadside business, unless the applicant is willing to pay the full cost. (3-31-22)()

03. Auxiliary Lanes Required by Planned Development. Auxiliary lanes required as a result of a planned development, shall will be paid for by the developer. When the need for an auxiliary lane exists prior to an application for a planned development, the developer may not be required to pay for the lane unless such construction precedes the Department's construction schedule. (3-31-22)()

403. -- 499. (RESERVED)

500. LOCATION AND DESIGN STANDARDS FOR UTILITIES.

01. Approved Permit Required. An approved right-of-way encroachment permit shall be required for all utility encroachments, including new utility installation and the relocation, maintenance, modification, or removal of existing utility facilities prior to the initiation of any work within the state highway right-of-way. (3-31-22)()

02. Utility Locations. Final utility locations shall be identified on the appropriate roadway and bridge plans. (3-31-22)()

03. Interstate Highways. As addressed in the 1996 Telecommunications Act, longitudinal placement of telecommunication utilities in any Interstate right-of-way shall require a permit approved by the Department for the installation of utilities. Longitudinal placement of all other utilities in Interstate right-of-way shall require a utility permit approved by both the Department and the FHWA. (3-31-22)()

04. Utility Maintenance and Emergency Repair. Right-of-way encroachment permits, approved annually by the Department, shall be required for all maintenance or emergency repairs of utility facilities. The utility shall notify the Department in advance of any work that affects the traveling public. (3-31-22)()

05. Conduits Under the Roadway. ()

a. Conduits crossing under highways that carry utility structures including, but not limited to, water, sewage, chemicals, electrical wire, and communications cables, shall be installed by jacking, driving or boring unless trenching can be justified. Acceptable justification would only be poor soil conditions, such as rock or boulders, inadequate room for a boring pit, or conflicts with other utility lines which cannot be located accurately (gas lines, multiple telephone conduits). If gravel or boulders prevent boring or jacking on the first attempt, at least two (2) other documented attempts should be made at different locations before contacting the District about an alternate installation method, unless the utility can provide documentation from a qualified agency or engineer that indicates the strata is not conducive to boring, driving or jacking. Normally installation of conduit twenty-four (24) inches or less outside diameter should be attempted by jacking, driving or boring before consideration of trenching as an alternative. (3-31-22)()

b. The applicant is required to submit for review and approval, a set of construction plans stamped by an engineer licensed in the state of Idaho. The plans shall show all details on casing, conduits, bulkheads and placement, vertical and horizontal dimensions of the pit and shoring, method of installing the conduit, drainage, void filling, and traffic control devices. Sluicing or jetting shall not be allowed. If required by the engineer, casings should be installed from highway right-of-way line to highway right-of-way line to allow for servicing of the utility facility with minimal disruption to traffic flows. Casings should be installed wherever feasible to allow for placement of multiple conduits. (3-31-22)()

c. Conduits under interstate highways shall not be installed by cutting through the pavement under any circumstance. (3-31-22)()

06. Conduits Attached to Structure. Conduits attached to any structure shall meet the following requirements: (3-31-22)()

a. A set of construction plans showing all details and calculations of a crossing or proposed attachments, stamped by an engineer licensed in the state of Idaho, shall be submitted to the Department for review and approval at the time of permit application. A copy of the existing structure plans shall also be submitted that are marked to show the proposed structure modifications. (3-31-22)()

b. Reinforcement shall be located prior to the placement of threaded inserts to suspend utilities using a method approved by the Department. (3-31-22)()

- c. All attaching hardware shall will be galvanized or coated as directed by the Department. (3-31-22)()
- d. Bolts for the attachment clamps shall will be a minimum of one-half (1/2) inch in diameter. (3-31-22)()
- e. Slip joints shall will be installed as directed by the Department. (3-31-22)()
- f. Drilling of any bridge structural element shall will be prohibited without approval from the Department. (3-31-22)()
- g. Utilities shall will be attached to bridges in an interior bay, unless interior attachment is not practical due to the bridge diaphragm or end beam construction. (3-31-22)()
- h. Placing brackets along or around the structure rail is prohibited. ()
- i. The installing utility shall will relinquish exclusive rights to future use of a hanger system, once installed. However, the responsibility for required maintenance shall will remain with the installing utility until the hanger system is placed into a joint-use system. At that time, the responsibility for maintenance shall will become a shared responsibility. (3-31-22)()
- j. A set of “as-built” plans for all conduit or utility crossings and structure attachments shall will be submitted to the Department and the local utility locating service with all details of construction within thirty (30) days of the work completion. All “as-built” plans are required to be stamped by an engineer licensed in the state of Idaho. (3-31-22)()

501. -- 599. (RESERVED)

600. LOCATION AND DESIGN STANDARDS FOR OTHER ENCROACHMENTS.

- 01. Approved Permit Required.** An approved right-of-way encroachment permit shall will be required for all portable objects or signs, memorials, urban improvements, landscaping, farming, irrigation or drainage, mailbox stands or turnouts, recreational parking facilities, park-and-ride lots, school bus turnouts, or structures within the state highway right-of-way other than those authorized or installed by the Department, or those which the government entity deems necessary for regulating, warning, and guiding of traffic. (3-31-22)()
- 02. Benches, Planters, and Other Urban Structures.** Structures, including protrusions and overhangs, shall will be a minimum of eighteen (18) inches behind the face of curb. When a structure is within a sidewalk area, at least four (4) feet of unobstructed space shall will be available for pedestrians. (3-31-22)()
- 03. Overhanging Displays, Canopies and Marquees.** In a curb section, encroachments shall will not extend closer than eighteen (18) inches behind face of curb. In a non-curb section, encroachments supported by a building shall will not extend more than twelve (12) inches into right-of-way. Signs or displays shall will be no lower than twelve (12) feet above the sidewalk or ground level. Canopies and marquees shall will be no lower than eight (8) feet. (3-31-22)()
- 04. Landscaping, Farming and Associated Irrigation.** Repair of landscaping in the state highway right-of-way shall will be the responsibility of the permittee, and the Department will not be responsible for, or participate in, any repair or maintenance costs. All requests for landscaping, farming and irrigation shall will require a review of current access control records for restrictive covenants. Applications may be approved provided the following conditions are met: (3-31-22)()
 - a. Landscaping, farming, and irrigation systems shall will maintain the structural integrity of the state highway right-of-way. No undercutting of the present highway fill and ballast section nor shall will access to a state highway from unprotected bare soil be allowed. (3-31-22)()

b. Unless otherwise specified, the degree of landscaping will be limited to what is necessary to insure that the appearance of the state highway right-of-way is compatible with the appearance of the surrounding area and shall will not interfere with public safety and overall maintenance operations. (3-31-22)()

c. Landscaping, farming, and irrigation systems shall will not disturb, obstruct, or add to the normal drainage patterns of the state highway right-of-way. No new ditches shall will be constructed without prior approval. (3-31-22)()

d. Landscaping, farming, and irrigation systems shall will not interfere with utility installations, removals, or operations. ()

e. Provisions shall will be established for the responsibility of future maintenance. (3-31-22)()

f. Only planting of forage plants, grasses, flowers, and shrubs with a mature height not to exceed three (3) feet will be allowed within the clear zone of the state highway right-of-way. Type and size of grasses, flowers, and shrubs will be determined by the Department. ()

g. No trees shall will be allowed within the clear zone of the state highway right-of-way. (3-31-22)()

h. All work within the highway right-of-way shall will be required to return the right-of-way to either original condition or to the requirements of the encroachment permit as approved by the Department. (3-31-22)()

i. Irrigation systems shall will be no closer than five (5) feet from the pavement edge and shall will be adjusted so water does not cover any portion of the highway pavement. (3-31-22)()

j. No grading, excavation or other ground disturbing activities will be performed during rainy periods. If work cannot be avoided during rainy periods, the permittee will install check dams or other approved device(s) or structure(s) in drainage channels and provide a sediment retention basin to avoid discharging sediment containing runoff into the drainage system, or any wetlands, or water bodies (streams, rivers, lakes and ponds). No work shall will be performed in or adjacent to any wetland or water body without providing the Department with copies of the appropriate permits from the Army Corps of Engineers, Idaho Department of Water Resources, and the Idaho Division of Environmental Quality. (3-31-22)()

k. All areas within the state highway right-of-way disturbed by construction shall will be returned to its original condition and reclaimed (re-seeded, fertilized and mulched) as directed by the Department or delegated local highway agency. (3-31-22)()

l. Appropriate best management practices to temporarily control erosion and resulting sediment shall will be used. Typical soil surface protection practices include erosion control blankets, taced mulches of straw, wood fiber, paper fiber, soil amendments, or rock mulch. Typical sediment control practices may include silt fences, fiber wattles, rock check dams, sediment basins/ponds, inlet culvert risers, and inlet rock filters. For further information on best management practices, contact the Department. (3-31-22)()

m. Travel lanes shall will be kept reasonably free of dirt, rocks and other debris resulting from construction or maintenance of landscaping, farming, or irrigation. (3-31-22)()

05. Recreational Parking and Park-and-Ride Lots. ()

a. Parking areas shall will be designed to safely accommodate an adequate number of parking spaces as determined by the Department. (3-31-22)()

b. Access points shall will be located so that adequate sight distance is maintained for the safety of approaching traffic and so that minimal interference with the normal flow of traffic on the traveled way results. (3-31-22)()

- c. Approaches shall will be constructed in accordance with Department standards. (3-31-22)()
- d. Installation of fencing and delineation should be considered to restrict ingress and egress locations and widths. ()
- e. Unrestricted drainage shall will be provided and shall will comply with Department standards. (3-31-22)()
- f. Construction and maintenance of parking areas, including snow removal shall will be the responsibility of the permittee. (3-31-22)()

06. Mailbox Turnouts. ()

- a. Mailbox turnouts in rural areas may be combined with an adjacent approach or may be independent of the approach. For safety reasons, the mail carrier should be able to stop out of the traveled way whenever possible. The applicant should be required to construct a mailbox turnout at the same time a mailbox is installed. ()
- b. Mailbox turnouts and mailbox supports shall will be constructed in accordance with Department standards. The box-to-post attachments shall will resist separation when struck by a vehicle. No massive metal, concrete, stone or other hazardous supports shall will be allowed. Owners of mailboxes that do not meet minimum installation requirements shall will be notified that correction is required. (3-31-22)()

07. School Bus Turnouts. ()

- a. School bus turnouts shall will be constructed with sufficient length and width to accommodate bus length and turning maneuvers as determined by the Department. (3-31-22)()
- b. Turnouts shall will be located so adequate sight distance is maintained for the safety of approaching traffic and so that minimal interference with the normal flow of traffic on the traveled way results. (3-31-22)()
- c. All permitted school bus turnouts shall will include approved advance warning signs installed at Department expense. (3-31-22)()

601. -- 699. (RESERVED)

700. APPLICATION FEES.

01. Fee Administration. Fees for applications for permits shall will be based on the Department’s cost to produce the permit and administer the program. Fees for permits are not refundable in the event of denial of the permit or in the event the permittee fails to comply with the permit. Applications shall will not be processed until all applicable permit fees are received. (3-31-22)()

02. Fee Schedule. The permit application fees shall will be as follows: (3-31-22)()

a. Approaches:

Land Use Category	Permit Application Fee
Residential, < 100 units (includes farm and field approaches)	\$50
Residential, ≥ 100 units	\$100
Retail, < 35,000 sq. ft.	\$50
Retail, ≥ 35,000 sq. ft.	\$100
Office, < 50,000 sq. ft.	\$50

Land Use Category	Permit Application Fee
Office, ≥ 50,000 sq. ft.	\$100
Industrial, < 70,000 sq.ft.	\$50
Industrial, ≥ 70,000 sq.ft.	\$100
Lodging, < 100 rooms	\$50
Lodging, ≥ 100 rooms	\$100
School (K-12)	\$100

- ()
- b. Encroachments other than approaches: fifty dollars (\$50). ()
- c. Utility Permits: ()
 - i. Non-interstate: new, modify, relocate with no prior easement rights, fifty dollars (\$50). ()
 - ii. Interstate: fees will be addressed at the time of application. ()
 - iii. Interstate and non-interstate: maintenance or emergency repairs with no prior easement rights - No Charge ()
 - iv. Interstate and non-interstate: new, modify, relocate with prior easement rights within an ITD State highway project) - No Charge. ()
- 03. Miscellaneous Costs.** In addition to the application fee, the Department may require payment of costs associated with the following: ()
 - a. Study or appraisal review; or ()
 - b. Appraisal fees required to establish the value of property for new, additional, modification in design or use, or relocation of approaches or other encroachments in a controlled access highway. ()
 - c. Inspection fees may be charged at the discretion of the District Engineer when substantial inspection time will be required to monitor and accept work done within the right-of-way. This includes wages, travel, subsistence and other expenses incurred. The intent is to recover only Department costs. When the inspection fee is to be assessed, it shall will be stipulated under the application’s special provisions. Travel time in excess of one (1) hour, a loaded payroll rate, vehicle rental cost, subsistence, and other expenses incurred. If additional inspections are required, the permittee will be billed a flat fee as determined by the Department at the time the permit is issued. (3-31-22)()
 - d. A performance bond may be required of an applicant at the discretion of the Department. The purpose of this bond is to guarantee completion of the work in accordance with the requirements of the permit. The bond amount should be large enough to cover costs to correct potential damage that might be caused by the permittee. The bond shall will be executed by a surety company authorized to conduct business in Idaho. (3-31-22)()
 - e. Construction of highway modifications or improvements, including but not limited to signals, illumination, signs, pavement markings, delineation, guardrail, and culverts; ()
 - f. Changes or adjustments made to highway features or fixtures; or ()
 - g. Expenses relating to photocopying highway plans, permits or related documents. ()
- 04. Waivers.** Permit fees may be waived and the justification included with the application for:

- ()
- a. Approaches resulting from right-of-way negotiations that are included in plans and completed during construction of a highway project. ()
 - b. Government agencies. ()
 - c. Agricultural uses of the right-of-way as included in the right-of-way agreement. ()
 - d. Approaches and other encroachments where direct benefit to the Department is gained. ()
 - e. Utility adjustments or relocations per project utility agreement, or requested by the Department, or utility maintenance and emergency repairs. ()

701. – 799. (RESERVED)

800. UNAUTHORIZED AND NONSTANDARD ENCROACHMENTS.

01. Compliance. District Engineers shall will ensure compliance with all applicable laws and Department policies relating to the removal or correction of unauthorized and non-standard encroachments in accordance with Department rules and policies. (3-31-22)()

02. Prohibition. Approaches and other encroachments on state highway rights-of-way that are installed without an approved state highway right-of-way permit, or not constructed in accordance with the Department requirements as stated in the permit, or are naturally occurring adjacent to the state highway right-of-way line and create a hazard, are prohibited, may be removed or their use may be suspended until corrective action is taken. The application process shall will be immediately initiated when applicable or the encroachment removed when such a permit cannot be approved. (3-31-22)()

03. Nonstandard Encroachment. When a permitted encroachment does not meet Department standards, the applicant or permittee shall will be given one (1) month to upgrade the encroachment to the encroachment standards. Encroachments may be removed by the Department and legal action initiated to collect the removal cost. (Section 40-2319, Idaho Code) The one (1) month period may be shortened if an imminent or immediate threat to the safety of the traveling public is present. Time extensions may be granted by the Department or delegated local highway agency. However, if the permittee does not comply, the permit shall will be revoked and the encroachment removed. (3-31-22)()

04. Encroachment Removal. Any person or entity maintaining an unauthorized encroachment of any kind upon state highway right-of-way shall will be served, according to law, with a notice to remove the same. Failure to remove the encroachment within forty-eight (48) hours shall will be followed by a certified letter from the Department requesting removal within ten (10) days. If the encroachment is still not removed, the Department shall will institute appropriate legal action to have it removed. The Department may take immediate corrective action if an imminent or immediate threat to the safety of the traveling public is present. (3-31-22)()

05. Liability of Applicant. The applicant may be held liable for injury or damages caused by the unauthorized or non-standard encroachment. The Department shall will make no reimbursement for removal of unauthorized or non-standard encroachments nor shall will compensation be made for any losses that may arise from their removal. The Department may initiate legal action to recover costs for the removal of unauthorized or non-standard encroachments. (3-31-22)()

801. PROHIBITIONS.

01. Prohibited Uses. The use of the highway right-of-way or any portion thereof for any of the following uses or purposes shall will be prohibited: (3-31-22)()

- a. Mobile stores, mobile lunch wagons or similar businesses that stop vehicles to offer for sale or sell their wares. ()

- b. Solicitation or sale of any goods or services, attempts to serve, distribute, petition or recruit, and all associated stopping, standing or parking of vehicles (except Department-approved vending privileges in safety rest areas. ()
- c. The storage of any substance, equipment or material, including but not limited to logs, lumber, supplies or aggregates. ()
- d. The abandonment of vehicles or other large objects. ()
- e. Servicing, refueling and repairing of vehicles, except for emergencies. ()
- f. The placement of portable objects or signs (material or copy), displays, or other unapproved highway fixtures. ()
- g. Permanent, temporary or mobile structures, manned or unmanned. ()
- h. Any obstruction that creates a traffic hazard, including trees, shrubbery, fences, walls, non-standard mailbox stands, or other appurtenances. ()
- i. Signs or displays that resemble, hide or because of their color, interfere with the effectiveness of traffic signals and other traffic control devices. ()

~~02. **Modification of Rule.** The Department may modify this rule for emergency, temporary installations for the benefit to the highway user. (3-31-22)~~

~~03. **Encroachment Hazards.** Encroachments ~~shall~~will not interfere with the safety of the highway or the visibility and effectiveness of traffic control devices, form a wall or building support, obstruct crosswalks or wheelchair ramps, or force pedestrians into the highway. (3-31-22)()~~

~~04. **Board Jurisdiction.** The Board, by and through the Department, may consummate agreements with cities and villages whereby they may exercise their police powers on those matters within their jurisdiction. (3-31-22)~~

802. -- 999. (RESERVED)

IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

39.03.48 – RULES GOVERNING ROUTES EXEMPT FROM LOCAL PLANS AND ORDINANCES

DOCKET NO. 39-0348-2301 (ZBR CHAPTER REWRITE)

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 and 49-201, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

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

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

The purpose of this rule is to expound upon a provision contained within Idaho's Local Planning Act concerning the designation of transportation systems of statewide importance which are exempt from local plans and ordinances. It clarifies provisions concerning the prevention of local control over improvements to transportation systems of statewide importance.

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 7, 2023, Idaho Administrative Bulletin, [Vol. 23-6, pages 84-85](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 Brendan Floyd at 208-334-8474.

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 25, 2023.

DATED this 1st Day of September, 2023.

Brendan Floyd
Policy Specialist
Idaho Transportation Department
11331 W. Chinden Blvd.
Boise, ID 83714
208-334-8474
Brendan.floyd@itd.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0348-2301
(ZBR Chapter Rewrite)

39.03.48 – RULES GOVERNING ROUTES EXEMPT FROM LOCAL PLANS AND ORDINANCES

000. LEGAL AUTHORITY.

The Idaho Transportation Board is authorized by Section 40-312, Idaho Code, to prescribe and enforce rules and regulations affecting state highways; by Section 40-310, Idaho Code, to determine which highways or sections of highways shall be part of the state highway system; and by Section 67-6528, Idaho Code, to identify the major transportation systems of statewide importance which would be exempt from local plans and ordinances as adopted according to Chapter 65, Title 67, Idaho Code. ()

001. TITLE AND SCOPE PURPOSE.

~~This rule is titled IDAPA 39.03.48, “Rules Governing Routes Exempt from Local Plans and Ordinances.”~~ The purpose of this rule is to follow-up on a provision contained within Idaho’s Local Planning Act concerning the designation of transportation systems of statewide importance which are exempt from local plans and ordinances. The intent of this legislative provision is to prevent local control over improvements to transportation systems of statewide importance. However, it is recognized by the Idaho Transportation Board that local regulations are necessary to achieve the future location, relocation, realignment and other improvements to the state highway system in accord with the Idaho Transportation Board’s plans. (3-31-22)()

002. -- 099. (RESERVED)

100. STATE HIGHWAY SYSTEM DESIGNATION.

The state highway system consists of those major highway transportation routes designated by the Idaho Transportation Board pursuant to Section 40-310, Idaho Code, and is hereby determined to be part of the “transportation systems of statewide importance” for the purposes of Section 67-6528, Idaho Code. ()

101. -- 1299. (RESERVED)

200. LOCAL AGENCIES.

~~This rule is not intended to discourage state/local agreements or to preclude the cities and counties from adopting and implementing: Zoning Ordinances (Section 67-6511, Idaho Code); Special Use Permits (Section 67-6512, Idaho Code); Subdivision Ordinances (Section 67-6513, Idaho Code); Planned Unit Developments (Section 67-6515, Idaho Code); Future Acquisition Maps (Section 67-6517, Idaho Code); Standards (Section 67-6518, Idaho Code); and Permit Granting Processes (Section 67-6519, Idaho Code). The Idaho Transportation Board supports a continued cooperative relationship with cities and counties concerning local ordinances pursuant to Section 67-6511 through Section 67-6519, Idaho Code, where such ordinances are beneficial to the state highway system.~~ (3-31-22)

201. -- 299. (RESERVED)

300. EXISTING STATE HIGHWAY SYSTEM.

The state highway system is not a permanent configuration or mileage because of additions or deletions over time. The official system description is kept current in the Department’s records and is available to the public upon request. ()

301. -- 999. (RESERVED)

IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

39.03.50 – RULES GOVERNING SAFETY REST AREAS

DOCKET NO. 39-0350-2301 (ZBR CHAPTER REWRITE)

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 and 49-201, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

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

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

The purpose of this rule is to establish standards for use of developed rest areas that are not explicitly addressed in statute.

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 7, 2023, Idaho Administrative Bulletin, [Vol. 23-6, pages 84-85](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 Brendan Floyd at 208-334-8474.

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 25, 2023.

DATED this 1st Day of September, 2023.

Brendan Floyd
Policy Specialist
Idaho Transportation Department
11331 W. Chinden Blvd.
Boise, ID 83714
208-334-8474
Brendan.floyd@itd.idaho.gov

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0350-2301
(ZBR Chapter Rewrite)**

39.03.50 – RULES GOVERNING SAFETY REST AREAS

000. LEGAL AUTHORITY.

Under the authority of Section 40-312, Idaho Code, the Idaho Transportation Board adopts this rule. ()

001. ~~TITLE AND SCOPE~~ PURPOSE.

01. ~~Title.~~ This rule is titled IDAPA 39.03.50, “Rules Governing Safety Rest Areas.” (3-31-22)

02. ~~Scope.~~ The purpose of this rule is to ~~regulate use of and~~ set standards of behavior for all persons ~~using or~~ visiting developed rest areas. (3-31-22)()

002. -- 099. (RESERVED)

100. SANITATION.

The following acts are ~~prohibited~~ not allowed: (3-31-22)()

01. **Designated Trash Containers.** Failing to dispose of all garbage and ~~trash, including paper, cans, bottles and other waste materials by either removal from the site or depositing~~ pet waste in designated trash containers. (3-31-22)()

02. **Vehicle Refuse or Water.** Draining or dumping refuse or waste from any ~~trailer or other~~ vehicle except in places or receptacles provided. (3-31-22)()

03. **Water Facilities.** Cleaning ~~fish or other~~ food, washing clothing or household articles at ~~hydrants or water faucets~~ any water facility. (3-31-22)()

04. **Water Systems.** ~~Polluting or e~~Contaminating water used for ~~human~~ consumption or water systems used for the delivery of such water. (3-31-22)()

05. **Comfort Station.** Depositing body waste in or on any portion of a comfort station not intended for that purpose. ()

06. **Dumping.** Dumping of household or commercial garbage ~~or trash~~ brought as such ~~from private off-site~~ into any on-site refuse containers or other refuse facilities. (3-31-22)()

101. -- 199. (RESERVED)

200. PUBLIC BEHAVIOR AND TREATMENT OF PUBLIC PROPERTY.

The following acts are ~~prohibited~~ not allowed: (3-31-22)()

01. **Behavior.** Indulging in boisterous, ~~abusive~~ dangerous, threatening, ~~or indecent~~ conduct or creating ~~unnecessary~~ noise which interferes with the reasonable use of the area by other visitors. (3-31-22)()

02. **Treatment of Natural Features or Plants.** Destroying, ~~defacing, cutting, sampling,~~ or removing any natural feature or plant. (3-31-22)()

03. **Treatment of Public Property.** Damaging ~~by defacing, plugging, breaking,~~ or removing any facility, fixture, sign or marker provided for use of the public ~~or damaging sidewalks or areas intended for motor vehicles.~~ (3-31-22)()

04. **Soliciting.** ~~Selling or e~~Offering for sale any merchandise or service other than emergency services for disabled vehicles, ~~such as towing, vehicle repairs,~~ fire response, ambulance or medical response/transport, or vending machines permitted under the provisions of federal law or federal rule and Section 67-5411, Idaho Code.

(3-31-22)()

05. Noise Producing Devices. ~~Operating or u~~Using any audio devices, ~~including radio, television and musical instrument,~~ and other noise producing devices, such as electrical generator plants and equipment driven by motors or engines, in such a manner and at such times so as to disturb other persons. (3-31-22)()

06. Fireworks/Incendiary Devices. Discharging fireworks or any other incendiary device. ~~Fireworks are considered any combustible or explosive substance, but This does~~ not include any automotive safety flares or any other emergency or safety device. (3-31-22)()

201. -- 299. (RESERVED)

300. OCCUPANCY OF DEVELOPED REST AREAS.

The following acts are ~~prohibited~~ not allowed: (3-31-22)()

01. Camping/~~Occupancy of Site.~~ ~~Camping or occupying a rest area for any purpose other than rest and relaxation from the fatigue of travel.~~ (3-31-22)()

02. Assembling. ~~Assembling or attracting groups of people~~ except for public service functions by civic, fraternal or religious organizations as approved by the Department. (3-31-22)()

03. Time Limits. Occupancy of the rest areas on interstate highways is limited to ten (10) consecutive hours. Occupancy of rest areas on other routes of the State Highway System is limited to sixteen (16) consecutive hours. ()

04. Fires. ~~Building fires outside the confines of a stove, grill or fireplace.~~ (3-31-22)()

05. Failure to Clean. Failing to clean the space occupied before departing. ()

06. Animals. ()

a. ~~Bringing a dog, cat or other~~ any animal into a rest area unless it is a certified service animal or ~~erated, caged,~~ leashed or otherwise under physical restrictive control at all times. (3-31-22)()

b. ~~Permitting a dog, cat or other animal to exercise and/or defecate in areas outside of specifically designated pet areas.~~ (3-31-22)

301. -- 399. (RESERVED)

400. VEHICLES.

The following acts are ~~prohibited~~ not allowed: (3-31-22)()

01. ~~Rates of Speed.~~ ~~Operating any motor vehicles in excess of fifteen (15) mph speed within the confines of a rest area with the exception of acceleration or deceleration ramps.~~ (3-31-22)

02.1. Driving or Parking. Driving or parking a vehicle or trailer except in places developed for such purpose. ()

03. ~~Careless Driving.~~ ~~Driving a vehicle carelessly and heedlessly in disregard of the rights or safety of others; or driving at a speed, or in a manner which endangers, or is likely to endanger, any person or property.~~ (3-31-22)

04.2. Paths/Roads/Trails in Rest Areas. Operating any vehicle on paths, roads, or trails in developed rest areas for any purpose other than entering or leaving the area, unless specifically allowed by ~~appropriate~~ signage. (3-31-22)()

05. ~~Accelerating Engine.~~ ~~Excessively accelerating the engine of any vehicle or motorcycle when such~~

~~vehicle is not moving or is approaching or leaving the rest area. (3-31-22)~~

~~**06. Skateboards/Rollerblades.** Use of skateboards or rollerblades on sidewalks or in areas primarily intended for use by motor vehicles. (3-31-22)~~

401. -- 999. (RESERVED)

IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

39.04.01 – RULES GOVERNING AERONAUTICS AND AVIATION

DOCKET NO. 39-0401-2301 (ZBR CHAPTER REWRITE)

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 and 49-201, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

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

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

This rule establishes provisions related to aeronautics and aviation, including rules governing aircraft registration, marking of hazards to air flight, restriction of flight in designated emergency areas, commercial and through-the-fence operations, aerial search and rescue, operations at state airports, Federal Aviation Regulations and the Idaho Airport Aid Program. This rule generally serves to clarify conditions that are not explicitly established in statute.

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 7, 2023, Idaho Administrative Bulletin, [Vol. 23-6, pages 84-85](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 Brendan Floyd at 208-334-8474.

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 25, 2023.

DATED this 1st Day of September, 2023.

Brendan Floyd
Policy Specialist
Idaho Transportation Department
11331 W. Chinden Blvd.
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0401-2301
(ZBR Chapter Rewrite)

39.04.01 – RULES GOVERNING AERONAUTICS AND AVIATION

000. LEGAL AUTHORITY.

Under authority of Sections 21-105, 21-111, 21-114, 21-142(9), 21-142(15) and 21-519, Idaho Code, the Idaho Transportation Board adopts this rule. Violators of state law and these rules are subject to the penalties specified in Sections 18-7031, 18-7033 and 21-121, Idaho Code. ()

001. ~~TITLE AND SCOPE~~ PURPOSE.

01. ~~Title.~~ This rule is titled IDAPA 39.04.01, “Rules Governing Aeronautics and Aviation.” (3-31-22)

02. ~~Scope.~~ This rule implements the provisions of Title 21, Idaho Code, related to aeronautics and aviation, including rules governing aircraft registration, marking of hazards to air flight, restriction of flight in designated emergency areas, commercial and through-the-fence operations, aerial search and rescue, operations at state airports, Federal Aviation Regulations and the Idaho Airport Aid Program. ~~Where feasible, all rules and regulations regarding navigation of aircraft within the airspace about the state of Idaho will be kept in conformance with the current federal aviation regulations.~~ (3-31-22)()

002. INCORPORATION BY REFERENCE.

These rules incorporate the current Federal Aviation Regulations, 14 CFR Parts 1-191, where they are not inconsistent with existing rules or regulations that may, from time to time, be adopted by the Idaho Transportation Board. Copies of Federal Aviation Regulations, 14 CFR parts 1-191, may be obtained from the Superintendent of Documents, U. S. Government Printing Office, Washington, DC 20402 or electronically at the Electronic Code of Federal Regulations, at <https://www.ecfr.gov/cgi-bin/ECFR?page=browse>. This rule also incorporates the Idaho Airport Aid Program, Implementation Manual (3rd Edition, September 2019 May 2023), and the Department’s Aerial Search and Rescue Manual. (3-31-22)()

007. – 009. (RESERVED)

010. DEFINITIONS.

01. ~~Adjusted Service Area Population.~~ The adjusted service area population is the subject airports service area population reduced by the population within the service area of a nearby 'more developed' airport(s) that overlaps the subject airports service area. The adjusted service area population is used to determine the match rate for Community airport grants. (3-31-22)

021. Aerial Search and Rescue Volunteer. One who volunteers services for humanitarian relief. When accepted in support of SAR missions, SAR volunteer ~~shall~~ will become quasi-state employee and be protected by state workman’s compensation insurance. (3-31-22)()

032. Aerial Search and Rescue Volunteer Aircraft. A civil aircraft voluntarily made available to be used in aerial search and rescue operations. ()

043. Aerial Search and Rescue Volunteer Pilot/Observer. A pilot/observer qualified in accordance with the Idaho Transportation Department Aerial Search and Rescue Manual. ()

054. AFRCC. Air Force Rescue Coordination Center, the single agency through which federal SAR missions will be prosecuted and federal assistance requested for SAR in the inland region. It is a coordinating agency only. ()

~~065.~~ **Aircraft Parking Area.** A designated site constructed on an airport with or without aircraft tiedown chains or ropes for the purpose of parking unattended aircraft. ()

~~07.~~ **Airman/Airmen.** Any individual who engages, as the person in command or as pilot, mechanic, or member of the crew, in the navigation of aircraft while underway. For the purpose of this regulation, search shall be conducted for airmen and passenger(s) of lost aircraft. (3-31-22)

~~08.~~ **Airport.** Any area of land or water which is used, or intended for use, for the landing and take off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon. For the purposes of this chapter, the term "airport" refers to a publicly owned and managed facility that is open for public use without operational restrictions on its use. For the purposes of Subchapter B of this rule, this is limited to airports that are owned, leased or permitted by the owner of the land and are under the control of, and operated by the Idaho Transportation Department's Division of Aeronautics. (3-31-22)

~~09.~~ **Airport Service Area Population.** The airport service area population is the number of people within the service area boundary based upon the most recent approved census data. An airport's service area is the geographic locale within a thirty (30) minute average drive time from the airport. (3-31-22)

~~10.~~ **Camping Area.** Any site designated for camping and identified by the placement of picnic tables, fire pits, barbecue stoves or appropriate signing. (3-31-22)

~~106.~~ **Civil Aircraft.** Aircraft other than public aircraft. ()

~~12.~~ **Department.** Idaho Transportation Department. (3-31-22)

~~13.~~ **Director.** Director of the Idaho Transportation Department. (3-31-22)

~~1407.~~ **District Deputy Aerial Search and Rescue Coordinator.** A designated representative of the State Search and Rescue Coordinator. (3-31-22)()

~~1508.~~ **Division.** The Division of Aeronautics of the Idaho Transportation Department, including its officers and employees. ()

~~16.~~ **Fueling.** Any procedure which involves the addition or removal of fuel from aircraft fuel tanks or the transfer of fuel from or into tanks, barrels, or bladders. (3-31-22)

~~1709.~~ **Guyed Tower.** A tower that is supported in whole or in part by guy wires and ground anchors or other means of support besides the superstructure of the tower itself, towers used for military purposes excepted. ()

~~180.~~ **Hazardous Material.** Any material or substance as defined by Sections 49-109(3), 39-4403(7) and (14), 39-4407, or 39-6203(9), Idaho Code. ()

~~19.~~ **Height.** The distance measured from the original grade at the base of the tower to the highest point of the tower. (3-31-22)

11. **International Aeronautical and Maritime Search and Rescue (IAMSAR) Manual.** A manual establishing the international standards for search and rescue. ()

12. **Land SAR Addendum.** Addendum to the National Search and Rescue Supplement to the IAMSAR manual that governs land search procedures for lost personnel, vehicles, or aircraft. This document governs how the ground component of SAR conducts operations. ()

~~2013.~~ **Loading Area.** A site designated on an airport for the purpose of loading or unloading passengers and cargo and facilitating the access of designated vehicles. ()

~~24~~**14.** **Marking.** ~~Shall~~Will include illuminating, painting, lighting, or designating in a manner to be approved by the department. (3-31-22)()

~~22.~~ ~~**National Search and Rescue Manual.** That manual for guidance of U.S. Federal Forces, military or civil, participating in search and rescue (SAR) operations.~~ (3-31-22)

~~23~~**15.** ~~**National Search and Rescue (SAR) Plan of the United States.** Aerospace Rescue and recovery Service Operations Plan Number 9506, entitled, "Inland Search and Rescue." It coordinates the SAR efforts among the states and federal agencies. This plan covers interagency agreements that govern federal search and rescue response.~~ (3-31-22)()

16. **National Search and Rescue Supplement to the IAMSAR Manual.** Federal guidelines on implementing Search and Rescue within the United States. ()

24**17.** **Office of Emergency Management (OEM).** State agency in charge of preparing for and/or providing assistance during and after natural or man-made disasters. ()

~~25~~**18.** **Runway.** An airport surface designed specifically for the takeoff and landing of aircraft. ()

~~26~~**19.** **Aeronautical Search and Rescue (SAR).**-(SAR) Operations involving the search for aircraft overdue, missing, or in distress. Use of aircraft to assist in other types of search and rescue operations. (3-31-22)()

~~a.~~ ~~Search—An investigative act to determine the location of lost aircraft or airman.~~ (3-31-22)

~~b.~~ ~~Rescue—Deliver from danger, to save.~~ (3-31-22)

27**0.** **SAR Agreements.** SAR agreements involving federal, state, local, and private agencies, and/or individual(s). ()

~~28.~~ ~~**Search Districts.** Those six (6) areas throughout the State which are designated as aerial search and rescue districts by the Idaho aerial search and rescue plan. These areas are the same as the states six (6) highway districts.~~ (3-31-22)

29**1.** ~~State Aerial~~ **Aeronautical Search and Rescue SAR Coordinator.** Director, Idaho Transportation Department, or his duly appointed representative, responsible for directing, coordinating and supervising all phases of aerial search and rescue operations in accordance with the National Search and Rescue Plan of the United States. (3-31-22)()

30**22.** **State Aerial Search and Rescue Plan.** Those plans, policies, and procedures set forth in the Department Aerial Search and Rescue Manual. ()

34**23.** **Temporary or Permanent Guyed Tower.** A guyed tower erected and standing for any period of time whatsoever. ()

~~32.~~ ~~**Vehicle.** Any motorized vehicle excluding aircraft and including, but not limited to, highway automobile, truck, bus, van, trailer, motorcycle, ATV, recreational vehicle, or snowmobile.~~ (3-31-22)

011. -- 099. (RESERVED)

SUBCHAPTER A – RULES GOVERNING AIRCRAFT REGISTRATION

100. AIRCRAFT TO BE REGISTERED.

Every resident of this State who operates an aircraft or who owns an aircraft holding a currently valid airworthiness certificate and a currently valid annual inspection or progressive inspection system issued by the Federal government, or a resident or nonresident operating an aircraft for hire, spraying, dusting, seeding, or operated in the transportation of persons or property, ~~shall~~ will register such aircraft with the ~~Idaho~~ Division of Aeronautics hereinafter referred to

as ~~Division~~.

(3-31-22)()

101. REGISTRATION PERIOD.

01. Annual Period. The period for the registration of aircraft in the state of Idaho runs from January 1 through December 31 of each year. ()

02. Annual Registration Closing Date. The closing date for the annual registration is the first Monday of November in each year. A list of unregistered aircraft, as of that date, ~~shall will~~ be forwarded to the proper county assessor for inclusion in personal property assessment due on the fourth Monday in November, as ~~required directed~~ by Section 63-301, Idaho Code. (3-31-22)()

102. APPLICATIONS FOR AIRCRAFT REGISTRATION.

01. Current Registration Certificate. An owner who holds a currently effective registration certificate for an aircraft issued by the Federal government ~~shall will~~ make application for an aircraft registration upon appropriate forms to be prescribed and furnished by the Division that contain the applicant's title and the names and addresses of all persons having any interest therein. (3-31-22)()

02. Application Information. Every application for an aircraft registration ~~shall will~~ contain: The name of the manufacturer, model, year, the aircraft identification number and serial number, ~~engine type~~, and aircraft manufacturer's certified maximum gross weight. (3-31-22)()

103. FEES.

Annual aircraft registration fees are set forth in Section 21-114, Idaho Code. ()

104. REGISTRATION TO BE CARRIED AND DISPLAYED.

The certificate of registration issued by the Division ~~shall will~~ be carried at all times in said aircraft and ~~must will~~ be made available for examination upon reasonable request by any person charged with the duty of enforcing the aviation laws of this state. (3-31-22)()

105. TRANSFER OF TITLE OR INTEREST IN AIRCRAFT.

01. Previous Owner Responsibility. The owner of an aircraft registered by the Division under Section 21-114, Idaho Code, who transfers or assigns his title or interest in such aircraft, ~~shall will~~: (3-31-22)()

a. Within 15 days, ~~notify the Division in writing of such transfer or assignment; provide a copy of the FAA bill of sale~~ and (3-31-22)()

b. Furnish the Division with the name, ~~and~~ address, phone number, and email address (if available) of the person to whom such transfer or assignment was made; and (3-31-22)()

c. Remove or obliterate the decal so as to indicate its cancellation prior to delivery of the aircraft to the transferee or assignee; and ()

d. Request the Division to cancel the registration. ()

02. New Owner Responsibility. The new owner, if a resident of Idaho, ~~or~~ a non-resident qualifying under Section 100 of this rule, or a non-resident who flies in this state for ninety (90) days or more within a registration year shall will register the aircraft with the Division. (3-31-22)()

106. EXEMPTIONS.

This rule does not apply to aircraft exempted from registration by Section 21-114(d), Idaho Code. ()

107 – 199. (RESERVED)

SUBCHAPTER B – RULES GOVERNING OPERATIONS AT STATE AIRPORTS

200. SPECIAL OPERATING RESTRICTIONS ON AIRPORTS.

The Division may establish special operating restrictions on an airport to assure the safety and convenience of users and the general public when special events or temporary or seasonal factors warrant. Such special restrictions ~~shall~~ will be issued in writing at least ten (10) days prior to their effective date and published as a NOTAM (Notice to Airmen Mission) and be conspicuously posted on the airport. When practical, the Division may advise principal users of the airport of the special restrictions. (3-31-22)()

201. AIRCRAFT PARKING, LOADING, AND TIEDOWN.

Aircraft that are loading and unloading on state airports ~~shall~~ will be parked in the available designated aircraft parking or loading areas. In the event such designated areas are fully occupied, pilots ~~shall~~ will park so as to remain clear of the defined runway. All unattended aircraft ~~shall~~ will be tied down when tiedowns are available. Persons parking their aircraft where tiedowns are not available ~~shall~~ will secure their aircraft with portable tiedown devices, or use other positive means of restraining their aircraft which will assure that their aircraft will not damage other aircraft or property. Aircraft will not remain tied down on an airport in excess of one (1) month without the approval of the Division. (3-31-22)()

202. VEHICLES, ~~DOMESTIC ANIMALS, BAGGAGE, AND OBJECTS~~ BAGGAGE.

01. Parking. No person will operate or park any vehicle on an airport without prior approval of the Division and may only park in designated parking areas. Vehicles authorized on an airport will not be operated on the runway or parked so as to occupy or block designated tiedowns or loading areas, except that temporary parking necessary for actual loading or unloading of baggage or objects is allowed if no hazard is thus created. ~~Vehicles shall be parked only in designated parking areas.~~ (3-31-22)()

~~**02. Domestic Animals.** No person will allow any domestic animal on an airport, taxiway or adjacent camping area without its being on a leash beyond the minimum time necessary for the loading or unloading of such animal into or from an aircraft without prior approval of the Division. (3-31-22)~~

~~**03. Livestock.** No person will allow livestock to graze on airport property without permission from the Division. (3-31-22)~~

~~**04. Domestic Animal Droppings.** No person will allow domestic animal droppings to be left on an airport, a loading area or in an adjacent camping area. (3-31-22)~~

05. Unattended Objects or Baggage. No person will place any unattended objects or baggage in a tiedown area when such placement creates a hazard, or restricts aircraft parking in such a way that displaced aircraft create a hazard. (3-31-22)()

203. CAMPING, ~~TRASH, AND REFUSE~~.

~~**01. Camping.** No person will camp on an airport except in designated camping areas without prior approval of Division employees. (3-31-22)~~

02. Camping Limits. No person is permitted to use a camping area adjacent to an airport for more than fourteen (14) consecutive days, however this time limit may be extended by Division employees when existing camp area vacancies exist. (3-31-22)()

03. Fires. No campfires or open flame camp stoves are allowed within fifty (50) feet of aircraft. ()

~~**04. Trash and Refuse.** All persons on an airport shall place their trash, garbage, and refuse in designated containers or shall otherwise remove it from the airport. (3-31-22)~~

~~**05. Trash Disposal.** No person will deposit their trash on an area adjacent to an airport. (3-31-22)~~

204. AIRCRAFT FUELING, AGRICULTURAL OPERATIONS, AND HAZARDOUS MATERIAL.

01. Fueling Procedures. Any person performing aircraft fueling on an airport ~~shall~~ will obtain and read a copy of the refueling procedures published by the Division and ~~shall~~ will conduct fueling in accordance with these procedures. All persons ~~shall~~ will comply with any airport restrictions issued by the Division in connection with recognized fire danger conditions. (3-31-22)()

02. Aerial Application Operations. No person will perform aerial spraying, dusting, or other aerial chemical application operations from an airport without making formal application to and receiving an approved operational agreement from the Division. Any person spilling, dumping, or disposing of any hazardous, toxic, or otherwise dangerous or offensive substance on an airport ~~shall~~ will be responsible for the full cost of the cleanup, disposal, and administrative costs to the Division necessitated by removal of the substance. (3-31-22)()

205. COMMERCIAL OPERATIONS.

01. Operational Agreement. No person will conduct any commercial or business operations from an airport without making formal application to and receiving an approved operational agreement issued by the Division. ()

02. Airport Use. No approved commercial operation on an airport by persons or firms engaged in business ~~shall~~ will be deemed to have priority over any public or other commercial use of such airport. (3-31-22)()

206. -- 299. (RESERVED)

SUBCHAPTER C – RULES GOVERNING COMMERCIAL AND THROUGH-THE-FENCE OPERATIONS AND HANGAR CONSTRUCTION AT STATE AIRPORTS

300. APPLICATION.

Any individual, company, or corporation wishing to establish any aviation facility, private or commercial, on or adjacent to any state airport ~~shall~~ will make formal application to the ~~Idaho~~ Division ~~of Aeronautics~~ that contained, at a minimum, a sketch showing the location of proposed facilities; a description, sketch, manufacturer's brochure, etc. of the proposed facilities; and a description of the operation proposed. (3-31-22)()

301. OPERATIONAL AGREEMENT.

01. Negotiation and Approval. Subsequent to Board approval of the application, the Division ~~of Aeronautics~~ will negotiate an operational agreement with the applicant. The terms of the agreement ~~must~~ will be approved by the Board prior to ratification of the agreement by any agent of the state. (3-31-22)()

02. Information ~~Required~~ Needed. The agreement will include, but not be limited to, lease fee, term, any operational limitations deemed appropriate, etc. (3-31-22)()

302. SAFETY AND ACCESS.

Aviation safety will be of paramount importance in consideration of any application. Special emphasis will be placed upon developing means of controlling the number of access points for through-the-fence operations, defined as operations which require aircraft to taxi across the airport property boundary. ()

303. -- 399. (RESERVED)

SUBCHAPTER D – RULES GOVERNING MARKING OF HAZARDS TO AIR FLIGHT

400. REQUIREMENTS.

01. Hazardous Structures. Any structure which obstructs the airspace more than two hundred (200) feet above the ground or water level, or at any height near an established airport as defined by Section 21-101(c), Idaho Code, when determined by the Department to be an aviation hazard or a potential aviation hazard, as defined in

Section 21-101(n), Idaho Code, to the safe flight of aircraft ~~shall will~~ be plainly marked, illuminated, painted, lighted, or designated in a manner approved by the Department. (3-31-22)()

02. Guyed Towers. Any temporary or permanent guyed tower fifty (50) feet or more in height that is located outside the boundaries of an incorporated city or town on land that is primarily rural or undeveloped or used for agricultural purposes, or that is primarily desert, and where such guyed tower's appearance is not otherwise governed by state or federal law, rule or regulation, ~~shall will~~ be lighted, marked and painted or otherwise constructed to be visible in clear air during daylight hours from a distance of not less than two thousand (2,000) feet. (3-31-22)()

a. Guyed towers ~~shall will~~ be painted in seven (7) equal alternating bands of aviation orange and white that begin with orange at the top of the tower and end with orange at the base. (3-31-22)()

b. Guyed towers ~~shall will~~ have one flashing obstruction light at the top of the tower that meets the technical requirements of medium intensity flashing white obstruction light systems as specified in Federal Aviation Administration Advisory Circular AC 70/7460-1 ~~K~~M or current edition. (3-31-22)()

c. For guyed towers the surface area under the footprint of the tower and six (6) feet beyond the outer tower anchors ~~shall will~~ have a contrasting appearance with any surrounding vegetation. (3-31-22)()

d. Guyed towers ~~shall will~~ have two (2) marker balls, having a minimum diameter of twenty (20) inches attached to and evenly spaced on each of the outside guy wires. Said spheres to be of the split-sheet, clamp-on type which are to be alternated in two (2) contrasting solid colors of gloss yellow and international orange, and may be constructed of recommended light-weight materials such as fiberglass, aluminum, or foam. (3-31-22)()

e. Guyed towers ~~shall will~~ have a seven (7) foot long safety sleeve colored to contrast with background vegetation at each anchor point and extend from the anchor point along each guy wire attached to the anchor point. (3-31-22)()

f. The provisions of this Subsection 400.02, do not apply to power poles or structures owned and operated by an electric supplier as defined in Section 61-332A(4), Idaho Code, to facilities used by a federal power marketing agency to serve public utilities or consumer-owned utilities, or any structure whose primary purpose is to support telecommunications equipment, including citizens band (CB) radio towers and all other amateur radio towers. ()

03. Lines, Wires, and Cables. Power lines, communication lines, wires, or cable more than two hundred (200) feet above the terrain crossing canyons, rivers, navigable bodies of water, terrain undulations, or guy structures or any height where such wire, cable or obstruction cross navigable bodies of water near established seaplane bases, if determined by the Department to be a hazard to air navigation, ~~shall will~~ be marked at two hundred (200) feet intervals of spacing by sphere-type markers having a minimum diameter of thirty-six (36) inches. Said sphere to be of the split-sheet, clamp-on type which are to be alternated in three (3) contrasting solid colors of gloss white, gloss yellow, and international orange and may be constructed of recommended light-weight materials such as fiberglass, aluminum, or foam. (3-31-22)()

04. Spans Between Support Piers. Long spans that exceed lengths of one-half (1/2) mile between support piers, each pier ~~shall will~~ be marked with flashing strobe or beacon lights of a type and brilliance acceptable to the Department if such is deemed pertinent to safety and recognition of obstructions. (3-31-22)()

05. Construction. Any construction sponsor ~~is required needs~~ to submit a notice to the ~~Aeronautics~~ Division Administrator if his construction meets one (1) or more of the following conditions: (3-31-22)()

a. If the proposed object will be more than two hundred (200) feet above ground level at its location. ()

b. If the proposed object will be within twenty thousand (20,000) feet of an airport (*) or seaplane base with a runway of more than three thousand two hundred (3,200) feet in length; and will penetrate an imaginary surface that is one (1) foot in height for each one hundred (100) feet (100:1) horizontally from the nearest point of the

nearest runway. * To qualify, an airport as defined in Section 21-101(c), Idaho Code, ~~must will~~ be listed in the Idaho Airport Facilities Directory, or in the Airport /Facility Directory published by the US-DOT, National Charting Office or operated by a public entity. (3-31-22)()

c. If the proposed object will be within ten thousand (10,000) feet of an airport having no runway more than three thousand two hundred (3,200) feet in length; and will penetrate an imaginary surface that is one (1) foot in height for each fifty (50) feet (50:1) horizontally from the nearest runway. ()

d. If the proposed object will be within five thousand (5,000) feet of a heliport listed in the "Airport Facilities Directory" or operated by a public entity; and will penetrate an imaginary surface that is one (1) foot in height for each twenty-five (25) feet (25:1), horizontally from the nearest landing and take-off area of that heliport. ()

e. If the proposed object is a traverse way which will exceed at least one (1) of the standards listed in Subsections 400.05.a. through 400.05.c. above, after its height is adjusted upward seventeen (17) feet for an Interstate Highway, fifteen (15) feet for any other public roadway, ten (10) feet (or the height of the highest mobile objects that would normally traverse the road) for a private road, twenty-three (23) feet for a railroad, or an amount equal to the height of the highest mobile objects that would traverse a waterway or any other thoroughfare not previously mentioned. ()

06. Notice Submittal. The notice specified in Subsection 400.05 of this rule ~~must will~~ be submitted: (3-31-22)()

a. At least thirty (30) days before the construction or alteration is to begin; or the application for construction permit is to be filed. ()

b. Immediately by telephone or other expeditious means, with written notification submitted within five (5) days thereafter, if immediate construction or alteration is needed as in cases involving public services, health, or safety. ()

07. Notice of Proposed Construction. A notice of proposed construction or alteration is ~~required~~ needed so that the Department may: (3-31-22)()

a. Depict obstructions on aeronautical charts. ()

b. Identify appropriate markings as promulgated by Section 21-515, Idaho Code. ()

c. Be made aware of potential aeronautical hazards in order to minimize their danger to the flying public. ()

d. Protect the lives and property of persons in the air and on the ground. ()

08. Submittal of Notice. Written notice of intended construction or alteration ~~must will~~ be submitted by mail, email, or hand-delivered to the Aeronautics Division Administrator. (3-31-22)()

09. Intent. It is the intent that the resultant markings required in this rule be compatible with FAA policies and directives in order to maintain consistency of object marking and lighting. ()

401. EXCEPTIONS. No person needs to notify the Aeronautics Division Administrator for any of the following construction or alteration: (3-31-22)()

01. Shielded. Any object that would be shielded by existing structures of a permanent and substantial character or by natural terrain or topographic features of equal or greater height, and would be located in the congested area of a city, town, or settlement where it is evident beyond all reasonable doubt that the structure so shielded will not adversely affect safety in air navigation. ()

02. Antennas. Any antenna structure of twenty (20) feet or less in height except one that would increase the height of another antenna structure. ()

03. Air Navigation. Any air navigation facility, airport visual approach or landing aid, aircraft arresting device, or meteorological device of a type approved by the ~~Aeronautics~~ Division Administrator, the location and height of which is fixed by its functional purpose. (3-31-22)()

402. -- 499. (RESERVED)

**SUBCHAPTER E – RULES GOVERNING RESTRICTION OF FLIGHT
IN DESIGNATED EMERGENCY AREAS**

500. GENERAL.

~~**01. Level of Flight for Non-Search Pilot.** No aircraft shall willfully fly below one thousand (1,000) feet above ground level over or through any designated search and rescue area, or any designated emergency area unless officially flying as an assigned search pilot in an assigned search area, or authorized by the official Search and Rescue Headquarters, or in direct official support of a designated emergency area. This flight restriction will remain in effect within the designated area until rescinded by the Aeronautics Division Administrator. (3-31-22)~~

01. Airspace Restrictions for Emergencies. To facilitate emergency response, state and federal agencies may need to restrict the presence of manned or unmanned aircraft. Common examples would include Search and Rescue (SAR) Operations or fighting wildfires. The primary mechanism for state and federal agencies to restrict airspace is a Temporary Flight Restriction (TFR). Non-participating manned or unmanned aircraft will remain clear of TFRs to protect the safety of responding aircraft. All published TFRs contain contact information for the agency controlling that airspace. Violations of a TFR are governed by Federal Law, and penalties may apply. ()

~~**02. Level of Flight for Non-Assistance Persons.** Aircraft not officially involved in rendering emergency assistance to persons and property may not fly below two thousand (2,000) feet above ground level over any emergency area created by fire, flood, earthquake, or other natural disasters. (3-31-22)~~

02. Notice to Air Missions (NOTAM). In cases where ongoing emergency operations require airfield closures or where emergency airborne activity increases traffic but does not require airspace closure, the NOTAM system will be used to pass information to the flying public. ()

501 – 599. (RESERVED)

**SUBCHAPTER F – RULES GOVERNING AERIAL SEARCH AND RESCUE
OF LOST AIRCRAFT AND AIRMEN**

600. SEARCH NOTIFICATION.

~~**01. Notification System.** The Department shall maintain a twenty-four (24) hour per day search and rescue notification system. (3-31-22)~~

01. Notification Sources. The Division receives initial notification of lost, missing, overdue, or suspected downed aircraft from the Federal Aviation Administration (FAA) flight service station (FSS), the Air Force Rescue Coordination Center (AFRCC), law enforcement, and/or concerned individuals. ()

~~**02. Notification Sources.** The Department normally receives initial notification of lost, missing, overdue, or suspected downed aircraft from the Federal Aviation Administration flight service station(s), the Air Force Rescue Coordination Center, law enforcement, and/or concerned individuals. (3-31-22)~~

02. Notification System. The Division will maintain a twenty-four (24) hour-per-day search and rescue notification system. ()

601. SEARCH INITIATION.

When notification is received from agencies, or individual(s) which constitute reasonable probability that an aircraft or airman is down, lost, or missing, a search ~~shall~~ will be initiated as described in the National SAR Plan, the ~~Department Division~~ SAR Manual and/or upon mutual agreement between the ~~Department Division~~ and the BHS ~~Office of Emergency Management (OEM)~~. Safety, weather, darkness, and other operational factors may influence the conduct of the search including time of initiation, duration, and suspension. (3-31-22)()

602. ~~ORGANIZATION.~~ (RESERVED)

~~01. **Staff.** The Division of Aeronautics will maintain a qualified staff capable of implementing the state aerial search and rescue plan.~~ (3-31-22)

~~02. **Designated Search Districts.** The Department's Aerial Search and Rescue Manual (Plan) designates six (6) search districts. Within each district one (1) or more qualified District Aerial Search and Rescue Coordinator(s) shall be designated based on knowledge, experience, and training. They, along with other SAR volunteers, will function under the direction of the State Aerial SAR Coordinator.~~ (3-31-22)

603. RESOURCES.

Normally, state volunteer airmen and their aircraft shall be used for aerial search and rescue. State Division of Aeronautics aircraft and crews may also be utilized. In addition to the use of volunteer airmen and aircraft, the Department may request through and under the direct control of respective county sheriffs, the use/assistance of ground search and rescue agencies, organizations, and/or individual(s). (3-31-22)

01. Non-Volunteer Staff and Equipment. Division staff, aircraft, vehicles, and crews may be utilized. ()

02. Volunteer Support. State volunteer airmen and their aircraft may be used for aerial search and rescue. ()

03. County Materials and Support. The Division will coordinate with respective county sheriffs for the use/assistance of ground search and rescue agencies, organizations, and/or individual(s). ()

04. Additional State Support. Additional State resources will be coordinated through OEM, ISP, or the Idaho ANG. ()

05. Coniguous Partner Support. The Division will coordinate through the AFRCC for requests to neighboring states or Canada or for access to Federal resources like Civil Air Patrol. ()

604. PROCEDURE.

01. Search and Rescue Guideline Plan. The Department's Aerial Search and Rescue Manual (Plan) ~~shall~~ will provide guidelines for effectively conducting aerial search and rescue operations. ~~The manual will and~~ establish requirements for crew qualification, adequacy of volunteer search aircraft performance, and ~~District Deputy~~ Aerial SAR Coordinator qualifications. In order to effectively implement the State SAR Plan, the State Aerial SAR Coordinator may make SAR agreements as necessary with other agencies/organization(s)/individual(s). They may be either informal verbal agreements or they may be formal written documents. Agreements ~~shall~~ will provide for the maximum practicable cooperation of such agencies/organization(s)/individual(s) and the use and coordination of facilities committed to SAR missions. Written agreements will normally involve officials of comparable levels in their respective agencies. Written agreements should be as brief as possible, covering only those specific items for which the agreement is deemed necessary. They should not be repetitious or contradictory of matters contained in the National SAR Plan. (3-31-22)()

02. District Deputy Aerial SAR Coordinators. The State Aerial SAR Coordinator ~~shall~~ may assign District Aerial SAR Coordinators who act under the direction of the State Aerial SAR Coordinator. ~~Tasks may~~ include organizing the volunteer personnel and resources of his assigned search ~~district~~ area for maximum efficiency, safety, and economy. Said ~~District Deputy~~ Coordinator may be either a volunteer, state employee or other individual as assigned by the State Aerial SAR Coordinator. (3-31-22)()

03. Designations by State Aerial SAR Coordinators. The State Aerial SAR Coordinator will designate airports of primary operational support as necessary in the aerial search effort. The State Aerial SAR Coordinator may designate Temporary Flight Restrictions (TFR) under Federal Aviation Regulation (FAR) 91.137 as ~~required~~ needed for safety of search aircraft. Normally the State Aerial SAR Coordinator will function in the Division of Aeronautics facilities but the option to dispatch state coordinator to the airport(s) of primary support, State EOC, or other location as necessary, may be exercised. ~~State Division of Aeronautics~~ aircraft may be used as necessary with state crews or with state pilot in command and volunteer pilot/observer(s). Volunteer aircraft and crews ~~shall will~~ be screened by the ~~District Deputy~~ Aerial SAR Coordinator for availability, qualification, and willingness to participate in the search. Flight logs and mission records ~~shall will~~ be maintained and all pertinent information will be screened and recorded and forwarded to the State Aerial SAR Coordinator or the Incident Command Staff (ICS) at the close of the mission or as requested. (3-31-22)()

04. Interstate or International Coordination. On some occasions the aerial search and rescue effort may need to extend into bordering states or Canada. Interstate coordination with other states/Canada ~~shall will~~ be ~~achieved as necessary~~ accomplished by the ~~Department Division through the AFRCC~~ for SAR mission needs. ~~Coordination with other search and rescue organization(s)/ individual(s) may be developed as needed or necessary. Such considerations as weather, time, no flight plan, no emergency locator transmitter signals, no availability, or limited search resources near the objective search area(s) may dictate extending Idaho resources into bordering states/ Canada. In a like manner, it may sometime become necessary for bordering states/Canada to extend their resources into Idaho.~~ (3-31-22)()

05. Funds. ~~Aerial State Aeronautical (SAR)~~ search and rescue funds ~~shall will~~ be used solely in support of ~~aerial aeronautical~~ SAR efforts. Financial support of ~~aerial aeronautical~~ SAR volunteers includes, but is not limited to, SAR training, education, equipment, coordinating efforts, communications, and aircraft fuel and oil expenses. (3-31-22)()

06. Official Mission Report. A report ~~shall will~~ be made to the State Aerial SAR Coordinator by the ~~District Deputy~~ Aerial SAR Coordinator at the termination of daily search activity. The State Aerial ~~SAR~~ Coordinator ~~SAR shall will~~ consolidate all necessary report information and relay it to AFRCC. All mission working papers which are accumulated during the course of the search mission will be analyzed for meaningful content upon which to base operational decisions ~~and the final official mission report.~~ (3-31-22)()

07. Time Period of Searches. Aerial searches ~~shall will~~ be continued until either successful or until ~~all reasonable leads are exhausted and/or~~ passage of time has drastically reduced the possibility of survival. If search is unsuccessful and all leads have been exhausted, the search may be suspended upon mutual agreement between the ~~Department Division~~ and the county sheriff, the Incident Commander or BHS OEM until either new leads are received or conditions have changed which increases the probability of detection. (3-31-22)()

08. Completion of Search. ~~Searches will be closed when the search and rescue objective has been located, the respective county sheriff notified, it is certain that authorized ground personnel gain access to the search objective for positive identification of missing or downed aircraft and assistance to possible survivors, and post mission procedures are completed. The search phase will end when the search and rescue objective has been located and confirmed. Division staff will assist the responding county sheriff of Incident Commander as needed until the rescue phase is complete.~~ (3-31-22)()

09. Required Reports. Upon completion of the mission, all cooperating/participating agencies ~~shall will~~ be advised as promptly as possible. News releases ~~shall will be coordinated through the incident command staff or be made~~ as deemed appropriate by the State Aerial SAR Coordinator. ~~It shall be ascertained that all search aircraft are accounted for. All SAR resources will be accounted for prior to closing the mission~~ A report of mission activity ~~shall will~~ be made to AFRCC. A synopsis of the entire mission ~~shall will~~ be developed by the State Aerial SAR Coordinator with the following forms attached to the synopsis using forms and guidance in the SAR manual, unless other requirements are established by the Incident Commander. (3-31-22)()

- a:** ~~Search and Rescue Information Sheet (2600).~~ (3-31-22)
- b:** ~~Search and Rescue Action Report (2601).~~ (3-31-22)

- ~~e. Air Search and Rescue Fuel and Oil Record (2602). (3-31-22)~~
- ~~d. Mission Authorization, Personnel Register (2604). (3-31-22)~~
- ~~e. Mission Flight Plan Briefing and Debriefing Log (2605) (3-31-22)~~
- ~~f. Search and Rescue (SAR) Mission Report (2606A). (3-31-22)~~
- ~~10. **Final Report.** The synopsis and attachments constitute the final official search and rescue mission report. (3-31-22)~~

605. -- 699. (RESERVED)

SUBCHAPTER G – RULES GOVERNING IDAHO AIRPORT AID PROGRAM

700. PROJECT ALLOCATION PRIORITY PRINCIPLES.

For the discretionary allocation programs priority will be given to: ()

- 01. Aircraft Operations Safety.** Projects involving safety of aircraft operations. ()
- 02. Projects Which Protect Prior Public Investments.** ()
- 03. Federal Funds.** Assuring maximum use and benefit of available federal funds. ()
- 04. Aircraft Landing Projects.** Projects at existing aircraft landing facilities where need is demonstrated. Projects ~~must~~ will provide benefits associated with aircraft landing facility utilization on a statewide basis. (3-31-22)()
- 05. Preservation and Acquisition.** The preservation and acquisition of existing aircraft landing facilities in danger of being lost. ()
- 06. Aircraft Landing Development.** The development of new, additional aircraft landing facilities in areas of greatest need: ()
 - a.** Large geographical areas with no “air accessibility.” ()
 - b.** Additional new sites in urban areas where landing sites are rapidly becoming non-existent. ()
 - ~~e. Recreational area development where land availability is becoming difficult to obtain. (3-31-22)~~

701. PROGRAM CRITERIA AND LIMITATIONS.

The allocation program is designed to provide the greatest and best utilization of limited Idaho Airport Aid Program Funds. The primary goal of the allocation program is to further the proper development of a statewide system of airports and fair distribution of aviation tax money. This policy requires: ()

- 01. Master Plan.** To be eligible each city, county, airport authority, political subdivision, or public corporation, hereinafter referred to as airport sponsor, should have a master plan or an airport or heliport layout plan that is ~~approved~~ accepted by the Division ~~of Aeronautics~~. (3-31-22)()
- 02. Face Value Contributions.** Labor and equipment contributions by the airport sponsor may be approved at face value in force-account financial evaluation as matching funds. The following items will not be eligible for force-account contribution: ()
 - a.** Land values previously acquired. ()
 - b.** Previous building construction or improvements. ()

- c. Previous State or FAA grants. ()

03. Public Funds Protection. In order to protect the investment of public funds, the Idaho Transportation Board may require proof of ownership or lease of all land upon which any project is proposed, and require that the airport be zoned to prevent incompatible land uses and the creation or establishment of structures or objects of natural growth which would constitute hazards or obstructions to aircraft operating to, from, on, or in the vicinity of the subject airport. ()

04. Projects Other Than Allocation Plan. All projects other than the annual allocation plan will be individually considered and acted upon at a regular meeting of the Board. All projects will be resolved by eligibility and priorities established by each year's review of the total State need. The availability of funds, or legislative appropriations, is the final determination of grant approvals. Consideration of all factors, including relative needs and priorities involved in an airport construction project will be considered. Attention will be given to effort made at the sponsor's level to assure availability of continuing financing and management support to keep the airport in good repair. ()

702. PERCENTAGES OF COST.

~~Matching percentages not to exceed the following guidelines, are subject to the approval of the Idaho Transportation Board:~~ (3-31-22)

~~**01. Airport Maintenance and Upgrade Funds (Up to 75%).** Airport sponsors not eligible for Federal funding assistance that have an adjusted service area population of less than five thousand (5,000), may receive up to seventy five percent (75%) of project cost for maintenance and upgrade of an airport. Acceptable assurance of continuing operation and maintenance over a twenty (20) year period under the guidance of a Citizen's Advisory Council shall be provided.~~ (3-31-22)

~~**02. Airport Maintenance and Upgrade Funds (Up to 50%).** Airport sponsors not eligible for Federal funding assistance that have an adjusted service area population of five thousand (5,000) or more may receive up to fifty percent (50%) of the cost for maintenance and upgrade of an airport. Acceptable assurance of continuing operation and maintenance over a twenty (20) year period under the guidance of a Citizen's Advisory Council shall be provided.~~ (3-31-22)

~~**03. State Funding Assistance.** Airport sponsors eligible for Federal funding assistance, may be considered for State funding assistance up to fifty percent (50%) of the sponsor's share when using Federal aid for the cost of maintenance and upgrade of existing facilities. If no Federal participation, each such project will be considered on its merit. The amount of State financial aid will be negotiated in each case.~~ (3-31-22)

041. Maintenance and Safety Supplies Program. All airport sponsors eligible for funding may apply to participate in the maintenance and safety supplies program. This is part of the discretionary allocation program that provides at no charge or a reduced charge for the following such items: ()

- a. Runway and taxiway light fixtures, bulbs, and parts; ()
- b. Rotating beacon fixtures; ()
- c. Windsocks, ~~windsock frames and standards;~~ (3-31-22) ()
- d. Tie-down chain sets; ()
- e. Utility light bulbs; and ()
- ~~f. Taxiway reflectors.~~ (3-31-22)

gf. All municipal airport sponsors eligible for funding may apply to participate in the small projects program which provides grant funding assistance of less than two thousand dollars (\$2,000) for unscheduled or emergency improvements, with approval from the aeronautics administrator, from the current years allocation. ()

703. GRANTED ALLOCATION ITEMS.

Allocations may be granted, but not limited to, for the following items: (3-31-22)()

01. Development of ~~Required~~ Airport Planning, Land Ownership, Airspace, Land Use Compatibility, and Land Use Zoning Documents. (3-31-22)()

02. Land Acquisition for Development and Improvement of Aircraft Landing Facilities. ()

03. Grading and Drainage Necessary for Construction or Reconstruction of Runways or Taxiways. ()

04. Construction or Reconstruction of Runways or Taxiways. ()

05. Acquisition of "Runway Protection Zones" as Defined in Current Regulations of the Federal Aviation Administration. ()

06. Acquisition of Easements through or Other Interests in Airspace as may be Reasonably Required for Safeguarding Aircraft Operations in the Vicinity of an Aircraft Landing Facility. ()

07. Removal of Natural Obstructions from Runway Protection Zones. ()

08. Installation or Rehabilitation of "Segmented Circle Airport Marker Systems" as Defined in Current Regulations of the Federal Aviation Administration. ()

09. Installation or Rehabilitation of Runway, Taxiway, Boundary, or Obstruction Lights, Together with Directly Related Electrical Equipment. ()

10. Erection or Rehabilitation of Appropriate Security Fencing Around the Perimeter of an Aircraft Landing Facility. ()

11. Grading and drainage necessary to provide for parking of transient general aviation aircraft. ()

12. Air Navigation Facilities. ()

13. Such Other Capital Improvements as may be Designated by the Board. ()

14. New Building Construction of Public Use Facilities such as Storage Hangars, Pilot Lounge, Rest Rooms, etc., that are Owned by the Airport Sponsor. ()

704. AIRPORT SPONSOR ELIGIBILITY.

The Idaho Airport Aid Program is available only to public entities that own or lease and operate a landing facility that is open to the public without use restrictions. Allocation may be made only on facilities that are not under exclusive lease or monopoly control of private individuals or corporations. The Idaho Airport Aid Program consists of grants, small projects, and maintenance and safety supplies. The grants (for scheduled projects) and small projects (for unscheduled or emergency projects) are available to municipal entities such as a city, county, airport authority, political subdivision, or public corporation, hereinafter referred to as the airport sponsor, but not to facilities operated by divisions of the state of Idaho or the Federal government. The maintenance and safety supplies are available to all public entities that own or lease and operate a landing facility that is open to the public without use restrictions. ()

705. APPLICATIONS FOR AID.

01. **Non-Federal Funding Eligibility.** Each project submitted for funding consideration from airport sponsors not eligible for Federal funding assistance will be presented in a written application for aid ~~which~~ that

outlines economic capability and source of funds. The application form will be supplied by the Division of Aeronautics. Eligibility and priority will be determined by an annual revision of a State allocation program for airport improvement. (3-31-22)()

02. Completed Applications. Each project application submitted for funding consideration from airport sponsors that are eligible for Federal funding assistance will consist of a full and complete copy of the federal application for assistance. ()

03. Via Written, Telephone, or Electronic Request. Each request for participation in the maintenance and safety supplies program or the small projects program ~~must will~~ be made through written, telephone, or electronic request. (3-31-22)()

04. Legislative Support and Consideration. Projects deemed by the Board to require special legislative appropriations will be submitted for legislative support and consideration. ()

706. IAAP IMPLEMENTATION METHOD.

~~**01. Calculation of Adjusted Service Area Population.** Upon collecting the most recent Census Data, calculate the Service Area Population (SAP) for all eligible airports. Relative to Community Airports, reduce the SAP, of the Community Airport, by the amount of population overlying the Community SAP by the population of a 'more developed' airport. The remainder is the amount used to calculate the Adjusted Service Area Population (ASAP) of the Community Airport. (3-31-22)~~

021. Project Prioritization. Each project gets a priority value based upon number of based aircraft, purpose of the project, component of the airport of the project, pavement condition index (number) of the project and age of the most recent plan. Determine the values for each of the above element and calculate the priority number of each project for future use. ()

~~**03. Community Airport Five Year Funding Cycle.** Each Community Airport gets ranking number by based aircraft, adjusted service area population and number of IAAP grants accepted. Assign the value to each airport and list such that there are five groups identified for funding in each of the next five years. (3-31-22)~~

042. Selection of Eligible Projects. The FAA, through the ISCAP process, identifies the NPIAS airport projects. Aeronautics lists each community airport project by priority value for the current year. (3-31-22)()

~~**053. Selection Guidelines for Projects.** A set of guidelines directs the selection and order of projects. These guidelines allow latitude in selection of projects to create a 'level playing field.' ()~~

~~**06. Allocation of Funding for Projects.** Aeronautics developed a five-step process to allocate funds to each project. The process builds funding, for each project, through each step until almost all available funds are allocated. (3-31-22)~~

074. Appendix for Aeronautics Advisory Board and Idaho Transportation Board Approval. Upon the completion of the above six items, an annual appendix is compiled, for use by the AAB, to review, modify and approve accept the program. Aeronautics ~~modifies the appendix, as directed, and~~ presents it to the ITB for final review, approval, and funding. (3-31-22)()

707. -- 999. (RESERVED)

IDAPA 52 – IDAHO STATE LOTTERY

52.01.03 – RULES GOVERNING OPERATIONS OF THE IDAHO STATE LOTTERY

DOCKET NO. 52-0103-2301

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(s) 67-7408(1).

METHOD OF PARTICIPATION: Interested persons wishing to participate in the negotiated rulemaking are encouraged to submit comments to the undersigned either in writing, by email, or by calling the phone number listed below. To participate, comments must be received no later than October 18, 2023, to janderson@lottery.idaho.gov. Please state “written comment” and note the docket number in the subject line.

A negotiated meeting may be scheduled by the agency should a reasonable number of persons respond to this notice. If the agency determines a meeting to be scheduled, details will be posted and made accessible on the agency website at the address listed below and on <https://townhall.idaho.gov/>.

Failure of interested persons to respond to this notice of intent or the lack of a sufficient number of responses to this notice of intent may result in the discontinuation of further informal proceedings. In either event, the agency shall have sole discretion in determining the feasibility of scheduling and conducting informal negotiated rulemaking and may proceed directly to formal rulemaking if proceeding with negotiated rulemaking is deemed infeasible.

Public comments received will be addressed in a written summary. The summary will be made available to interested persons who contact the agency or, if the agency chooses, the summary may be posted 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 principal issues involved:

Statute requires Lottery retailers to pay winning ticket prizes up to \$599. However, staffing challenges and increasing threats of robbery create concerns over employee safety. Retailers are often unable to pay prizes under \$600 when presented winning tickets because safety concerns necessitate keeping no more than \$100 in the cash drawer. The retail industry has offered solutions. They have requested the ability to pay lottery prizes up to \$599 with no-fee prepaid prize payment cards, electronic fund transfer and other modern methods of payment. Lottery Administrative Rules allow only for prize payment by cash, money order, or check. Retailers will not pay by check and money orders are obsolete. The problem cannot be solved by non-regulatory measures.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES: For assistance on technical questions concerning this negotiated rulemaking or to obtain a preliminary draft copy of the rule text (if available), contact Director Jeffrey Anderson, listed below. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the Idaho Lottery web site at the following web address: www.idaholottery.com.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 18, 2023.

DATED this 1st day of September, 2023.

Jeffrey R. Anderson
Director
Idaho State Lottery Commission
1199 Shoreline Lane, Suite 100
Boise, ID 83702
Ph. 208.780.2500

IDAPA 55 – STATE BOARD OF CAREER TECHNICAL EDUCATION

55.01.03 – RULES OF CAREER TECHNICAL SCHOOLS

DOCKET NO. 55-0103-2301 (ZBR CHAPTER REWRITE)

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 33-101, 33-105, 33-107, 33-1002G, 33-1629, 33-2202, 33-2207, and 33-2211 in 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 18, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 accordance with [Executive Order 2020-01](#), this rulemaking will be a review of the chapter for evaluation on how it can be improved, simplified, and streamlined.

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: 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 June 2023 Idaho Administrative Bulletin, [Volume 23-6, page 86](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Nicholas Wagner at rules@osbe.idaho.gov or (208)-488-7586.

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 25, 2023.

DATED this 25th day of August, 2023.

Nicholas Wagner
Administrative Rules Coordinator
Idaho State Board of Education 650 W State St.
PO Box 83720
Boise, Idaho 83720-0037
Phone: (208)488-7586, fax: (208)334-2632

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 55-0103-2301
(ZBR Chapter Rewrite)**

55.01.03 – RULES OF CAREER TECHNICAL ~~SCHOOLS~~ CENTERS

000. LEGAL AUTHORITY.

~~The State Board of Education is designated as the State Board for Career Technical Education and is responsible to execute the laws of the state of Idaho relative to career technical education, administer state and federal funds, and through the administrator of the State Division of Career Technical Education, coordinate all efforts in career technical education (Sections 33-1002G and 33-2202 through 33-2212, Idaho Code).~~ (3-31-22)()

001. SCOPE.

These rules serve the administration of Career Technical ~~schools~~ centers in Idaho and define the duties of the State Division of Career Technical Education. (3-31-22)()

002. -- 004. (RESERVED)

005. DEFINITIONS.

01. **Administrator.** A designated school administrator, holding a career technical education program administrator certificate pursuant to IDAPA 08.02.02, "Rules Governing Uniformity," Section 015.04.b, and who oversees and monitors the career technical school center programs and is responsible for ensuring the school meets all applicable federal, state, and local school district regulations, rules, and policies. (3-31-22)()

02. **Capstone Course.** A culminating course that requires students to demonstrate the knowledge and skills learned throughout their program of study. ()

~~03. **Career Technical Schools.** Schools meeting the requirements of Section 33-1002G, Idaho Code, 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.~~ (3-31-22)

04. **Concentrator Student.** A ~~junior or senior~~ student enrolled in the career technical education program capstone course. (3-31-22)()

~~05. **Credit Hours.** The total number of earned credit hours reported to the state longitudinal data system for qualifying intermediate, capstone, and work-based learning courses.~~ (3-31-22)

06. **EDUID Division.** ~~Education Unique Identifier~~ The Division of Career Technical Education. (3-31-22)()

07. **Enrollment Units.** The total number of individual EDUIDs that are reported as enrolled during the previous academic year in a qualifying capstone course, as determined by the division. ()

08. **Intermediate Course.** A course beyond the introductory level that adds to the technical competencies of pathway students, is intended to serve as a prerequisite for a capstone course and is offered in grades 9 through 12. ()

09. **Participation ~~Total~~ Data.** The ~~total~~ number of technical skills assessments taken by enrolled concentrator students as part of each required capstone course during the previous academic year. (3-31-22)()

10. **Technical Skills 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. ()

~~409.~~ **Work-based Learning Course.** A paid or unpaid, internship, clinical, or apprenticeship that is delivered as part of a Career Technical ~~School center~~ program of study. This course must be delivered in conjunction with or after completion of a capstone course. Work-based learning courses must be tied to the program of study, and must be formalized through a written agreement between the school, industry partner, parent, and student. (3-31-22)()

006. -- 101. (RESERVED)

102. CAREER TECHNICAL COMPONENT CRITERIA.

01. **Program Criteria.** Career technical ~~schools centers~~ are intended to deliver high-end career technical education programs that go beyond the scope of traditional career technical education. Labs are appropriately designed for the type of program and the number of students enrolled. The program has state-of-the-art equipment, current technology and strong links to business and industry. (3-31-22)()

02. **Career Technical ~~School Center~~ Program.** Each program of a career technical ~~school center~~ shall: (3-31-22)()

a. Deliver a sequence of career technical education courses that culminate in a capstone course. ()

~~b. Meet all of the required technical competency credit standards established by the state board of education. (3-31-22)~~

~~eb.~~ Develop and maintain business and industry partnerships in addition to the technical advisory committee. ()

~~dc.~~ Integrate industry-specific, state-of-the-art equipment and technologies into classroom instruction and applied learning opportunities for students. ()

~~ed.~~ Employ instructors who hold career technical certification to teach the occupation and who also hold a related industry-based credential, or equivalent credential, as approved by the Division of Career Technical Education. (3-31-22)()

~~f. Be delivered over a term of not less than five (5) semesters, or the equivalent instructional hours. Semester and trimester equivalencies will be approved by the Division of Career Technical Education. (3-31-22)~~

~~g. Enroll students from at least two (2) high schools. No single high school will comprise more than eighty-five percent (85%) of the total enrolled career technical school students. In the event a student enrolled in the career technical school is not enrolled in a high school, that student will be reported separately, based on the high school attendance zone where the student resides. (3-31-22)~~

~~he.~~ Promote the development of leadership. ()

103. APPLICATION PROCESS.

New and renewal applications for career technical ~~school center~~ funding must be received by the Division of Career Technical Education on or before the fifteenth of April for the following fiscal year. (3-31-22)()

104. **CAREER TECHNICAL ~~SCHOOL CENTER~~ 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 distributed based on the number of students enrolled in a capstone course during the previous academic year, the aggregate total of the students who completed the technical skills assessment for the program the student was enrolled in, and the total earned credit hours reported by each school for intermediate, capstone, and work-based learning courses. ~~If any approved program within a career technical school does not enroll~~

~~students from more than one (1) high school during the previous academic year, 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. Eligibility requirements based on student enrollment numbers are determined at the program level. Charter schools who have an established attendance area that overlaps with more than one school district boundary may report students as coming from the high school whose attendance zone they reside in for establishing the enrollment eligibility criteria.~~ (3-31-22)(____)

105. CAREER TECHNICAL ~~SCHOOL CENTER~~ FUNDING CALCULATION.

~~The distribution of individual career technical ~~school center~~ funding will be calculated as a portion of the annual appropriation based on the following criteria: 50 percent (50%) of the annual appropriation will be divided among the total enrollment units, 25 percent (25%) will be divided by the total participation, and 25 percent (25%) will be divided among the total cumulative earned credit hours. Qualifying pathway enrollment will be reported to the State. The Division of Career Technical Education will gather participation data from the independent technical skill assessment providers annually.~~ (3-31-22)(____)

106. (RESERVED)

107. CAREER TECHNICAL ~~SCHOOL CENTER~~ UNIT FUND DISTRIBUTION.

~~Once the career technical appropriation is made, the per unit value will be determined by dividing the total units into the appropriation. The value of each unit may vary from year to year, depending on the total appropriation and the total number of units in each of the enrollment categories.~~ (3-31-22)

01. Payment Distribution. ~~Added cost support unit~~ Funds shall be distributed by the Division of Career Technical Education in two (2) payments on a timeline established by the Division. (3-31-22)

a. ~~Seventy percent (70%) of the total appropriated funds for which career technical schools are eligible shall be distributed no later than September 30th each year. Funding will may not be distributed until to a center prior to the previous year enrollment units are being reported and the Division of Career Technical Education has verified aggregate participation data being verified.~~ (3-31-22)(____)

b. ~~The remaining funds shall be distributed no later than June 30th.~~ (3-31-22)

108. ACCOUNTABILITY.

01. Assessment Process. ~~The Division of Career Technical Education shall develop an assessment process that includes measures and standards for career technical ~~school center~~ programs.~~ (3-31-22)(____)

02. Reporting. ~~No later than October 15 of each year, career technical ~~schools centers~~ will submit a report to the Division of Career Technical Education, detailing their enrollment at the program level ~~by high school. Centers that fail to report the required data by the established timelines may not be eligible for funding until the subsequent fiscal year.~~~~ (3-31-22)(____)

03. Administrator Responsibility. ~~The administrator of each career technical ~~school center~~ shall be responsible to provide onsite administration of the career technical ~~school center~~. The administrator ~~will submit all required career technical school reports requested by the~~ is responsible for all career technical center reports submitted to the Division of Career Technical Education.~~ (3-31-22)(____)

04. Accreditation. ~~Each career technical school shall be accredited following Board of Education requirements. This accreditation shall be appropriate for the individual type of career technical school that is developed.~~ (3-31-22)

05. School Improvement Plan. ~~The administration, faculty and staff at each career technical school is responsible to develop and implement a local school improvement plan based on the assessment process developed by the Division of Career Technical Education.~~ (3-31-22)

109. -- 999. (RESERVED)

IDAPA 55 – STATE BOARD OF CAREER TECHNICAL EDUCATION

55.01.04 – RULES GOVERNING IDAHO QUALITY PROGRAM STANDARDS INCENTIVE GRANTS AND AGRICULTURAL EDUCATION PROGRAM START-UP GRANTS

DOCKET NO. 55-0104-2301 (ZBR CHAPTER REWRITE)

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 33-1629, 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 18, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 accordance with [Executive Order 2020-01](#), this rulemaking will be a review of the chapter for evaluation on how it can be improved, simplified, and streamlined.

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: 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 June 2023 Idaho Administrative Bulletin, [Volume 23-6, page 88](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Nicholas Wagner at rules@osbe.idaho.gov or (208)-488-7586.

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 25, 2023.

DATED this 25th day of August, 2023.

Nicholas Wagner
Administrative Rules Coordinator
Idaho State Board of Education 650 W State St.
PO Box 83720
Boise, Idaho 83720-0037
Phone: (208)488-7586, fax: (208)334-2632

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 55-0104-2301
(ZBR Chapter Rewrite)**

**55.01.04 – RULES GOVERNING IDAHO QUALITY PROGRAM STANDARDS INCENTIVE GRANTS
AND AGRICULTURAL EDUCATION PROGRAM START-UP GRANTS**

000. LEGAL AUTHORITY.

~~This chapter is adopted under authority of~~ Section 33-1629, Idaho Code.

~~(3-31-22)~~()

001. SCOPE.

These rules govern the standards and procedures for application to the Idaho Quality Program Standards Incentive Grants and the Agricultural Education Program Start-up Grants as administered by the Idaho Division of Career Technical Education. ()

002. -- 009. (RESERVED)

010. DEFINITIONS AND ABBREVIATIONS.

01. Administrator. The administrator for the Division of Career Technical Education. ()

02. Agricultural and Natural Resources Program. A program approved by the Division of Career Technical Education that is a standards-based ~~curriculum~~ program in agriculture, food and natural resources systems delivered through an integrated model that incorporates classroom and laboratory instruction, experiential learning and student leadership and personal development. ~~(3-31-22)~~()

03. Board. The State Board for Career Technical Education. ()

04. Division. The Division of Career Technical Education. ()

05. FTE. Full Time Equivalent employee. ()

06. School District or District. A public school district or a charter school authorized by the Public Charter School Commission or school district. ()

011. -- 099. (RESERVED)

100. INCENTIVE GRANT.

01. Eligibility Requirements. Eligible applicants must meet quality program and instructor requirements as approved by the board. Applicants may re-apply ~~each year regardless of whether they have received a previous grant award~~ annually. ~~(3-31-22)~~()

~~a.~~ An agricultural and natural resources program in any grade, nine (9) through twelve (12), must first meet the minimum program specific quality program standards as approved by the board. (3-31-22)

~~ba.~~ Programs will be rated on a scale consisting of “non-existent,” “below basic,” “basic,” “qualified,” “distinguished,” and “exemplary.” Eligibility requires that the program must meet each of the program quality indicators at the level of “basic” or higher. Programs must also have an overall average rating of no less than “distinguished” for all program specific quality standards. This average will be calculated using the quality indicators within each standard. Programs that do not meet the minimum quality standards requirements in one (1) year may be found eligible in subsequent year. Programs and instructors will be assessed by the division. ~~(3-31-22)~~()

~~eb.~~ Instructors must teach in an approved agricultural and natural resources ~~program that meets the quality program standards and must also meet the instructor specific quality program standard as approved by the board~~ program in grades nine (9) through twelve (12). (3-31-22)()

~~d.~~ ~~Instructors will be rated on a scale consisting of “non-existent,” “below basic,” “basic,”~~

~~“qualified,” “distinguished,” and “exemplary.” Eligibility requires that the instructor must meet each of the program quality indicators at the level of “basic” or higher. Instructors must also have an average rating of no less than “distinguished” for all instructor specific quality indicators. Instructors that do not meet the minimum quality standards requirements in one (1) year may be found eligible in a subsequent year. All instructors of agricultural and natural resources programs in grades nine (9) through twelve (12) are eligible to apply for the grant. (3-31-22)~~

~~e. Payments to districts will be adjusted according to the percent of time an instructor teaches within an approved agricultural and natural resources program. (3-31-22)~~

~~f. Should the division request additional information from a school district regarding a grant application, districts must respond to the request within the time period indicated. Failure to respond will result in the cancellation of the application and/or the forfeiture of the grant. (3-31-22)~~

02. Application Process. The application process consists of a formal application and assessment. ()

~~a. To be considered for the grant, a school district must first complete and submit a formal application and supporting documentation on behalf of an instructor for an approved program according to the timeline established by the administrator. Applications may must be submitted electronically to the division. In the event of a mailed application, applications must be postmarked no later than the timeline specified by the division. Instructors may not apply on their own behalf. (3-31-22)()~~

~~b. Following the receipt of an application, the division will conduct an assessment of the program and instructor to ensure they both meet the minimum eligibility requirements, as outlined in the quality program standards and complete a full evaluation. At the administrator’s discretion, the division may partner with additional subject-matter experts to assist in the evaluation. Assessments will be conducted each school year the instructor and program participate in the grant program. Districts will only be eligible to apply for the grant during the academic year the program received an assessment. Prior assessments cannot be used for subsequent grant applications. (3-31-22)()~~

03. Selection of Grant Recipients. Grants will be awarded annually based on the availability of grant funds and the number of qualified applicants. Grants will be awarded to applicants based on ranking in accordance with the following criteria: ()

~~a. Applicants will be ranked according to their overall score. Scores will be calculated using the sum of: ()~~

~~i. The average score of the program quality indicators; and ()~~

~~ii. The average score of the instructor-specific program quality indicators. ()~~

04. Incentive Grant Award. ()

~~a. Announcement of the grant award will be made following administrator approval through the distribution of a funding authorization letter. Prior to the distribution of the letter, the division will verify that the grant recipient continues to teach at the same school, in the same agricultural and natural resources program, and at the same FTE level as indicated on the formal application. (3-31-22)~~

~~b. The total number of recipients will vary by year in accordance with the availability of funds and the qualifications of the applicant pool. Awards will be in the amount of ten thousand dollars (\$10,000) until available funds are exhausted or all qualified recipients have been awarded the grant. In the event that funds are exhausted and a qualified teacher does not receive the grant in the year he or she applies, that teacher will receive priority consideration for the grant the following year. If the teacher(s) reapplies and continues to meet the minimum qualifications the following year, he or she will be eligible to receive the grant regardless of where he or she ranks. Once the prioritized teacher(s) has been awarded funds, the remaining teachers will be ranked and funds will be awarded until the remaining funds have been exhausted. This cycle of prioritization may continue for multiple years; once a qualified teacher receives funds, he or she automatically moves back into the pool of teachers whose~~

~~applications will be ranked in the following application cycle. Grants may be less than ten thousand dollars (\$10,000) when certain conditions exist: (3-31-22)~~

~~i. In the event of a tie, and in those instances where the number of qualified applicants exceeds the available funds, grants will be awarded equally among those recipients with a tied score. (3-31-22)~~

~~ii.a. Grants awarded will be awarded using based on FTE to calculate the percent of time an instructor spends teaching within an approved agricultural and natural resources program. In the event an instructor teaches in an approved program in less than a full-time capacity, grants will be pro-rated according to the percent of time the instructor spends teaching in the approved program. (3-31-22)()~~

~~eb. Grants are awarded on an annual basis and are not transferable. ()~~

~~dc. The use of grant funds must be in accordance with division guidelines and must be clearly linked to the agricultural and natural resources program identified on the formal application. ()~~

~~ed. Grant funds may be used to improve the agricultural and natural resources program, including but not limited to: ()~~

~~i. Offset travel and registration fees associated with educational workshops and/or professional training on behalf of the instructor and on behalf of the students participating in the eligible program for travel related to field trips and student organization activities; (3-31-22)()~~

~~ii. Purchase or repair equipment; or ()~~

~~iii. Purchase educational supplies/curricula. ()~~

~~fe. Grant funds may not be used to: ()~~

~~i. Cover the costs of either salaries or benefits, including extended contracts; ()~~

~~ii. Offset expenses associated with the FFA organization or other student organizations; or ()~~

~~iii. Supplant other district funding sources, e.g. routine facility maintenance or improvements. ()~~

101. -- 199. (RESERVED)

200. START-UP GRANT.

01. Eligibility Requirements. A school district may apply for a start-up grant for a newly-approved agricultural and natural resources program or to re-establish an agricultural and natural resources program in any grade, nine (9) through twelve (12), when specific eligibility requirements are met. Districts are eligible to apply for the grant within the first three (3) fiscal years their program is approved or re-established. If a district applies for the grant but does not receive it, the district may reapply the following year(s). However, the district may only receive the grant once and may not apply beyond the three-year window. ()

~~a. To start a new program, districts are required to first complete a request for new secondary program of study form for a new agricultural and natural resources program in one (1) of the specified grades. The new agricultural and natural resources program must then be approved by the division prior to application for the grant. Expansions of existing programs, including the addition of new career pathways or additional staff, do not qualify as a new program. (3-31-22)~~

~~b. To re-start a program, districts are required to first complete a Request for New Secondary Program of Study form to re-establish an agricultural and natural resources program in any grade nine (9) through twelve (12). The re-established agricultural and natural resources program must then be approved by the division prior to application for the grant. The re-established program must have been inactive for at least two (2) academic years to qualify for the grant. (3-31-22)~~

02. Application Process. A school district may submit an application for a new or re-established program. Completed applications, which must be authorized by the district superintendent or district administrator, must be submitted to the division according to the timeline established by the administrator. ~~In the event of a mailed application, the application must be postmarked no later than the timeline specified in the request.~~ (3-31-22)()

a. Applications must include all required information outlined in the grant application, including specific documents detailing the district’s proposed budget and long-term strategy for sustaining the program. ()

~~**b.** Should the division request additional information from a district regarding a grant application, districts must respond to the request within the time period indicated. Failure to respond will result in the cancellation of the application and/or the forfeiture of the grant.~~ (3-31-22)

03. Selection of Grant Recipients. Grants will be awarded annually by the division based on the availability of grant funds and the number of qualified programs. Grants will be awarded to districts based on ranking and priority that considers factors including but not limited to: the strength of the budget proposal, sustainability potential of the proposed program, and the history of prior grant awards. ()

~~**04. Start-up Grant Award.** Announcement of the grant award will be made following administrator approval through the distribution of a funding authorization letter.~~ The total number of recipients will not exceed four awards annually, and may vary by year in accordance with the availability of funds and the qualifications of the applicant pool. Awards will be in the amount of twenty-five thousand dollars (\$25,000) until available funds are exhausted or all qualified recipients have been awarded the grant. (3-31-22)()

a. Grants are awarded on a one-time basis and are not renewable or transferable. If a district is awarded the grant for a new program, the program is ineligible for future Start-up Grant awards should the program terminate and then be re-established. (3-31-22)()

b. Use of grant funds must be in accordance with division guidelines and must be clearly linked to the agricultural and natural resources program identified on the formal application. If a district fails to spend the entire award amount, those funds may not be carried forward to the next fiscal year. ()

c. Grant funds may be used to improve the agricultural and natural resources program, including but not limited to: ()

i. Offset travel and registration fees associated with educational workshops and/or professional training on behalf of the instructor; ()

ii. Purchase or repair equipment; ()

iii. Purchase educational supplies/curricula; or ()

iv. Start-up costs, up to one thousand dollars (\$1,000,) associated with establishing a new chapter of FFA ~~or other relevant student organization.~~ (3-31-22)()

d. Grant funds may not be used to: ()

i. Cover the costs of salaries and/or benefits, including extended contracts; ()

ii. Offset ongoing expenses associated with the FFA organization or other student organizations; or ()

iii. Supplant other district funding sources, e.g. routine facility maintenance or improvements. ()

201. -- 299. (RESERVED)

300. PAYMENTS.

Payment of grant funds will be made to the district once the final award determinations are made. For grants awarded under Section 100, funds will be made to the district on behalf of the instructor. No later than June 30 of the fiscal year the grant was received, the district must submit a detailed expenditure report to the Division. ~~Each report is subject to review and verification by the Division and must detail that all expenditures were allowable under the grant and that all funds were spent within the fiscal year. Any unspent grant funds must be returned to the Division.~~

~~(3-31-22)()~~

301. APPEALS.

~~Any grant applicant or recipient adversely affected by a decision made under provisions of these rules may appeal such adverse decision as follows. The grant applicant or recipient must appeal in writing no later than thirty (30) days following the announcement of the award, and the written statement must include the basis for the appeal. The appeal must be submitted to the administrator. The division shall acknowledge receipt of the appeal within seven (7) days. The administrator may or may not agree to review the action, or may appoint a subcommittee of three (3) persons to hear the appeal, including at least one (1) agricultural and natural resources professional.~~

~~(3-31-22)~~

~~**01. Review.** If the appeal is transmitted to the subcommittee, the subcommittee will review the appeal and submit a written recommendation to the administrator within fifteen (15) days from the time the subcommittee receives the appeal document. The grant applicant or recipient initiating the appeal will be notified by the chairperson of the subcommittee of the time and place when the subcommittee will consider the appeal and will be allowed to appear before the subcommittee to discuss the appeal.~~

~~(3-31-22)~~

~~**02. Presentation.** Following the subcommittee's decision, the administrator will present the subcommittee's recommendation to the board at the next regularly scheduled meeting of the board. The grant applicant or recipient initiating the appeal may, at the discretion of the board, be permitted to make a presentation to the board.~~

~~(3-31-22)~~

~~**03. Final Decision.** The decision of the board is final, binding, and ends all administrative remedies, unless otherwise specifically provided by the board. The board will inform the incentive grant applicant or recipient in writing of the decision of the board.~~

~~(3-31-22)~~

3021. -- 999. (RESERVED)

IDAPA 62 – OFFICE OF ADMINISTRATIVE HEARINGS

62.01.01 – IDAHO RULES OF ADMINISTRATIVE PROCEDURE

DOCKET NO. 62-0101-2301 (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 67-5206(3) and 67-5280(2)(c), 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 18, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 will simplify, modernize, and replace the existing Idaho Rules of Administrative Procedure of the Attorney General, which govern the conduct of contested cases before Idaho's administrative agencies.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: 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 June 7, 2023 Idaho Administrative Bulletin, [Vol. 23-6, p. 90](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: None.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Chief Administrative Hearing Officer Bryan Nickels at 208-605-4300.

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 25, 2023.

DATED this 31st day of August, 2023.

Bryan Nickels
Chief Administrative Hearing Officer
Office of Administrative Hearings
816 W. Bannock St., Suite 203 (physical and mailing)
Boise, ID 83702
208-605-4300
general@oah.idaho.gov

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 62-0101-2301
(New Chapter)**

62.01.01 – IDAHO RULES OF ADMINISTRATIVE PROCEDURE

SUBCHAPTER A – GENERAL PROVISIONS AND DEFINITIONS (RULES 0-99)
Rules 0 Through 49 – General Provisions

000. LEGAL AUTHORITY (RULE 0).

This chapter is adopted under the legal authority of Section 67-5206, Idaho Code. ()

001. TITLE AND SCOPE (RULE 1).

01. Title. This chapter is titled “Idaho Rules of Administrative Procedure.” ()

02. Scope. Every state agency that conducts “contested cases” as defined by Section 67-5240, Idaho Code, must use these rules unless otherwise required by governing federal or state statute, rule, regulation, or binding state or federal judicial decisional authority. ()

002. DEFINITIONS (RULE 2).

All terms used in this Chapter shall be interpreted in accordance with the definitions set forth in the Idaho Administrative Procedure Act (“APA”) within Section 67-5201, Idaho Code, and as otherwise defined below: ()

01. Agency. In addition to the definition in Section 67-5201(2), Idaho Code, reference to the “agency” in these rules includes the agency director, board or commission, agency secretary, hearing officer appointed by the agency, hearing officer assigned by the Office of Administrative Hearings, or other such presiding officer, as context requires. In turn, reference to the “agency head” means the agency director, board or commission, as context requires, or such other officer designated by the agency head to review recommended or preliminary orders. ()

02. Interlocutory Order. Any order issued by a presiding officer or agency head which is neither a preliminary order, a recommended order, nor a final order. ()

03. Presiding Officer. One (1) or more members of the agency board or commission, the agency head, or duly appointed hearing officer(s) who are authorized by statute or rule to preside at a contested case hearing. When more than one (1) officer sits at hearing, they may all jointly be presiding officers or may designate one of them to be the presiding officer. ()

04. Service or Serving. The agency’s or a party’s delivery or distribution of official documents in a legally sufficient manner in a contested case proceeding to the parties to that proceeding and, if applicable, to any other persons required by statute, rule, order, or notice to receive official documents. ()

003. ABBREVIATIONS (RULE 3).

These rules use the following abbreviations: ()

01. ADA. ADA means the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101, et seq. ()

02. ADR. ADR means alternative dispute resolution, which includes, but is not limited to, mediation, arbitration, negotiation, conciliation, collaboration, mini-trial, and peacemaking. ()

03. APA. APA means the Idaho Administrative Procedure Act, Chapter 52, Title 67, Idaho Code. ()

04. IRAP. IRAP means these rules, the Idaho Rules of Administrative Procedure. ()

004. LIBERAL CONSTRUCTION (RULE 4).

The rules in this chapter will be liberally construed to secure the just, speedy, and inexpensive determination of

contested cases proceedings. ()

005. COMMUNICATIONS WITH AGENCY (RULE 5).

All communications that are intended to be part of an official record for a decision in a contested case must be filed with the presiding officer. Unless otherwise provided by statute, rule, order, or notice, documents are considered filed when received by the presiding officer, not when mailed or otherwise transmitted. ()

006. IDENTIFICATION OF COMMUNICATIONS (RULE 6).

Communications regarding a given proceeding should refer to that proceeding's case caption and case number. ()

007. COMPUTATION OF TIME (RULE 7).

In computing any period of time set by these rules, the day of the event from which the period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday, or legal holiday. ()

008. FEES AND REMITTANCES (RULE 8).

Fees and remittances to the agency, including cost awards, shall be paid in the manner directed by the agency. ()

009. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT REQUIREMENTS (RULE 9).

All conferences and hearings must be held by means or in facilities meeting the accessibility requirements of the ADA, and any notice of conference or hearing must inform the parties that the conference or hearing will be conducted in compliance with the accessibility requirements of the ADA. Any notice of conference or hearing must inform the parties and other persons notified that if they require accessibility accommodation pursuant to the ADA, the agency will supply that assistance upon request a reasonable number of days before the hearing. The notice of hearing shall explicitly state the number of days before the conference or hearing that the request must be made. ()

010. PRACTICE NOT COVERED BY STATUTE OR RULES (RULE 10).

In cases where no provision is made by statute or by these rules, proceedings in contested cases to which these rules apply shall be in accordance with the practice usually followed in such or similar contested cases, or as may be prescribed by the hearing officer or stipulated to by the parties. ()

011. – 099. (RESERVED)

SUBCHAPTER B – PROSECUTIONS AND INFORMAL RESOLUTIONS (RULES 100-199)
Rules 100 Through 149 – Agency As Prosecutor And Advisor

100. CONTRAST BETWEEN AGENCY'S PROSECUTORIAL/INVESTIGATIVE AND ADJUDICATORY FUNCTIONS (RULE 100).

When statute assigns to an agency both (1) the authority to initiate petitions or to investigate petitions made by the public, and (2) the authority to decide the merits of petitions, the agency is required to perform both of those functions and shall follow the following procedures within Rules 100 through 103 applicable to the agency head, agency attorneys, agency staff, and hearing officers in processing these petitions or responding to citizen inquiries. As used within Rules 100 through 103, the term "agency head" shall include any person designated by the agency head to exercise, in whole or in part, the ultimate legal authority vested in the agency. ()

01. Prosecutorial/Investigative Function. The prosecutorial/investigative function can be performed exclusively by agency attorneys and agency staff. When required or allowed by statute, the agency head may participate in or supervise investigations preceding the issuance of a petition and may supervise the agency attorneys and agency staff conducting the prosecution of the petition issued by the agency head, but the agency head shall not participate in the prosecution of a formal contested case hearing for a petition issued by the agency unless the agency head does not participate in the adjudicatory function. ()

02. Adjudicatory Function. The adjudicatory function is performed by the agency head and/or a hearing officer. The adjudicatory function includes: deciding whether to issue a petition upon the basis of allegations

before the agency when the decision to issue the petition is made by an agency head acting in an adjudicatory capacity, i.e., when presented by agency staff in a formal setting with the question whether a petition shall be issued; deciding whether to accept a consent order or other settlement after a petition is issued when the decision to accept a consent order or other settlement is made by an agency head acting in an adjudicatory capacity; and deciding the merits of a petition following presentation of evidence in formal contested case proceedings. ()

101. PUBLIC INQUIRIES ABOUT OR RECOMMENDATIONS FOR AGENCY ISSUANCE OF A PETITION (RULE 101).

01. Response to Public Inquiry. When the public contacts an agency head, an agency attorney, or agency staff to inquire whether a petition should be issued by an agency or to recommend that a petition be issued, the agency head may: explain the agency’s procedures; explain the agency’s jurisdiction or authority (including the statutes or rules administered by the agency); and direct the public to appropriate staff personnel who can provide investigatory assistance or who can advise them how to pursue a petition before the agency. Additionally, response can be provided by specific agency roles as follows: ()

a. The Agency Head. When the agency head issues petitions, the agency head may also discuss whether given allegations would, in the agency head’s opinion, warrant the issuance of a petition or warrant direction to staff to pursue further investigation. No statement of the agency head in response to a public inquiry constitutes a finding of fact or other decision on the underlying matter. ()

b. The Agency Attorney. An agency attorney assigned to a prosecutorial/investigative role may also discuss whether given allegations would, in the attorney’s opinion, warrant the issuance of a petition or warrant direction to staff to pursue further investigation. The agency is not bound by the attorney’s advice or recommendations, and the attorney should notify the public that the agency is not obligated to follow the attorney’s advice or recommendations. ()

02. The Agency Staff. Agency staff may also express an opinion whether given allegations would, in the agency staff’s opinion, warrant the issuance of a petition or warrant agency staff’s further investigation. The agency is not bound by the agency staff’s advice or recommendations, and the agency staff should notify the public that the agency is not obligated to follow the agency staff’s advice or recommendations. ()

03. Presiding Officers. When the public contacts a presiding officer to inquire whether a petition should be issued by an agency or to recommend that a petition be issued, the presiding officer should not discuss the matter, but should refer the member of the public to other agency personnel. ()

04. Office of Administrative Hearings. When the public contacts the Office of Administrative Hearings to inquire whether a petition should be issued by an agency or to recommend that a petition be issued, Office of Administrative Hearings staff should not discuss the matter, but should refer the member of the public to other agency personnel. ()

102. AGENCY PROCEDURES AFTER ISSUANCE OF A PETITION (RULE 102).

01. The Agency Head. ()

a. Prohibited Contacts--Allowable Managerial Reporting. Once a petition has issued, the agency head shall not discuss the substance of the petition ex parte with any representative of any party, agency attorneys or agency staff involved in the prosecution or investigation of the petition, or an assigned hearing officer, unless authorized or required by statute. The agency head may request periodic progress reporting on staff preparation from an executive director or other staff member in charge. As required to perform statutory supervisory duties, the agency head may also approve or disapprove expenditures associated with the prosecution, authorize retention of experts or outside counsel for the prosecution, address policy issues that may affect the prosecution, and otherwise discharge the agency head’s statutory management and supervisory duties. ()

b. Allowed Contacts. The agency head may discuss the substance of the petition with agency attorneys and agency staff who are not involved in the prosecution or investigation of the petition. When one or more members of the agency head sits as a presiding officer to hear the contested case, any other member of the agency

head not participating in the prosecution and not supervising prosecutorial/investigative personnel may discuss the substance of the petition with that presiding officer. ()

02. The Agency Attorney. ()

a. Prosecutorial/Investigative Attorneys. Except as to allowed contacts with the agency head, no agency attorney involved in the investigation or prosecution of a petition shall discuss the substance of the petition ex parte with the agency head, the hearing officer assigned to hear the petition, or with any agency attorney assigned to advise or assist the agency head acting as a presiding officer assigned to hear the petition. ()

b. Advisory Attorneys. Except as to allowed contacts with the agency head, no agency attorney assigned to advise or assist the agency head shall discuss the substance of the petition ex parte with any representative of any party, agency attorneys or agency staff involved in the prosecution or investigation of the petition, or an assigned hearing officer. An agency attorney assigned to advise or assist the agency head acting as a presiding officer may discuss the substance of the petition with that agency head. ()

03. The Agency Staff. ()

a. Prosecutorial/Investigative Staff. Except as to allowed contacts with the agency head, no member of the agency staff involved in the investigation or prosecution of the petition shall discuss the substance of the petition ex parte with the agency head, any agency attorney assigned to advise or assist the agency head acting as a presiding officer assigned to hear the petition, or an assigned hearing officer. ()

b. Advisory Staff. Except as to allowed contacts with the agency head, no agency staff assigned to advise or assist the agency head shall discuss the substance of the petition ex parte with any representative of any party or with agency attorneys or agency staff involved in the prosecution or investigation of the petition. Agency staff assigned to advise or assist an agency head acting as a presiding officer may discuss the substance of the petition with the agency head. ()

04. Presiding Officers. ()

a. Agency Heads. Agency heads acting as a presiding officer may discuss the substance of a petition with attorneys of the agency assigned to advise or assist the agency head acting as a presiding officer. ()

b. Assigned Presiding Officers. Except as to allowed contacts with the agency head, no assigned presiding officer shall discuss the substance of a petition ex parte with an agency head, any representative of any party, or with agency attorneys or agency staff involved in the prosecution or investigation of a petition. ()

c. Communications With Other Hearing Officers. Any presiding officer may discuss the substance of a petition with any other hearing officer not assigned to the matter, including hearing officers within the Office of Administrative Hearings, provided that: ()

i. The presiding officer and the other hearing officer make reasonable efforts to avoid discussing factual information that is not a part of the record; and ()

ii. The presiding officer does not abrogate their responsibility to personally decide the matter. ()

d. Procedural matters. Presiding officers may also discuss, with any other hearing officer not assigned to the matter, including hearing officers within the Office of Administrative Hearings, any procedural matter related to a proceeding, including interpretation and application of the APA and/or the IRAP. ()

103. ASSISTANCE WITH AGENCY HEAD'S CONSIDERATION OF RECOMMENDED OR PRELIMINARY ORDER (RULE 103).

01. The Agency Head. In considering a presiding officer's recommended or preliminary order, the agency head issuing a final order may consult with an agency attorney assigned to advise or assist the agency head and with agency staff who did not participate in the investigation or prosecution of the petition. The agency head shall

not discuss the substance of the petition ex parte with any representative of any party, agency attorneys or agency staff involved in the prosecution or investigation of the petition, or the presiding officer. ()

02. The Agency Attorney. ()

a. Prosecutorial/Investigative Attorneys. No agency attorney involved in the investigation or prosecution of a petition shall consult with the agency head issuing a final order considering a presiding officer's recommended or preliminary order. An agency attorney who was involved in the investigation or prosecution of the petition may attend public meetings of the agency head that consider petitions and may respond to questions from the agency head, so long as the meetings have been noticed to all parties and all parties have the same opportunity to respond to questions from the agency head as the agency's prosecutorial/investigative attorneys. ()

b. Advisory Attorneys. An agency attorney assigned to advise or assist the agency head in consideration of the petition may consult with the agency head in preparation for or while the agency head is considering a presiding officer's recommended or preliminary order. ()

03. The Agency Staff. ()

a. Prosecutorial/Investigative Staff. No member of the agency staff involved in the investigation or prosecution of the petition shall consult with the agency head in their consideration of a presiding officer's recommended order or preliminary order. ()

b. Advisory Staff. Any member of the agency staff assigned to advise or assist the agency head may consult with the agency head in its consideration of a presiding officer's recommended order or preliminary order at the agency head's direction. ()

c. Presiding Officers. No presiding officer shall consult with any person regarding the agency head's consideration of the presiding officer's recommended or preliminary order. ()

104 – 149. (RESERVED)

Rules 150 through 199 – Informal Dispositions

150. INFORMAL DISPOSITIONS, GENERALLY (RULE 150).

Informal dispositions may be conducted in writing, by telephone or video, or in person, and may include individual contacts by or with the agency staff asking for information, advice, or assistance from the agency staff, or proposing informal resolution of formal disputes under the law administered by the agency. At any time following the presentation of an informal disposition to the presiding officer, the presiding officer may, including at the time of hearing, request additional information needed by the presiding officer to determine whether to render a decision in the contested case proceeding. ()

151. ALTERNATIVE DISPUTE RESOLUTION OF CONTESTED CASES (RULE 151).

If informal disposition cannot be reached by the parties, the use of ADR at any time before or after a contested case has been initiated is encouraged. A presiding officer may inquire as to the status of ADR or otherwise encourage parties to undertake ADR, but a presiding officer may not order parties to undertake ADR without the agreement of all parties. No party may be penalized or sanctioned for failing or refusing to participate in ADR, except where a party refuses or fails to participate in mandatory or binding ADR that the parties have voluntarily agreed to. ()

152. NEUTRALS (RULE 152).

When ADR is used for all or a portion of a contested case, or prior to the initiation of a contested case, an agency may provide a neutral, at the agency's cost, to assist the parties in resolving their disputed issues. The neutral may be any individual agreed upon by the parties, but must be someone with no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is disclosed in writing to all parties and all parties agree that the neutral may serve. If the parties are unable to agree upon, or identify, a neutral to provide ADR services, the agency shall make a request to the Office of Administrative Hearings for the selection and provision of a neutral by the Chief Administrative Hearing Officer. ()

153. CONFIDENTIALITY OF SETTLEMENT NEGOTIATIONS (RULE 153).

Negotiations regarding a potential consent order or other settlement made prior to or during a contested case are confidential, unless all participants to the negotiation agree to the contrary in writing. Facts disclosed, offers made, and all other aspects of negotiation (except agreements reached) in any such negotiations are not part of the record.

()

154. PROCEDURE FOR NOTICE OF INFORMAL DISPOSITION OCCURRING PRIOR TO A CONTESTED CASE PROCEEDING (RULE 154).

The terms of any informal disposition, including, but not limited to, any stipulation regarding agreement as to facts, evidence, or issues in a contested case, which are reached prior to the initiation of a contested case proceeding shall be disclosed by the parties in full to the presiding officer no later than the initial scheduling conference, unless otherwise directed by the presiding officer.

()

155. STIPULATIONS REGARDING FACTS (RULE 155).

Parties may stipulate among themselves to any fact at issue in a contested case by written statement filed with the presiding officer or presented by oral statement at hearing. A stipulation binds all parties agreeing to it only according to its terms. The agency may regard a stipulation as evidence or may require proof by evidence of the facts stipulated. The presiding officer is not bound to adopt a stipulation of the parties, but may do so. If adopted, the presiding officer may regard a stipulation as evidence, or may require additional proof by evidence of the facts stipulated. If the presiding officer rejects a stipulation, they will do so before issuing their order, and will provide an additional opportunity for the parties to present evidence and arguments on the subject matter of the rejected stipulation.

()

156. CONSENT ORDERS AND OTHER SETTLEMENTS (RULE 156).

This rule sets forth procedures to be followed when a consent order or other settlement is negotiated before or after the initiation of a contested case proceeding.

()

01. Negotiations. Persons who participate in negotiations regarding a consent order or other settlement prior to the initiation of a contested case proceeding are not permitted to serve as a presiding officer in any subsequent contested case proceeding regarding the same matter. Once a contested case proceeding has been initiated, no presiding officer may thereafter participate in negotiations regarding a consent order or other settlement.

()

02. Presentation of Consent Order or Other Settlement to Agency Head. When the consent order provides, or the persons signing the consent order contemplate, that the consent order must be presented to the agency head for approval, the consent order may be presented to the agency head by representatives of any party, unless the agreement provides to the contrary. Any consent order presented to the agency head must be served on all parties and the presiding officer, if any. The agency head may accept or reject the consent order, indicate how the consent order must be modified to be acceptable, or inform the parties what further information is required for the agency head's consideration of the consent order. When a consent order is rejected, no matter recited in the rejected consent order may be used as an admission against a party in any later proceeding before the agency, and any such matter must be proven by evidence independent of the consent order.

()

03. Consideration Of Consent Orders And Other Settlements By Presiding Officers. Consent orders and other settlements must be reviewed under this rule. When a consent order or other settlement is presented to the presiding officer, the presiding officer will prescribe procedures appropriate to the nature of the agreement to consider the agreement. For example, the presiding officer may summarily accept settlement of essentially private disputes that have no significant implications for administration of the law for persons other than the affected parties. On the other hand, when one or more parties to a proceeding is not party to the settlement or when the settlement presents issues of significant implication for other persons, the presiding officer may convene an evidentiary hearing to consider the reasonableness of the agreement and whether acceptance of the agreement is consistent with the agency's charge under the law.

()

04. Suspension of Deadlines. Unless otherwise provided by law, the presiding officer may suspend all contested case deadlines, including the hearing date, during the consideration of a proposed consent order or other settlement.

()

157. INQUIRY ABOUT NEGOTIATIONS (RULE 157).

Through notice or order or on the record at prehearing conference or hearing, the presiding officer may inquire of the parties in any proceeding whether settlement negotiations are in progress or are contemplated or may invite settlement of an entire proceeding or certain issues. ()

158. BURDENS OF PROOF (RULE 158).

Proponents of a proposed consent order or other settlement agreement carry the burden of showing that the consent order or other settlement agreement is in accordance with the law. The presiding officer may require the development of an appropriate record in support of or opposition to a proposed consent order or other settlement agreement as a condition of accepting or rejecting the consent order or other settlement agreement. ()

159. CONSENT ORDERS AND SETTLEMENTS NOT BINDING (RULE 159).

The presiding officer is not bound by consent orders or other settlement agreements that are not unanimously accepted by all parties or that have significant implications for persons not parties. In these instances, the presiding officer will independently review any proposed settlement to determine whether the settlement is in accordance with the law. ()

160. NEGOTIATIONS DO NOT EXHAUST ADMINISTRATIVE REMEDIES (RULE 160).

Negotiations regarding potential consent orders or other settlement agreements do not substitute for formal proceedings and do not exhaust administrative remedies, and any such negotiations are conducted without prejudice to the right of the parties to present the matter formally to the agency as a contested case. ()

161. – 199. (RESERVED)

SUBCHAPTER C – CONTESTED CASE PARTICIPANTS (RULES 200-299)

Rules 200 Through 224 – Parties

200. PARTIES TO CONTESTED CASES LISTED (RULE 200).

Unless otherwise labeled by statute or by agency practice, parties to contested cases before the agency are called petitioners, respondents, or intervenors. On reconsideration or appeal within the agency, parties are called by their original titles. ()

201. PETITIONERS (RULE 201).

Persons who seek to modify, amend, or stay existing orders or rules of the agency, to clarify their rights or obligations under law administered by the agency, to ask the agency to initiate a contested case, or to otherwise take action that will result in the issuance of an order or rule, are called “petitioners.” ()

202. RESPONDENTS (RULE 202).

Persons against whom petitions or complaints are filed or about whom investigations are initiated are called “respondents.” ()

203. INTERVENORS (RULE 203).

Persons, other than petitioners and respondents, who are permitted to participate as parties are called “intervenors.” ()

204. RIGHTS OF PARTIES AND OF AGENCY STAFF (RULE 204).

All parties, including agency staff, may appear at any hearing or argument, introduce evidence, examine witnesses, make and argue motions, state positions, and otherwise fully participate in hearings or arguments, including submitting any written filings which are required or which are requested by the presiding officer. ()

205. WITHDRAWAL AND SUBSTITUTION OF PARTIES (RULE 205).

Any party may withdraw from a proceeding upon notice to the presiding officer in writing or at hearing. Upon withdrawal of a party, the presiding officer shall determine if and how the contested case proceeding will continue. A presiding officer conducting the hearing may default the withdrawing party, may proceed with the hearing on the matter, or may take such other action consistent with law. A presiding officer may, upon motion, permit the substitution of a party as justice requires. ()

206. PERSONS NOT PARTIES – INTERESTED PERSONS (RULE 206).

Persons other than the persons named in Rules 200 through 203 are not parties for the purpose of any statute or rule addressing rights or obligations of parties to a contested case. In proceedings in which persons other than a petitioner, respondent, or intervenor would be expected to have an interest, persons may request the agency in writing that they be notified when proceedings of that kind are initiated. These persons are called “interested persons.” Interested persons may become intervenors or public witnesses. The agency must serve notice of such proceedings on all interested persons. If not previously identified by the agency, the presiding officer may identify and serve potentially interested persons within their discretion or otherwise direct the agency to identify and serve such persons. ()

207. PERSONS NOT PARTIES – PUBLIC WITNESSES (RULE 207).

Persons not parties and not called by a party who may be permitted to testify at hearing are called “public witnesses.” Public witnesses do not have parties’ rights to examine witnesses or otherwise participate in the proceedings as parties. Public witnesses’ written or oral statements and exhibits are subject to examination and objection by parties. Subject to a presiding officer’s determination of hearing procedure and admissibility of evidence, public witnesses have a right to offer evidence at hearing through written or oral statements and exhibits, except that public witnesses offering expert opinions at hearing or detailed analyses or detailed exhibits must comply with these rules and any order of the presiding officer regarding the prehearing disclosure of expert testimony. ()

208. – 224. (RESERVED)

Rules 225 through 249 – Party Representatives

225. INITIAL PLEADING – LISTING OF, AND SERVICE UPON, REPRESENTATIVES (RULE 225).

The initial pleading of each party at the formal stage of a contested case must name the party’s representative for service and state the representative’s e-mail and mailing address for purposes of receipt of all official documents. Unless authorized by order of the agency, no more than two (2) representatives for service of documents may be listed in an initial pleading. Service of documents on the named representative is valid service upon the party for all purposes in that proceeding. If no person is explicitly named as the party’s representative, the first person signing the pleading will be considered the party’s representative. ()

226. TAKING OF APPEARANCES – PARTICIPATION BY AGENCY STAFF – USE OF AGENCY REPORT OR RECOMMENDATION (RULE 226).

The presiding officer at a formal hearing or prehearing conference will take appearances to identify the representatives of all parties or other persons. In all proceedings in which the agency staff will participate, or any report or recommendation of the agency staff will be considered or used in reaching a decision, at the timely request of any party, the agency staff must appear at any hearing and be available for cross-examination and participate in the hearing in the same manner as a party. ()

227. REPRESENTATION OF PARTIES (RULE 227).

Parties may be represented by an attorney throughout the proceedings in a contested case, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. Persons appearing in contested case proceedings in a representative capacity must conform to the standards of professional conduct required of attorneys before the courts of Idaho. If any representative fails to conform to these standards, the presiding officer may exclude the person from the proceeding. ()

228. ATTORNEY REPRESENTATIVES (RULE 228).

Attorneys representing a party in a contested case proceeding must have an active license to practice law in the state of Idaho. Attorneys not licensed in Idaho but who are licensed in one or more other states may request admission to the proceeding on a pro hac vice status by the presiding officer consistent with Idaho State Bar Commission Rule 227(i) “Agency Admission.” ()

229. SUBSTITUTION OF REPRESENTATIVE (RULE 229).

A party’s representative may be changed and a new representative may be substituted by notice to the presiding officer and to all other parties, which substitution will be liberally allowed so long as the proceedings are not unreasonably delayed. The presiding officer may permit substitution of representatives at the time of hearing solely in the presiding officer’s discretion. ()

230. WITHDRAWAL OF REPRESENTATIVE (RULE 230).

Persons representing a party who wish to withdraw their representation must immediately file in writing a notice of withdrawal of representation to the presiding officer and serve that notice on the party represented and all other parties. If a party's representative withdraws, the presiding officer may reset deadlines and/or the hearing as long as the proceedings are not unreasonably delayed. ()

231. CONDUCT REQUIRED – SANCTIONS FOR MISCONDUCT (RULE 231).

Parties and their representatives are expected to conduct themselves in a civil and nondisruptive manner during contested case proceedings. Persons appearing in contested case proceedings in a representative capacity are further expected to conform to the standards of civility in professional conduct expected of attorneys before the courts of Idaho. The presiding officer may, in their discretion, reprimand or exclude from any hearing any person who disrupts the hearing or engages in improper conduct. For disruptive or improper conduct made in the course of a contested case proceeding outside of hearings, the presiding officer may take any action not inconsistent with these rules, the APA, and any other applicable statute or rule to maintain order during the course of a contested case proceeding and to ensure an expeditious, fair, and impartial proceeding. ()

232. – 249. (RESERVED)

Rules 250 through 299 – Hearing Officers and Presiding Officers

250. APPOINTMENT OF HEARING OFFICERS (RULE 250).

A hearing officer is a presiding officer, other than the agency head, in a contested case proceeding. Subject to governing statutes and rules, a hearing officer may be appointed by an agency head. ()

01. Office of Administrative Hearings. Where required by statute or rule, or where an agency head otherwise requests a hearing officer as permitted by statute or rule, an agency head will refer a hearing officer appointment to the Office of Administrative Hearings. Upon receipt and acceptance of the referral, the Chief Administrative Hearing Officer or their designee shall appoint a hearing officer of their own selection by issuing a Notice of Appointment to all parties to the contested case proceeding. ()

02. Other Hearing Officers. Hearing officers not appointed through the Office of Administrative Hearings may be employees of the agency or independent contractors, and may (but need not) be attorneys. Hearing officers who are not attorneys should ordinarily be persons with technical expertise or experience in issues before the agency. ()

251. DISQUALIFICATION (RULE 251).

01. Petitions – Determination. Upon any petition to disqualify a presiding officer, the presiding officer may request additional briefing or argument from any party to the contested case proceeding, or may otherwise immediately rule upon the petition on its face without additional briefing or argument. ()

02. Voluntary Disqualification. A presiding officer in a contested case may make a voluntary disqualification without stating any reason therefor. ()

252. SCOPE OF AUTHORITY OF PRESIDING OFFICERS (RULE 252).

01. Standard Scope of Authority. Unless otherwise limited by statute, rule, or in the appointment by the agency, presiding officers have the following standard scope of authority: ()

a. Authority to schedule cases assigned to the presiding officer, including authority to issue notices of prehearing conference and of hearing, as appropriate; ()

b. Authority to schedule and compel discovery, when discovery is authorized before the agency, and to require advance filing of expert testimony, when authorized before the agency; ()

c. Authority to preside at and conduct hearings, accept evidence into the record, rule upon objections to evidence, and otherwise oversee the orderly presentations of the parties at hearing; and ()

d. Authority to issue a written decision of the presiding officer, including a narrative of the proceedings before the presiding officer and findings of fact, conclusions of law, and recommended or preliminary orders by the presiding officer. ()

02. Change in Scope of Authority. Except as prohibited by statute or rule, at any time prior to hearing, a presiding officer's scope of authority in a proceeding may be increased or limited by written directive of the agency head. Such change in the scope of authority shall be made on the agency head's initiative alone, and no motion to the presiding officer requesting a change in the scope of their authority will be permitted. ()

253. CHALLENGES TO STATUTES (RULE 253).
A presiding officer in a contested case has no authority to declare a statute unconstitutional. ()

254. CHALLENGES TO RULES (RULE 254).
An agency head, acting either as a presiding officer or in issuing a final order, may consider and decide whether a rule of that agency is within the agency's substantive rulemaking authority or whether the rule has been promulgated according to proper procedure. A presiding officer, other than an agency head, does not have the authority to consider and decide such issues except upon express written grant of authority by the agency head. ()

255. EX PARTE COMMUNICATIONS (RULE 255).

01. Substantive Communications. When a presiding officer receives or participates in an ex parte communication regarding any substantive issue from a party or party representative during a contested case, the presiding officer shall place a copy of the communication, or a detailed summary thereof, in the file for the case. Additionally, the copy or summary of the communication shall also be distributed to all parties of record. Upon request of any party or upon the presiding officer's own motion, the presiding officer shall permit either a hearing or written response by any party not involved in the communication, to allow those parties an opportunity to participate in the communication. Substantive communications are part of the agency record. ()

02. Procedural Communications. The presiding officer may communicate ex parte, orally or in writing, with a party concerning procedural matters (e.g., scheduling). When reasonably feasible, a written confirmation of such communication should be sent to all parties to the proceeding, with a copy placed in the file of the case. Procedural communications are not part of the agency record, except as ordered by the presiding officer in their discretion, either on their own motion or a motion by any party. ()

03. Communications With The General Public. Ex parte communications from members of the general public who are neither parties, interested persons, nor witnesses are not required to be reported by this rule. However, any communications with such persons shall be disclosed to all parties to the proceeding, in writing with a copy to the file, in the event that those persons become parties, interested persons, or witnesses to the proceeding. Hearing or written response shall be permitted in the same manner as with any other substantive ex parte communication. ()

256. – 299. (RESERVED)

SUBCHAPTER D – PLEADINGS AND MOTIONS (RULES 300-399)
Rules 300 Through 324 – Pleadings

300. PLEADINGS – NAMING (RULE 300).
Except as otherwise named by statute, rule, or established agency practice, pleadings initiating contested cases may be called "petitions," "applications," "protests," or "complaints," and responding pleadings may be called "answers." Affidavits or declarations under penalty of perjury may be filed in support of any pleading. A party may adopt or join any other party's pleading. ()

301. PLEADINGS – CONSTRUCTION (RULE 301).
Pleadings will be liberally construed, and defects that do not affect substantial rights of the parties will be disregarded. A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. An exhibit to a pleading is a part of the pleading for all purposes. ()

302. PLEADINGS – FORM AND CONTENTS (RULE 302).

01. Form. All pleadings, except those filed on agency forms, submitted by a party and intended to be part of an agency record must be in writing and be submitted as follows unless otherwise directed by the agency or presiding officer: ()

a. Caption. Pleadings must include the case caption, case number, and title of the document. Documents complying with this rule will be in the following form:

Name of Party/Representative
Mailing Address of Party/Representative
Street Address of Party/Representative (if different)
Telephone Number of Representative
E-mail Address of Representative
Attorney/Representative for [Name of Party] (if needed)

_____ BEFORE THE [NAME OF AGENCY]

[Title of Proceeding] _____ CASE NO. [Case number assigned by agency]

_____ [TITLE OF DOCUMENT]

()

b. Party Information. Pleadings must include, in the upper left corner of the first page, the name, mailing and street address, telephone number, and e-mail address of the person filing the document: ()

c. Formatting. Text should be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins should be at least one inch on all four sides. ()

d. Electronic filings. Pleadings filed electronically should be in a commonly-used format, such as in.PDF or.DOCX. ()

e. Paper filings. Pleadings filed in paper form should be on 8 1/2 by 11-inch paper, single-sided and numbered. ()

02. Content. Pleadings should: ()

a. Identify the party making the pleading, and the party to whom the pleading is directed; ()

b. Fully state all facts, contentions, claims, and defenses in numbered paragraphs, each limited to a single set of circumstances, where practicable; ()

c. Refer to the particular provisions of statute, rule, order, or other controlling law upon which they are based; ()

d. State the right, license, award, or authority sought, contested, or at issue; and ()

e. The relief sought, if any. ()

303. ANSWERS – SPECIFIC REQUIREMENTS (RULE 303).

01. Time for filing. An answer to a pleading initiating a contested case must be filed and served on all parties of record within twenty-one (21) days after service of the pleading, unless a different deadline is provided by order or notice. ()

02. Content. An answer must admit or deny each material allegation of the pleading initiating the

contested case. Any material allegation not specifically admitted shall be considered denied. Matters alleged by cross-petition, cross-complaint, or affirmative defense must be separately stated and numbered. ()

03. Motions in Lieu of Answer. A motion filed in lieu of an answer in response to a pleading initiating a contested case, such as a motion to dismiss, strike, or for clarification, must be made within the time to answer. Any such motion suspends the party's obligation to file an answer until such time as the presiding officer directs that an answer be filed. ()

04. Failure to File an Answer or Motion. If a party fails to file an answer or a motion under this rule in response to a pleading, the presiding officer may issue a notice of default against the respondent pursuant to these rules. ()

05. Motions Directed to the Answer. A motion directed to an answer must be filed within fourteen (14) days after service of the answer. ()

304. DEFECTIVE, INSUFFICIENT, OR LATE PLEADINGS (RULE 304). Defective, insufficient, or late pleadings may be returned, dismissed, or rejected. ()

305. AMENDMENTS TO PLEADINGS (RULE 305). The presiding officer may allow any pleading to be amended or corrected, the allowance for which will be liberally granted. ()

306. – 324. (RESERVED)

Rules 325 through 349 – Motions

325. MOTIONS — DEFINED — FORM AND CONTENTS — TIME FOR FILING (RULE 325).

01. Motions Defined. All other requests for the presiding officer to take any other action in a contested case are called "motions." ()

02. Form and Contents. Motions should: ()

a. Be in writing, and comply with the same form requirements as pleadings; ()

b. Not exceed twenty-five (25) pages for dispositive motions, or ten (10) pages for any other motion, except as authorized by the presiding officer; ()

c. Fully state the facts upon which they are based; ()

d. Refer to the particular provision of statute, rule, order, notice, or other controlling law upon which they are based; and ()

e. Include any affidavits, declarations, exhibits, and attachments intended to support the motion, which do not count towards any page limitation, except as otherwise directed by the presiding officer; and ()

f. State the relief sought. ()

03. Oral Argument. If the moving party desires oral argument on the motion, it must state so in the motion, including whether it is requested to be in-person or by remote means. All motions seeking dispositive relief shall be set for oral argument; all other motions may be decided on briefing without further oral argument, in the presiding officer's discretion. ()

04. Time for Filing. Except as otherwise directed by statute, rule, or order of the presiding officer, motions may be filed at any time during a contested case proceeding. ()

05. Oppositions to Motions. An opposition to a motion may be filed by any party in the proceedings

using the same form and content requirements as the motion being opposed. Unless otherwise directed by the presiding officer, any opposition to a motion must be filed within fourteen (14) days after service of the motion. Reply briefs and further briefing on the motion shall be permitted only upon request of the presiding officer. ()

06. Determination of Motions. ()

a. Dispositive Motions. Any ruling on a dispositive motion shall be in writing. The presiding officer may suspend all deadlines, including the evidentiary hearing date, during the consideration of a dispositive motion. ()

b. Other Motions. Except as otherwise directed by statute, rule, or these rules, a ruling on any other motion may be presented orally by the presiding officer. The presiding officer may direct any party to submit a proposed order regarding an oral ruling. ()

326. SPECIAL MOTIONS (RULE 326).

01. Interlocutory Motions for Reconsideration. Motions for reconsideration are permitted for any interlocutory order issued by a presiding officer, but any such motion for reconsideration must be filed within fourteen (14) days of the issuance of the order for which reconsideration is sought. The presiding officer may, in their discretion, rule upon a motion for reconsideration with or without additional briefing, and with or without conference. ()

02. Motions for Permissive Appeal. Motions for permissive appeal are permitted for any interlocutory order issued by a presiding officer, subject to the deadlines and procedure set forth in Idaho Appellate Rule 12, "Appeal By Permission." ()

327. – 349. (RESERVED)

Rules 350 through 374 – Filing and Service of Pleadings and Motions

350. FILING –NUMBER OF COPIES – ELECTRONIC SUBMISSION – FACSIMILE MACHINE PROHIBITED (RULE 350).

An original and necessary copies (if any are required by the agency) of all documents intended to be part of an agency record must be filed with the presiding officer and any other person designated by the agency to receive filings in the case. If authorized by the presiding officer or the agency, e-mail or other electronic submission of documents will satisfy this requirement. No party shall be required to file, submit, or receive any documents via facsimile machine. ()

351. SERVICE BY PARTIES (RULE 351).

All documents submitted by a party and intended to be part of the agency record for decision must be served upon the representatives of each party of record concurrently with filing with the presiding officer and any other person designated by the agency to receive filings in the case. The presiding officer may direct that some or all of these documents be served on interested or affected persons who are not parties. The presiding officer may also direct the means of service the parties are to use during a contested case proceeding. ()

352. SERVICE BY AGENCY OR PRESIDING OFFICER (RULE 352).

01. Service by the Agency. Unless otherwise required by statute or rule, the officer designated by the agency to serve notices, summonses, complaints, or orders issued by the agency, that initiate or conclude a contested case proceeding, may serve these documents by regular mail, or by certified mail with return receipt requested, to a party's last known mailing address, or by personal service. ()

02. Service by a Presiding Officer. Unless otherwise required by statute or rule, if a party has appeared in a contested case, the presiding officer, in their discretion, may determine the governing means of service during the contested case proceeding. Service may be effectuated by personal service, regular mail, certified mail with return receipt requested, or e-mail. Where a party has appeared by e-mail, service by e-mail shall be the preferred means of service. When an item to be served is too large for e-mail, service may be made by other means.

with e-mail notice to the party as to how the item is being served. ()

03. Proof of Service. Every notice and order that the agency or presiding officer serves in a contested case must be accompanied by proof of service stating the service date, each party or other person who was served, and the method of service. The agency or presiding officer may use a proof of service similar to those used by parties. ()

353. WHEN SERVICE COMPLETE (RULE 353).
Unless otherwise provided by statute, rule, order, or notice, service is complete when a copy is deposited in the United States mail, Statehouse mail, or with a third-party commercial overnight service; when personal service is made; or when there is an electronic verification that an e-mail has been sent. ()

354. PROOF OF SERVICE (RULE 354).
Every document that a party or interested person files and intends to be part of the agency record must be accompanied by proof of service by the following or similar certificate:

I HEREBY CERTIFY (swear or affirm) that I have on
this _____ day of _____,
served the foregoing (name(s) of document(s)) upon all parties of record in this proceeding, (by delivering a copy thereof in person: (list names)) (by mailing a copy thereof, properly addressed with postage prepaid, to: (list names and addresses)).
(by e-mail to: (list names and e-mail addresses))
(Signature) ()

355. – 399. (RESERVED)

SUBCHAPTER E – PREHEARING MATTERS (RULES 400-499)
Rules 400 Through 424 – Prehearing Conferences

400. PURPOSES OF THE SCHEDULING CONFERENCE (RULE 400).
The presiding officer may, by order or notice issued to all parties and to all interested persons, convene a scheduling conference in a contested case for the purposes of: identifying or simplifying the issues; identifying stipulations of fact or evidence to avoid unnecessary discovery; scheduling discovery when discovery is authorized before the agency, as well as identifying the allowed types of discovery and limitations thereon; arranging for the exchange of proposed exhibits and witness lists; discussing the potential for, or status of, ADR; scheduling of the prehearing conference, evidentiary hearing, and other hearings; establishing anticipated procedures at the evidentiary hearing and other hearings; determining the format and/or location of the evidentiary hearing; determining any transcription or additional recording request by any party; identifying facts and materials for which official notice may be had; resolving any accommodation requests, including, but not limited to, ADA or interpreter requests; and addressing other matters that may aid in the just, speedy, and inexpensive disposition of the proceeding. ()

401. NOTICE OF SCHEDULING CONFERENCE (RULE 401).
Except where differently required by statute or rule, notice of the place, date, and hour of a scheduling conference should be served within seven (7) days of appointment of the presiding officer, and the scheduling conference should, when feasible, be held within fourteen (14) days of appointment of the presiding officer. The place, date, or hour of a scheduling conference may also be set or reset by agreement of the parties, subject to approval by the presiding officer, or by the presiding officer on their own initiative, if the presiding officer finds it necessary and appropriate. ()

402. PURPOSES OF THE PREHEARING CONFERENCE (RULE 402).
Except where otherwise required by statute or rule, or where the presiding officer determines a prehearing conference is not necessary based upon the needs of the case, the presiding officer should convene a prehearing conference in a contested case no less than seven (7) days prior to the evidentiary hearing, except where the presiding officer determines that the needs of the case require otherwise. The purposes of the prehearing conference shall include: identifying or simplifying the issues; identifying stipulations of fact or evidence to avoid unnecessary proof; disposition of pending motions; confirming compliance with all prehearing deadlines; discussing the potential for, or status of, ADR; avoidance of unnecessary proof and of cumulative evidence; establishing procedures at the

evidentiary hearing and other hearings; addressing proposed stipulations between the parties regarding any facts or evidence; and addressing other matters that may aid in the just, speedy, and inexpensive disposition of the proceeding. ()

403. ORDERS RESULTING FROM CONFERENCES (RULE 403).

The presiding officer should issue a written order based upon the results of, agreements reached at, and rulings made at any scheduling or prehearing conference. Orders issued regarding the results of conferences will control the course of subsequent proceedings, unless modified by the presiding officer for good cause. Any such order issued shall be served upon all parties and to all interested persons to the proceeding. ()

404. OTHER STATUS CONFERENCES BEFORE THE EVIDENTIARY HEARING (RULE 404).

Upon approved request by any party to the presiding officer or on the presiding officer's own initiative, a status conference may be set at any time prior to the evidentiary hearing to address any matter that may aid in the just, speedy, and inexpensive disposition of the proceeding. ()

405. RECORD OF CONFERENCES (RULE 405).

Prehearing conferences must be held formally before the presiding officer. All other conferences may be held formally (on the record) or informally (off the record) before the presiding officer. Agreements by the parties may be put on the record during formal conferences, or may be reduced to writing and filed after the conference. The results of any informal conference, or any agreements reached therein, must be later put on the record, either verbally in subsequent conference or filed in writing, to be considered part of the agency record. ()

406. – 424. (RESERVED)

Rules 425 through 449 – Defaults

425. DEFAULT (RULE 425).

A presiding officer may enter a default order against any party pursuant to the provisions of Section 67-5242, Idaho Code. ()

01. Procedure if No Petition to Vacate is Filed. If no timely petition to vacate is filed by the party subject to a proposed default order, the presiding officer should issue or vacate the default no later than three (3) days after the expiration of the time within which the party could have filed the petition, or otherwise as promptly as possible, except where a shorter period is directed by law. ()

02. Procedure Upon Filing of a Petition to Vacate. Upon the timely filing of a petition to vacate by a party subject to a proposed default order, the presiding officer may request additional briefing from the parties, and may also set a conference for argument regarding the proposed default order. Whether additional briefing and/or argument is accepted, the presiding officer should issue or vacate the default no later than fourteen (14) days after the petition to vacate is filed, except where a shorter period is directed by law. ()

03. Procedure After Default. Upon the issuance of a default order, the presiding officer shall set a conference with the non-defaulting party to determine which remaining proceedings, if any, are still needed to complete the adjudication. Such conference should be held as soon as practicable after the issuance of the default order. ()

04. Notices to Defaulting Party. While the defaulting party shall not participate in any remaining proceedings, the presiding officer shall direct that all subsequent filings, including all orders issued in the contested case proceeding, continue to be served on the defaulting party by the most appropriate means, as determined by the presiding officer. ()

426. CONTINUANCE IN LIEU OF DEFAULT (RULE 426).

A presiding officer may, in the interest of due process and on their own motion, decline to issue a notice of a proposed default order, and instead make a reasonable continuance of the proceedings. If the same party subsequently fails to attend any stage of the continued proceedings, a notice of a proposed default order must be issued. ()

427. – 449. (RESERVED)

Rules 450 through 474 – Discovery

450. KINDS AND SCOPE OF DISCOVERY LISTED (RULE 450).

01. Discovery. Generally. Parties are encouraged to informally exchange information and documentation which will aid in the just, speedy, and inexpensive disposition of the proceeding. Except where prohibited by statute or rule, discovery may be conducted as agreed between the parties or where ordered by the presiding officer on their own initiative. The presiding officer may, in their discretion, limit any discovery on the grounds that it:

- a.** Does not appear relevant;
- b.** Appears unduly repetitious;
- c.** Violates any constitutional, statutory, or regulatory provisions;
- d.** Violates any privilege provided by statute or recognized by the courts of Idaho;
- e.** Appears to be made in bad faith;
- f.** Is not proportional to the needs of the proceeding; and/or
- g.** Otherwise exceeds the permitted scope of discovery as defined in these rules.

02. Kinds and Scope - Rules of Civil Procedure. Unless otherwise provided by statute, rule, order, or notice, when discovery is authorized before the agency, the kinds and scope of discovery is governed by the Idaho Rules of Civil Procedure, subject to any limitations established by the presiding officer.

451. WHEN DISCOVERY AUTHORIZATION NOT REQUIRED (RULE 451).

The agency or agency staff may conduct any inspection, examination, or investigation authorized by statute or rule at any time without making a discovery request or filing a motion to compel discovery. This rule recognizes, but does not enlarge or restrict, an agency's statutory and/or regulatory right of inspection, examination (including mental or physical examination), or investigation which is independent of, and cumulative to, any right of discovery in contested case proceedings, and may be exercised by the agency whether or not a person is party to a contested case proceeding before the agency. Information obtained from any such statutory or regulatory inspection, examination, or investigation may be used in any contested case proceeding or for any other purpose, except as restricted by statute or rule. The presiding officer may, by order and upon request by the agency, authorize or compel any such inspection, examination, or investigation authorized by statute or rule.

452. RIGHTS TO DISCOVERY RECIPROCAL (RULE 452).

Where permitted, all parties to a proceeding have a right of discovery of all other parties to a proceeding, subject to any limitations set by the presiding officer.

453. SUBPOENAS (RULE 453).

The presiding officer may issue subpoenas, as authorized by statute or rule, upon a party's motion or upon the presiding officer's own initiative. A subpoena may command the person to whom it is directed to appear to give testimony at an evidentiary hearing, any other hearing, or a deposition at a specified time and place. A subpoena that commands a person to produce or to permit inspection and copying of documents, electronically stored information or tangible things, or to permit inspection of premises, may be joined with a command to appear at an evidentiary hearing, any other hearing, or a deposition, or may be issued separately. Any party, or person upon whom the subpoena has been served, may move to quash a subpoena prior to the deadline for compliance with the subpoena.

454. FILING AND SERVICE OF DISCOVERY-RELATED DOCUMENTS (RULE 454).

Notices of deposition, cover letters stating that production requests, written interrogatories, or requests for admission have been served, cover letters stating answers to production requests, written interrogatories, or requests for

admission have been served or are available for inspection, and objections to discovery must be filed and served in the same fashion as other pleadings and motions in the proceeding. ()

455. PREPARED TESTIMONY AND EXHIBITS (RULE 455).

Order, notice, or rule may require a party or parties to file before hearing, and to serve on all other parties, prepared expert testimony and exhibits to be presented at hearing. Assigned exhibit numbers should be used for all prepared testimony. ()

456. SANCTIONS FOR FAILURE TO OBEY ORDER COMPELLING DISCOVERY (RULE 456).

The presiding officer may impose all sanctions recognized by statute or rule, including the rules of civil procedure, for failure to comply with an order compelling discovery or a duly-issued subpoena. ()

457. PROTECTIVE ORDERS (RULE 457).

The presiding officer may issue protective orders recognized by statute or rule, including the rules of civil procedure, limiting access to information and documents. ()

458. – 474. (RESERVED)

Rules 475 through 499 – Evidence

475. RULES OF EVIDENCE (RULE 475).

Evidence is admissible, and excludable, as provided in Section 67-5251, Idaho Code. The presiding officer may exclude inadmissible evidence with or without motion. Evidence should be taken by the presiding officer to assist the parties' development of the record, not excluded to frustrate that development. The presiding officer at hearing is not bound by the Idaho Rules of Evidence, except as to rules governing evidentiary privileges, or where otherwise required by statute or rule. ()

476. EVALUATION OF EVIDENCE (RULE 476).

A presiding officer is entitled to weigh the quality of evidence presented, including the credibility of witnesses. While a presiding officer is not bound by the Idaho Rules of Evidence, except as provided in Rule 475, the presiding officer may assign less weight to evidence that would otherwise be inadmissible under the Idaho Rules of Evidence. ()

477. BURDEN OF PROOF (RULE 477).

Except as otherwise provided by statute, rule, regulation, or binding state or federal judicial decisional authority, the burden of proof is on the party requesting or challenging an agency action or order, or who is otherwise the proponent of an order or position. Absent an allegation of fraud, or a statute, rule, regulation, or binding state or federal judicial decisional authority requiring a higher standard, a preponderance of evidence standard applies. ()

478. HEARSAY (RULE 478).

The presiding officer may admit, weigh, and consider hearsay evidence. In evaluating hearsay, including hearsay which has been admitted without objection, the presiding officer should determine whether it is supported by circumstantial guarantees of trustworthiness, such as other corroborating evidence. A factual finding cannot be based solely on hearsay unless permitted by statute or where no objection has been made to the admission of the hearsay. ()

479. OFFICIAL NOTICE (RULE 479).

Official notice of facts may be taken as provided in Section 67-5251, Idaho Code. Any notice that official notice will be taken, or that official notice is requested, should be made in writing prior to any hearing in which the facts or material will be offered, and shall include either a copy of the facts or materials for which official notice may be taken, or citation to a readily-accessible source. If official notice of facts or materials is made at a hearing, for which official notice of such facts or materials had not been made prior to the hearing, the presiding officer may provide such recess or continuance sufficient to allow any party to contest and rebut the facts or material so noticed. ()

480. DEPOSITIONS AND PREPARED TESTIMONY (RULE 480).

Depositions and other prepared testimony, or parts thereof, may be offered into evidence and included in the record of hearing, with or without reading. Where only part of a deposition or prepared testimony is offered, a presiding officer may, upon motion or their own initiative, order that other parts of the deposition or prepared testimony be admitted.

()

481. OTHER WRITTEN EVIDENCE (RULE 481).

If a presiding officer determines that a part of the evidence in a contested case may be received in written form to expedite the case without substantially prejudicing the interests of any party, the presiding officer will allow any party to make objection thereto. ()

482. OBJECTIONS -- OFFERS OF PROOF (RULE 482).

Grounds for objection to the admission or exclusion of evidence must be stated briefly at the time the evidence is offered. When a party objects to the admission of evidence, the presiding officer will rule on the objection, or may receive the evidence subject to later ruling. For exhibits offered at hearing, the presiding officer should determine whether any party objects to the admission of the exhibit. Exhibits to which no objection is made are deemed admitted into evidence without the need for any additional action by the offering party. Formal exceptions to rulings admitting or excluding evidence are unnecessary and need not be taken, but offers of proof regarding excluded evidence are permitted. ()

483. EXHIBITS (RULE 483).

Exhibit numbers may be assigned to the parties by the presiding officer before hearing. Except where permitted by the presiding officer to be presented in digital form, exhibits prepared for hearing should ordinarily be printed on eight and one-half inch (8 1/2") by eleven inch (11") white paper, except maps, charts, photographs, and non-documentary exhibits may be introduced on the size or kind of paper customarily used for them. A copy of each documentary exhibit must be furnished to each party present and to the presiding officer, except for unusually bulky or voluminous exhibits that have previously been made available for the parties' inspection. Neither motion pictures, slides, opaque projections, videotapes, audiotapes, nor other materials not capable of duplication by still photograph or reproduction on paper shall be presented as exhibits without advance approval of the presiding officer. ()

484. POLYGRAPHS (RULE 484).

Except where required by statute or rule, results of polygraph examinations, and expert or lay opinion testimony based thereon, are not admissible unless all parties stipulate to admissibility. ()

485. EXPERTS (RULE 485).

A presiding officer may admit, weigh, and consider expert opinions, whether presented in writing or through testimony. Expert opinions are generally admissible if the proffering party demonstrates the relevancy of the expert opinions, as well as demonstrates the general reliability of the expert opinions, both as to methodology and qualifications of the expert. Expert testimony that is conclusory, offers legal opinions, or which is based solely upon hearsay, is inadmissible. Expert opinions may be offered in writing, and may be either set forth formally, as in an expert report, or informally, as in a letter, e-mail, records, or other similar writings. ()

486. INTERPRETERS (RULE 486).

01. Appointment. If an agency or presiding officer determines that an interpreter is needed for a hearing based upon a party's disability or lack of English language proficiency, the agency or presiding officer shall advise the party that he or she has a right to a qualified interpreter. If then requested, a qualified interpreter shall be appointed. A party needing interpretation may, alternatively, advise the agency or presiding officer that they will provide their own alternate qualified interpreter. ()

02. Oath. At the start of the hearing, the interpreter shall be sworn as follows: "Do you solemnly swear or affirm that you will interpret and/or translate accurately, completely, and impartially, using your best skill and judgment in accordance with the standards prescribed by law?" ()

03. Cost. The agency shall pay the cost of an interpreter needed for a hearing. Any alternate qualified interpreter used by the party needing interpretation shall be paid for solely by that party. ()

487. – 499. (RESERVED)

SUBCHAPTER F – HEARINGS (RULES 500-599)
Rules 500 Through 599 – Hearings

500. NOTICE OF HEARING (RULE 500).

If not previously set in an order following a scheduling or prehearing conference, notice of the time, place, and nature of the hearing will be served on all parties at least fourteen (14) days before the time set for hearing, unless the presiding officer finds by order that it is necessary or appropriate that the hearing be held earlier. Notices must list the names of the parties (or the lead parties if the parties are too numerous to name), the case number or docket number, the name of the presiding officer who will hear the case, the name, address, and telephone number of the person to whom inquiries about scheduling or hearing facilities should be directed, and the names of persons with whom the pleadings or other documents in the case should be filed if the presiding officer is not the person who should receive those documents. If no document previously issued by the agency has provided a statement of the legal authority under which the hearing is to be held and/or a short and plain statement of the matters asserted or the issues involved, the notice of hearing must do so. ()

501. HOW HEARINGS HELD (RULE 501).

Hearings may be held in person, by telephone, or by other remote technology, as agreed by the parties. If the parties are unable to agree how a hearing will be held, the presiding officer shall decide, based upon considerations of: locations of the parties; locations of any witnesses; agreements regarding the admission of prepared testimony or other evidence; complexity of the dispute; limitations in suitability of telephone or remote technology for one or more parties; and any other factor impacting the just, speedy, and inexpensive determination of the proceeding. However a hearing is held, all participants shall be afforded an opportunity to participate in the entire proceeding while it is taking place. ()

502. CONDUCT AT HEARINGS (RULE 502).

01. Nondisruptive Conduct. All persons attending a hearing must conduct themselves in a respectful and nondisruptive manner. No person shall interfere with the conduct of, disrupt, or threaten interference with or disruption of the hearing. ()

02. Abusive Or Improper Questioning Or Argument. A presiding officer may halt any questioning or argument they deem abusive or improper, with or without prior warning and with or without objection by a party. Continued abusive or improper questioning or argument thereafter by the same party may be deemed disruptive and subject to sanctions. ()

03. Audio-Visual Recordings. Except where otherwise not permitted by statute, rule, order, notice, or any other governing policy or procedure, audio-visual equipment, including cameras, microphones, and the like, may be operated in the hearing room by any attendee during the course of a hearing after permission is granted by the presiding officer and then only pursuant to any conditions the presiding officer may impose to avoid disruption of the hearing. At any time during the hearing, should disruption occur, the presiding officer may impose in their discretion any additional conditions upon the use of audio-visual equipment, including the revocation of permission for such use. ()

04. Sanctions for Disruptive Conduct. In the event of interference, disruption, or threat by any attendee to the hearing, the presiding officer shall read this rule to those persons causing such interference or disruption and thereafter proceed as deemed appropriate, which may include termination of the hearing or ordering the disruptive person to leave or be removed from the hearing. ()

503. CONFERENCE AT HEARING (RULE 503).

In any proceeding the presiding officer may convene the parties before hearing or recess the hearing to discuss formulation or simplification of the issues, admissions of fact or identification of documents to avoid unnecessary proof, exchanges of documents, exhibits, or prepared testimony, limitation of witnesses, order of procedure, and other matters that may expedite orderly conduct of the hearing. The presiding officer shall state the results of the conference on the record. ()

504. PRELIMINARY PROCEDURE AT HEARING (RULE 504).

Before taking evidence at a hearing, the presiding officer will call the hearing to order, take appearances of parties, and act upon any pending motions or petitions. The presiding officer may allow opening statements to explain a party's presentation. ()

505. CONSOLIDATION OF PROCEEDINGS (RULE 505).

The agency or the presiding officer may consolidate two (2) or more proceedings for hearing upon finding that they present issues that are related and that the rights of the parties will not be prejudiced. In consolidated hearings, the presiding officer determines the order of the proceeding. ()

506. ORDER OF PROCEDURE (RULE 506).

The presiding officer may determine the order of presentation of witnesses and examination of witnesses. ()

507. TESTIMONY UNDER OATH (RULE 507).

All testimony presented at hearing by any witness will be given under oath. Before testifying, each witness must swear or affirm that the testimony the witness will give before the presiding officer is the truth, the whole truth, and nothing but the truth. ()

508. PRESIDING OFFICER'S CALLING OR EXAMINING OF WITNESSES (RULE 508).

A presiding officer may call or examine a witness on their own or at a party's request. All parties are entitled to cross-examine the witness, and any party may make objections during the presiding officer's examination. ()

509. SEQUESTRATION OF WITNESSES (RULE 509).

On motion by a party, and upon showing of good cause, a presiding officer may order that any or all testifying witnesses be sequestered during a hearing. However, a named party and/or their designated representative, even if designated as a witness, shall not be sequestered. ()

510. PARTIES AND PERSONS WITH SIMILAR INTERESTS (RULE 510).

If two (2) or more parties or persons have substantially like interests or positions, to expedite the proceeding and avoid duplication, the presiding officer may limit the number of them who testify, examine witnesses, or make and argue motions and objections. ()

511. CONTINUANCE OF HEARING (RULE 511).

The presiding officer may continue a hearing to a later date, either upon motion or on their own initiative. ()

512. RULINGS AT HEARINGS (RULE 512).

The presiding officer rules on motions and objections presented at hearing. Rulings by the presiding officer may be made verbally on the record, or addressed by written order after hearing. ()

513. ORAL ARGUMENT (RULE 513).

The presiding officer may set and hear oral argument on any matter in the contested case on reasonable notice according to the circumstances. ()

514. BRIEFS – PROPOSED ORDERS – POSITION STATEMENTS (RULE 514).

In any contested case, the presiding officer may request, and any party or interested person may ask to submit, any briefs, proposed orders, or position statements regarding any issue in the proceeding. ()

515. – 599. (RESERVED)

**SUBCHAPTER G – POSTHEARING MATTERS (RULES 600-699)
Rules 600 Through 624 – Record For Decisions**

600. AGENCY RECORD (RULE 600).

01. Requirement. The agency shall maintain an official record of each contested case as provided for in Section 67-5249, Idaho Code. ()

02. Presiding Officers. Presiding officers shall provide the agency with the presiding officer's copy of the agency record within a reasonable time after the expiration of the time for any motion for reconsideration of a recommended or preliminary order, or at such other time as the agency may request. If the presiding officer is one assigned by the Office of Administrative Hearings, the Office of Administrative Hearings shall provide such copy of

the agency record to the agency. ()

601. RECORDING OR REPORTING OF HEARINGS (RULE 601).

01. In-Person and Telephonic Hearings. All in-person and telephonic hearings shall be recorded at the agency's expense, either by audiotape, digital audio, and/or court reporter, as selected by the presiding officer. Any party requesting a video recording of an in-person or telephonic hearing may do so at their own expense, subject to the presiding officer's determination that the recording does not cause distraction or disruption, which determination may be made at any time before or during the hearing. ()

02. Remote Video Hearings. All remote video hearings shall be recorded at the agency's expense, by digital audio, digital video, and/or court reporter, as selected by the presiding officer. ()

03. Transcripts. Any party may request an official transcript of any recording of any hearing at their own expense. However, if a party uses an official transcript for any purpose in the contested case proceeding, the full official transcript must be provided to all parties and the presiding officer. If a party is required to provide a copy of an official transcript to all parties and the presiding officer, the presiding officer may, in their discretion, direct all other parties to contribute to the expense of the official transcript. ()

04. Presiding Officers. In preparing any order, a presiding officer may rely upon any unofficial transcript of a hearing, including, but not limited to, any transcript automatically generated by computer software. If the presiding officer determines that an unofficial transcript of a hearing is incomplete or insufficient, or otherwise determines that an official transcript is required for any other reason, the presiding officer may direct the creation of an official transcript at the agency's expense. If the agency is not a party to the proceeding, the presiding officer may direct the creation of an official transcript at the parties' shared expense. ()

602. – 624. (RESERVED)

Rules 625 through 649 – Orders

625. RECOMMENDED ORDERS (RULE 625).

01. Definition. Recommended orders are orders issued by a person other than the agency head that will become a final order of the agency only after review of the agency head (or the agency head's designee) pursuant to Section 67-5244, Idaho Code. ()

02. Content. Except where otherwise provided by statute or rule, every recommended order must contain the following paragraphs or substantially similar paragraphs: ()

a. This is a recommended order of the presiding officer. It will not become final without action of the agency head. If you disagree with this recommended order, you may file a "motion for reconsideration" with the presiding officer, or you may file "exceptions" with the agency head. You are allowed to file both. ()

b. If you would like to file a motion for reconsideration of this recommended order with the presiding officer, you must do so within fourteen (14) days of the service date of this order. After the presiding officer receives your motion for reconsideration, they have twenty-one (21) days to rule upon it. If they do not issue a ruling within twenty-one (21) days, your motion will be considered denied. ()

c. If another party has filed a motion for reconsideration of this recommended order, you must file any opposition brief within fourteen (14) days from the service date of the motion for reconsideration. No further briefing by any party will be permitted unless the presiding officer, in their discretion, requests it. ()

d. You may also file any exceptions you may have to this recommended order, with a supporting brief, directly with the agency head within fourteen (14) days of the service date of this order, unless the agency head sets a different deadline. ()

e. If another party has filed exceptions to this recommended order with the agency head, you must file

any opposition brief within fourteen (14) days from the service date of the exceptions. No further briefing by any party will be permitted unless the agency head, in their discretion, requests it. ()

f. If you would like to request oral argument regarding any motion for reconsideration or exceptions, you must state so in your filings. The decision whether to have oral argument is a decision for the presiding officer or the agency head to make, and they may decide to not have oral argument, even if you or any other party has requested it. ()

03. Content if Reconsideration is Not Permitted or Feasible. Where statute or rule does not permit a motion for reconsideration, or otherwise renders a motion for reconsideration not feasible (e.g., insufficient time), the recommended order must contain the following paragraphs or substantially similar paragraphs: ()

a. This is a recommended order of the presiding officer. It will not become final without action of the agency head. If you disagree with this recommended order, you may file “exceptions” with the agency head. Motions for reconsideration filed with the presiding officer will not be considered. ()

b. You may file any exceptions you may have to this recommended order, with a supporting brief, directly with the agency head within [number of days for which the governing statute or rule would sufficiently allow for submission of exceptions and consideration thereof in advance of a final order, as determined by the presiding officer] days from the service date of this recommended order, unless the agency head sets a different deadline. ()

c. If another party has filed exceptions to this recommended order with the agency head, you must file any opposition brief within [number of days for which the governing statute or rule would sufficiently allow for submission of responses to exceptions and consideration thereof in advance of a final order, as determined by the presiding officer] days from the service date of the motion for reconsideration. No further briefing by any party will be permitted unless the agency head, in their discretion, requests it. ()

d. Oral arguments will not be allowed unless requested by the agency head. ()

04. Service of Recommended Orders. All recommended orders must be served on all parties contemporaneously with the issuance of the recommended order. ()

626. PRELIMINARY ORDERS (RULE 626).

01. Definition. Preliminary orders are orders issued by a person other than the agency head that will become a final order of the agency unless reviewed by the agency head or the agency head's designee pursuant to Section 67-5245, Idaho Code. ()

02. Content. Except as otherwise provided by statute or rule, every preliminary order must contain the following paragraphs or substantially similar paragraphs: ()

a. This is a preliminary order of the presiding officer. It can and will become final without further action of the agency, and without any further notice to you, unless any party requests that either the presiding officer or the agency head review it. If no such request is made within fourteen (14) days of the service of this preliminary order, the order will become final, and you will then have twenty-eight (28) days to file a petition for judicial review with a district court, pursuant to Idaho Code Sections 67-5270 through 67-5279. ()

b. If you disagree with this preliminary order, you may file a “motion for reconsideration” with the presiding officer, or you may file “exceptions” and/or a “petition for review” with the agency head. You are allowed to file all of these. ()

c. If you would like to file a motion for reconsideration of this preliminary order with the presiding officer, you must do so within fourteen (14) days of the service date of this order. After the presiding officer receives your motion for reconsideration, they have twenty-one (21) days to rule upon it. If they do not issue a ruling within twenty-one (21) days, your motion will be considered denied. ()

d. If another party has filed a motion for reconsideration of this preliminary order, you must file any opposition brief within fourteen (14) days from the service date of the motion for reconsideration. No further briefing by any party will be permitted unless the presiding officer, in their discretion, requests it. ()

e. You may also file any exceptions you may have to this preliminary order, with a supporting brief, directly with the agency head within fourteen (14) days of the service date of this order, unless the agency head sets a different deadline. ()

f. If another party has filed exceptions to this preliminary order with the agency head, you must file any opposition brief within fourteen (14) days from the service date of the exceptions. No further briefing by any party will be permitted unless the agency head, in their discretion, requests it. ()

g. You may also file a petition for review regarding this preliminary order, with a supporting brief which sets forth the basis for review, directly with the agency head within fourteen (14) days of the service date of this order, unless the agency head sets a different deadline. The agency head may also notify the parties within fourteen (14) days of the service date of this order, that they, by their own choice, are reviewing this preliminary order, which notice will identify the issues the agency head will review. If a motion for reconsideration has been filed with the presiding officer, your petition for review, or the agency head's notice, does not have to be filed until fourteen (14) days after the motion for reconsideration process with the presiding officer is complete. ()

h. If another party has filed a petition for review of this preliminary order with the agency head, you must file any opposition brief within fourteen (14) days from the service date of the petition for review. No further briefing by any party will be permitted unless the agency head, in their discretion, requests it. ()

i. If you would like to request oral argument regarding any motion for reconsideration, exceptions, or petition for review, you must state so in your filings. The decision whether to have oral argument is a decision for the presiding officer or the agency head to make, and they may decide to not have oral argument, even if you or any other party has requested it. ()

j. If an agency head reviews a preliminary order, they have the option of either issuing a final order, remanding the matter back to the presiding officer, or holding additional hearings. You will be notified of the agency head's choice if the preliminary order is reviewed. ()

03. Service of Preliminary Orders. All preliminary orders must be served on all parties contemporaneously with the issuance of the preliminary order. ()

627. FINAL ORDERS (RULE 627).

01. Definition. Final orders are preliminary orders that have become final under Rule 626 and Section 67-5245, Idaho Code, or orders issued by the agency head, either as the presiding officer or in regards to a recommended order, pursuant to Section 67-5246, Idaho Code. Emergency orders issued under Section 67-5247, Idaho Code, shall be designated as final orders if the agency will not issue further orders or conduct further proceedings in the matter. ()

02. Content. Except as otherwise provided by statute or rule, every final order issued by the agency head must contain the following paragraphs or substantially similar paragraphs: ()

a. This is a final order of the agency. ()

b. If you disagree with this final order, you will then have twenty-eight (28) days to file a petition for judicial review with a district court, pursuant to Sections 67-5270 through 67-5279, Idaho Code. ()

c. Prior to requesting judicial review of this final order, you may also file a "motion for reconsideration" with the agency head. If you do wish to file a motion for reconsideration, you must do so within fourteen (14) days of the service date of this order. After the agency head receives your motion for reconsideration, they have twenty-one (21) days to rule upon it. If they do not issue a ruling within twenty-one (21) days, your motion will be considered denied. ()

d. If another party has filed a motion for reconsideration of this final order, you must file any opposition brief within fourteen (14) days from the service date of the motion for reconsideration. No further briefing by any party, and no oral argument, will be permitted unless the agency head, in their discretion, requests it. ()

e. Once an agency head has ruled upon a motion for reconsideration, or if twenty-one (21) days have passed since the motion for reconsideration was filed without a ruling by the agency head, you will have twenty-eight (28) days to file a petition for judicial review with a district court, pursuant to Sections 67-5270 through 67-5279, Idaho Code. ()

03. Service of Final Orders. ()

a. Parties. Final orders must be served on all parties contemporaneously with the issuance of the final order. ()

b. Presiding officers. Final orders must be served on the presiding officer contemporaneously with the issuance of the final order. ()

c. Non-Parties. Where not otherwise directed by statute or order, final orders should, upon request, be made available for public inspection within a reasonable time after the issuance of the final order. The conspicuous posting of the final order on an agency website, by clearly identifying the action and providing an accessible electronic copy of the final order, shall be deemed to satisfy this requirement. ()

628. ORDERS REGARDING COSTS AND/OR FEES (RULE 628).

01. Scope of Rule. This rule provides procedures for considering requests for costs and/or fees (including attorneys' fees) when an agency has authority to award costs and/or fees under other provisions of law. This rule is not a source of authority for awarding costs and/or fees. ()

02. Filing of Motions for Awards of Costs and/or Fees. Unless otherwise provided by statute, rule, or order: ()

a. Procedure. Upon the issuance of a final order, any party seeking an award of costs and/or fees must file a motion within fourteen (14) days of the service date of the final order. The request must state the basis for which fees or costs may be awarded. Any opposition to the motion must be made within fourteen (14) days. Upon the making of such a motion, the agency head may issue an order upon the motion, or assign resolution of the motion to the presiding officer. Any order regarding a request for an award of costs and/or fees shall be final and subject to judicial review pursuant to Sections 67-5270 through 67-5279, Idaho Code. The filing of any motion for an award of costs and/or fees, and any proceedings thereon, do not extend, alter, or stay any other deadlines in the contested case proceeding. ()

b. Interlocutory requests. Motions for awards of costs and/or fees made prior to the issuance of a final order will not be ruled upon prior to the issuance of the final order, but will instead be deemed filed as of the date of the final order. ()

03. Orders Granting or Denying Costs and/or Fees. Every order granting or denying a request for costs and/or fees must cite the statutes or rules under which the determination of the request for costs and/or fees has been made. ()

629. ORDER NOT DESIGNATED (RULE 629).

If an order is not designated as interlocutory, recommended, preliminary, or final at its release, any party may move to designate the order as interlocutory, recommended, preliminary, or final, as appropriate. ()

630. MODIFICATION OF ORDERS ON PRESIDING OFFICER'S AND AGENCY HEAD'S OWN MOTION (RULE 630).

01. Recommended and Preliminary Orders. A presiding officer issuing a recommended or

preliminary order may modify the recommended or preliminary order on the presiding officer's own motion within fourteen (14) days after issuance by withdrawing the order and issuing an amended recommended or preliminary order. ()

02. Final Orders. The agency head may modify or amend a final order at any time before a petition for judicial review to district court has been filed or before the expiration of the time for the filing of a petition for judicial review to district court, whichever is earlier, by withdrawing the earlier final order and issuing an amended final order. ()

03. Other Orders. A presiding officer may modify or amend any other order issued by them at any time prior to the issuance of a preliminary or recommended order. An agency head may modify or amend any other order issued by them at any time prior to the issuance of a final order. ()

631. CLARIFICATION OF ORDERS (RULE 631).

Any party or person affected by an order may petition to clarify any order, whether interlocutory, recommended, preliminary, or final. Petitions for clarification from final orders do not suspend or toll the time to file a motion for reconsideration or appeal of the order. A petition for clarification may be combined with a motion for reconsideration or stated in the alternative as a motion for clarification and/or reconsideration. ()

632. STAY OF ORDERS (RULE 632).

Any party or person affected by an order may file a motion to stay any order, whether interlocutory or final. Interlocutory or final orders may be stayed by the judiciary according to statute or rule. A presiding officer may stay any interlocutory, preliminary, or recommended order on their own motion, and an agency head may stay any final order on their own motion. ()

633. VOIDING OF ORDERS (RULE 633).

01. Notice. Any notice to the Chief Administrative Hearing Officer pursuant to Section 67-5283(2)(b), Idaho Code, regarding the alleged failure of an independent contract hearing officer to comply with the requirements of Section 67-5283(2)(a), must be submitted in writing to, and received by, the Chief Administrative Hearing Officer within thirty (30) days of the issuance of the independent contract hearing officer's order, and should state whether the order involves a financial transaction and whether the noticing party requests a stay of the independent contract hearing officer's order. ()

02. Stay. If the Chief Administrative Hearing Officer determines that the independent contract hearing officer's order involves, or may involve, a financial transaction, the Chief Administrative Officer may promptly issue a stay of the independent contract hearing officer's order for the duration of the investigation, which shall be served on all parties to the contested case. ()

03. Investigation. ()

a. An investigation into an independent contract hearing officer's alleged failure to comply with the requirements of Section 67-5283(2)(a), Idaho Code, may be conducted by either the Chief Administrative Hearing Officer or any person contracted by them to conduct such investigation or a portion thereof. ()

b. The independent contract hearing officer being investigated shall promptly comply with all information and documentation requests made by the Chief Administrative Hearing Officer or their designee related to the alleged failure to comply. ()

04. Determination. Within fourteen (14) days of the notice regarding an alleged failure of an independent contract hearing officer to comply with the requirements of Section 67-5283(2)(a), Idaho Code, the Chief Administrative Hearing Officer shall issue a determination in writing of their findings and conclusions, which shall be served on all parties to the contested case. Upon issuance of a determination, any stay will automatically dissolve. ()

05. Voiding of Order. If the Chief Administrative Hearing Officer's written determination finds a failure to comply has occurred, or where an independent contract hearing officer fails to cooperate in an investigation

as to whether they failed to comply, the Chief Administrative Hearing Officer shall declare the independent contract hearing officer's order void and of no effect. The Chief Administrative Hearing Officer's investigation, determination, and voiding of an order pursuant to Section 67-5283(2)(b), Idaho Code, does not constitute a contested case proceeding under the APA, and is not an appealable agency order. ()

06. Reassignment. If the Chief Administrative Hearing Officer's written determination finds a failure to comply has occurred, the Chief Administrative Hearing Officer shall promptly reassign the contested case to another hearing officer for completion of the contested case. ()

634. – 649. (RESERVED)

Rules 650 through 699 – Judicial Review

650. JUDICIAL REVIEW, GENERALLY (RULE 650).

Sections 67-5270 through 67-5279, Idaho Code, and the rules of civil procedure govern who may petition for judicial review of a final agency order to district court, where and when such an appeal must be filed, and how the judicial review process will be conducted. ()

651. PETITION FOR JUDICIAL REVIEW (RULE 651).

A petition for judicial review filed by any party must be filed with the agency and with the district court, and must be served on all parties and the presiding officer. ()

652. – 699. (RESERVED)

SUBCHAPTER H – SPECIAL PROCEEDINGS (RULES 700-799)

Rules 700-724 – Intervention

700. INTERVENTION GENERALLY (RULE 700).

Persons who are not parties to a proceeding but who claim a direct and substantial interest in the proceeding may petition for an order from the presiding officer granting intervention to become a party. Where an agency participates in the hearing in a neutral capacity, the agency may petition to intervene to become a party. ()

701. FORM AND CONTENTS OF PETITIONS TO INTERVENE (RULE 701).

Petitions to intervene must comply with all rules governing form of pleadings. The petition must set forth the name and address of the potential intervenor and must state the direct and substantial interest of the potential intervenor in the proceeding. If affirmative relief is sought, the petition must state the relief sought and the basis for granting it. The petition must also include a proof of service reflecting service upon all existing parties to the proceeding. ()

702. TIMELY FILING OF PETITIONS TO INTERVENE (RULE 702).

Petitions to intervene must be filed at least twenty-one (21) days before the date set for hearing or prehearing conference, whichever is earlier, unless a different time is provided by order or notice. Petitions not timely filed must state a substantial reason for delay. The presiding officer may deny or conditionally grant petitions to intervene that are not timely filed for failure to state good cause for untimely filing, to prevent disruption or prejudice to existing parties or undue broadening of the issues, or for other reasons. Intervenors who do not file timely petitions are bound by orders and notices earlier entered as a condition of granting the untimely petition. ()

703. OPPOSITION TO PETITIONS TO INTERVENE (RULE 703).

No petition to intervene will be ruled upon by a presiding officer earlier than fourteen (14) days after its filing, except during or after a hearing in which any party may be heard. Any party opposing a petition to intervene must file an objection within seven (7) days after receipt of the petition to intervene and serve the objection upon all parties of record and the proposed intervenor(s). ()

704. HEARING ON PETITIONS TO INTERVENE (RULE 704).

Where necessary to develop a full record on the question of intervention, the presiding officer shall conduct a hearing on the petition to determine whether intervention will be permitted and to define the scope of intervention and any limitations thereon. All parties to the proceeding will be permitted to participate in such a hearing, and will be permitted to offer testimony and exhibits. ()

705. ORDERS ON PETITIONS TO INTERVENE (RULE 705).

If a petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding, does not unduly broaden the issues, and does not unduly delay or prejudice the original parties, the presiding officer will grant intervention, unless the petitioner's interest is already adequately represented by one or more parties already participating in the case. The order granting intervention may be subject to reasonable conditions as determined by the presiding officer, including limiting the factual or legal issues the intervenor may raise and/or the means an intervenor may use to present and develop those issues, so as to avoid undue delay or prejudice to the original parties. If it otherwise appears that an intervenor has no direct or substantial interest in the proceeding, or that intervention would unduly broaden the issues, or unduly delay or prejudice the original parties, the presiding officer may deny the petition. ()

706. DENIAL OF INTERVENTION DOES NOT PRECLUDE PARTICIPATION (RULE 706).

A person whose petition for intervention is denied may still, subject to these rules and the discretion of the presiding officer, participate in the proceeding as an interested person or a public witness. ()

707. – 724. (RESERVED)

Rules 725-749 – Declaratory Rulings

725. FORM AND CONTENTS OF PETITIONS FOR DECLARATORY RULINGS (RULE 725).

A petition for declaratory ruling on the applicability of a statute, a rule administered by an agency, or an order issued by an agency is a pleading which initiates a declaratory proceeding. The form and content of a petition for declaratory ruling must substantially comply with this rule, as determined by the presiding officer. ()

01. Form. Petitions for declaratory rulings must comply with all rules governing form of pleadings. ()

02. Content. Petitions for declaratory rulings shall: ()

a. Identify the petitioner and state the petitioner's interest in the matter; ()

b. State the declaratory ruling the petitioner seeks; and ()

c. Indicate the statute, order, or rule for which a declaratory ruling is requested, and the factual allegations which support the petitioner's request. ()

03. Legal Assertions. Legal assertions in the petition may be accompanied by citations to caselaw, statutes, or other authority. ()

726. SERVICE AND NOTICE OF PETITION FOR DECLARATORY RULING (RULE 726).

At a minimum, the petitioner must serve a copy of their petition on any person the petitioner knows would be affected by the declaratory relief sought. Further, notice of a petition for declaratory ruling should also be made by the petitioner in a manner designed to call its attention to persons likely to be interested in the subject matter of the petition. The presiding officer may direct the petitioner and/or the agency to make, or attempt to make, notice or service to potentially interested persons if those potentially interested persons have not previously been notified of, or served with, the petition. ()

727. PROCEEDINGS (RULE 727).

01. Determination Of Need For Hearing. The presiding officer shall have thirty (30) days to determine if a hearing on the petition for declaratory ruling is needed. ()

02. No Hearing Needed. If the presiding officer determines that a decision can be rendered on the face of the petition without hearing or further proceedings, the presiding officer shall thereafter render, as soon as practicable, a preliminary or recommended order reflecting the determination that no hearing is needed and the reasons therefor, and the declaratory ruling. If the presiding officer is an agency head, the order reflecting the

determination that no hearing is needed and the reasons therefor, and declaratory ruling, shall issue as a final order. ()

03. Hearing Needed. If a presiding officer determines that a hearing is needed, the petitioner, the agency, and any other interested persons shall be notified, and a hearing upon the petition shall be held as soon as practicable. A declaratory hearing shall be conducted utilizing the contested case proceeding rules herein, and a preliminary or recommended order setting forth the declaratory ruling shall be issued as soon as practicable after the hearing. If the presiding officer is an agency head, the order reflecting the declaratory ruling shall issue as a final order. ()

728. SPEEDY HEARING PERMITTED (RULE 728).

Parties may request, or a presiding officer may order sua sponte, a speedy hearing on a petition for declaratory ruling. In evaluating the need or request for a speedy hearing, a presiding officer should weigh both factors favoring speedy hearing, such as an imminent deadline facing petitioner, and factors disfavoring speedy hearing, such as impairment to notice and/or due process. ()

729. LIMITATIONS (RULE 729).

01. Contested Cases. ()

a. Petitions for declaratory rulings, or other requests for declaratory relief, are not permitted where the requested declaratory relief addresses the same subject matter or issues of an existing contested case. ()

b. Further, in responding to a petition for declaratory relief, an agency may make motion to the presiding officer to dismiss the declaratory proceeding upon a showing that the agency has initiated a contested case to address the same subject matter or issues of the declaratory action. ()

02. No Limitation On Other Agency Action. The provisions of these rules regarding petitions for declaratory rulings shall not be construed in any way to preclude: ()

a. Any person from requesting an agency to informally interpret a pertinent statute, rule, or order in the routine course of agency business, whether such request is made in-person, by mail, by e-mail, or by telephone; ()

b. An agency from providing an informal interpretation in response to any such request; or ()

c. An agency from issuing any agency guidance of any kind, as defined in Section 67-5250, Idaho Code. ()

730. – 749. (RESERVED)

Rules 750-799 – Emergency Proceedings

750. SERVICE OF EMERGENCY ORDER (RULE 750).

Orders issued as the result of an emergency proceeding under Section 67-5247, Idaho Code, shall be served upon all persons required to comply with the order by both certified mail, return receipt requested, and additionally by e-mail or personal service, where feasible. ()

751. HEARING ON EMERGENCY ORDER (RULE 751).

01. Time for Hearing. The hearing upon an emergency order shall be held no later than twenty-eight (28) days after the issuance of the emergency order, except as otherwise provided by statute, rule, or order. ()

02. Appointment of Presiding Officer. No later than three (3) days after the issuance of the emergency order, the agency shall assign the matter to the Office of Administrative Hearings, or, where otherwise authorized by statute or rule, appoint a presiding officer. ()

03. Notice of Proposed Hearing. As quickly as feasible, the presiding officer shall issue a notice of proposed hearing date. ()

a. Service. The notice of hearing shall be served upon all persons required to comply with the order by both certified mail, return receipt requested, and additionally by e-mail or personal service, where feasible. The agency may be served by e-mail or regular mail. ()

b. Content. Except as otherwise provided by statute or rule, the notice of proposed hearing date must contain the following paragraphs or substantially similar paragraphs: ()

i. You have a right to have an evidentiary hearing before the agency as quickly as feasible if you wish to contest the Emergency Order dated [insert date of order]. Any hearing will be conducted as a contested case hearing pursuant to Chapter 52, Title 67 of the Idaho Code. ()

ii. Pursuant to Section 67-5252, Idaho Code, the presiding officer shall, at the time of hearing: ()

(1) Regulate the course of the proceedings to assure that there is a full disclosure of all relevant facts and issues, including such cross-examination as may be necessary, and ()

(2) Shall afford all parties the opportunity to respond and present evidence and argument on all issues involved, except as restricted by a limited grant of intervention or a prehearing order. ()

iii. The hearing date identified in this notice is a proposed hearing date. If you would like to request a different date, you may contact the presiding officer identified in this notice within seven (7) days of receiving this notice. You may contact the presiding officer to make your request by phone, e-mail, or by formal filing with the presiding officer. If you do not timely request a different date, the hearing will be held on the date proposed in this notice. ()

04. Request for Alternative Hearing Date. Within seven (7) days of receipt of the notice of proposed hearing, any party can request an alternative hearing date, for a date sooner or later than proposed. Such request may be made to the presiding officer informally, via e-mail or telephone. The presiding officer shall hold a conference as soon as practicable with all parties to select a new date. ()

05. Regular Proceedings Permitted. Although the hearing upon an emergency order shall be treated as an appeal of an agency order, any party participating therein shall be entitled to any discovery, presentation of evidence, or other contested case activities as would have been afforded as if the emergency order had not been issued. ()

06. Stay. Motions requesting stay of the emergency order are permitted; however, no stay may be granted by the presiding officer except upon stipulation by the agency to the stay and any terms governing the stay. ()

752. – 799. (RESERVED)

SUBCHAPTER I – AGENCY-SPECIFIC RULES (RULES 800-899)
Rules 800 Through 809 Agency-Specific Contested Case Rules

800. OTHER AGENCY-SPECIFIC CONTESTED CASE RULES (RULE 800).

01. Mandatory Application. Some agencies have promulgated their own contested case rules to comply with applicable federal law or specific requirements of Idaho law applicable to the agency or programs it administers. The presiding officer shall adopt and apply any such agency-specific rules, including temporary rules. Agency-specific rules which were promulgated as alternative procedures to the prior Idaho Rules of Administrative Procedure of the Attorney General shall continue to be adopted and applied, except as may conflict with any of these Idaho Rules of Administrative Procedure. Previously-promulgated alternative procedures which conflict with these Idaho Rules of Administrative Procedure, but which are otherwise mandated by federal or state statute, rule,

regulation, or binding state or federal judicial decisional authority, shall be adopted and applied notwithstanding these Idaho Rules of Administrative Procedure. ()

02. Optional Application. Agency-specific contested case procedures may also be reflected in agency policies, procedures, or other non-rule guidance. Upon request of the agency no later than the initial scheduling conference, the presiding officer may adopt and apply such agency-specific policies, procedures, or other non-rule guidance, provided that such policies, procedures, or other non-rule guidance are publicly-available pursuant to Section 67-5250, Idaho Code; however, any such policies, procedures, or non-rule guidance which are required to comply with applicable federal law shall be adopted and applied. ()

801. – 899. (RESERVED)

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LEGAL NOTICE

Summary of Proposed Rulemakings

PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all required information concerning their intent to change or make new the following rules in the latest publication of the state Administrative Bulletin.

*The proposed rule public hearing request deadline is October 18, 2023, unless otherwise posted.
The proposed rule written comment submission deadline is October 25, 2023, unless otherwise posted.
(Temp & Prop) indicates the rulemaking is both Temporary and Proposed.
(*PH) indicates that a public hearing has been scheduled.*

IDAPA 02 – IDAHO DEPARTMENT OF AGRICULTURE PO Box 7249, Boise, ID 83707

02-0213-2301, Commodity Dealers' Rules. Zero-Based Rulemaking (ZBR) Chapter Rewrite clarifies procedure for licensing, assessment collection and remittance, determining claim value, maintaining electronic records, use of electronic scales and Department remedies for non-compliance.

02-0214-2301, Rules for Weights and Measures. Proposed rule updates incorporated document for commercial weighing and measuring devices.

02-0215-2301, Rules Governing the Seed Indemnity Fund. ZBR Chapter Rewrite outlines definitions, licensing procedure, recordkeeping requirements, collection and remittance to, and claim processes with, the Seed Indemnity Fund, and remedies of the Department for non-compliance.

02-0303-2301, Rules Governing Pesticide and Chemigation Use and Application. ZBR Chapter Rewrite governs the use, application, and registration of pesticides; licensing of pesticide applicators; and responsibilities for chemigation in Idaho.

02-0414-2301, Rules Governing Dairy Byproduct. ZBR Chapter Rewrite provides for review, approval, and enforcement by the Department of dairy environmental management plans.

02-0423-2301, Rules Governing Commercial Livestock Truck Washing Facilities. ZBR Chapter Rewrite regulates the permitting, construction, and management of commercial livestock truck washing facilities to protect the natural resources and water in Idaho.

02-0430-2301, Rules Governing Environmental and Nutrient Management. ZBR Chapter Rewrite governs: soil samplers and nutrient management planners certification and soil sample collection; contents request for, and formation of, a CAFO Site Advisory Team; development and submission of a site suitability determination to appropriate officials; management of odor and stockpiling of waste on agricultural operations.

02-0432-2301, Rules Governing Poultry Operations. ZBR Chapter Rewrite details the management practices of waste systems on poultry concentrated animal feeding operations.

02-0601-2301, Rules Governing the Production and Distribution of Seed. Changes reflect an industry petition for the agency to raise fees based on surrounding state and private sector seed labs to help support and sustain Idaho's seed program.

02-0602-2301, Rules Governing Registrations and Licenses. Proposed rule updates documents incorporated by reference to regulate commercial feed and fertilizer and soil and plant amendments.

02-0604-2301, Rules Governing Plant Exports. ZBR Chapter Rewrite governs the production of pest-free plants and plant products, provides procedures for compliance with phytosanitary regulations, and certification of virus-free nursery stock for export.

02-0609-2301, Rules Governing Invasive Species and Noxious Weeds. Updates reference document of decontamination protocols for firefighting equipment; creates lists of invasive insects and mollusks species; and

updates noxious weed lists.

02-0610-2301, Rules Governing the Growing of Potatoes. ZBR Chapter Rewrite provides the procedures for all potato management within Seed Potato Crop Management Areas; establishes procedures of testing uncertified seed potatoes; and the prevention of pests and disease in potato crops.

02-0616-2301, Rules Governing Honey Standards. ZBR Chapter Rewrite applies to all honey produced by honeybees and incorporates by reference the United States Standards for Grades of Extracted Honey as a quality control program.

02-0633-2301, Organic Food Products Rules. Proposed rule updates the National Organic Program Regulations incorporated document to ensure that organic certification is valid for customers wishing to utilize the agency for certification services.

IDAPA 05 – IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

PO Box 83720, Boise, ID 83720-0285

***05-0102-2301, Rules and Standards for Secure Juvenile Detention Centers.** (*PH) ZBR Chapter Repeal moves necessary provisions to 05.01.04.

***05-0104-2301, Rules Governing County Juvenile Probation and Detention Services.** (*PH) ZBR Chapter Rewrite ensures that, with Department oversight, all county juvenile probation services departments and county juvenile detention centers operate under consistent standards.

***05-0201-2301, Rules for Residential Treatment Providers.** (*PH) ZBR Chapter Repeal shifts enforcement expectations to contract language.

IDAPA 08 – STATE BOARD OF EDUCATION

PO Box 83720, Boise, ID 83720-0037

08-0102-2301, Rules Governing the Postsecondary Credit Scholarship Program. ZBR Chapter Repeal due to changes in governing law.

08-0113-2302, Rules Governing the Opportunity Scholarship Program. Amendments move deadline for initial awards from July 1 to December 31 each year; and allow the Board to make awards pending financial need verification should student access to FAFSA be delayed.

08-0203-2301, Rules Governing Thoroughness. Changes remove duplicative satisfaction and engagement survey for alternative high schools.

08-0401-2301, Rules of the Idaho Digital Learning Academy. ZBR Chapter Rewrite provides requirements for the governance and administration of the Idaho Digital Learning Academy's Board of Directors.

IDAPA 11 – IDAHO STATE POLICE / STATE BRAND BOARD

PO Box 1177, Meridian, ID 83680-1177

11-0201-2301, Rules of the Idaho State Brand Board. Proposed rulemaking increases the cattle brand inspection fee by \$0.06 per head inspected.

IDAPA 12 – IDAHO DEPARTMENT OF FINANCE

800 Park Blvd, Ste 200, Boise, ID 83720-0031

12-0104-2301, Rules Pursuant to the Idaho Credit Union Act. ZBR Chapter Rewrite implements statutory intent with respect to the regulation and supervision of state-chartered credit unions in Idaho.

12-0108-2301, Rules Pursuant to the Uniform Securities Act (2004). ZBR Chapter Rewrite relates to the offer and sale of securities and the giving of investment advice in the state of Idaho by licensed individuals.

12-0110-2301, Rules Pursuant to the Idaho Residential Mortgage Practices Act. ZBR Chapter Rewrite adopts documents incorporated by reference to enforce provisions related to required disclosures; restricting fees and charges; deceptive advertising practices; and, prohibited practices in residential mortgage brokering, lending, and origination.

IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME

PO Box 25, Boise, ID 83707

13-0106-2301, Rules Governing Classification and Protection of Wildlife. ZBR Chapter Rewrite establishes the classification and protection of wildlife including big and upland game animals, game birds and fish, fur-bearing animals, protected non-game species, and unprotected wildlife.

13-0108-2301, Rules Governing Taking of Big Game Animals. Proposed rule allows for the use of any metal or metal alloy in muzzleloaders and removes the restriction of non-jacketed projectile. Additional change allows for accuracy tips and pressure bases.

13-0111-2301, Rules Governing Fish. ZBR Chapter Rewrite integrates provisions from repealed chapter to govern: commercial and non-commercial take, seasons transport, and possession limits for all non-commercial fishing; the release of fish and crustacea; and fishing contests.

13-0112-2301, Rules Governing Commercial Fishing. ZBR Chapter Repeal moves necessary provisions to companion docket 13-0111-2301.

13-0115-2301, Rules Governing the Use of Dogs. ZBR Chapter Rewrite concerns the use of dogs in taking wildlife and use of game birds in field training dogs in Idaho.

IDAPA 15 – OFFICE OF THE GOVERNOR

Division of Human Resources and Personnel Commission, PO Box 83720, Boise, ID 83720-0066

Idaho State Liquor Division, 1349 E Beechcraft Ct, Boise, ID 83716

15-0401-2301, Rules of the Division of Human Resources and Idaho Personnel Commission. ZBR Chapter Rewrite establishes the policies and procedures of the Idaho Personnel System for public service employment.

15-1001-2301, Rules of the Idaho State Liquor Division. ZBR Chapter Rewrite governs Division operations and supports the Idaho Liquor Act, Title 23, Idaho Code, through regulation of retail stores, distributing stations, and suppliers; and establishes fees.

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

PO Box 83720, Boise, ID 83720-0036

***16-0305-2301, Eligibility for Aid to the Aged, Blind, and Disabled (AABD).** (*PH) ZBR Chapter Rewrite provides standards for issuing AABD cash benefits and related Medicaid benefits in the administration of public assistance programs.

***16-0310-2101, Medicaid Enhanced Plan Benefits.** (*PH) (Temp & Prop) Rule change aims to decrease regulatory burden, implements operations for end of public health emergency, compliance updates with K.W. Settlement, and aligns with federal regulations regarding conflicts of interest.

***16-0313-2101, Consumer-Directed Services.** (*PH) (Temp & Prop) Rule change makes technical corrections decreasing regulation, implements end of public health emergency, compliance updates with K.W. Settlement, and aligns with federal regulations regarding conflicts of interest.

***16-0318-2301, Medicaid Cost-Sharing.** (*PH) ZBR Chapter Rewrite describes general requirements regarding administration of the cost-sharing provisions for participation in a medical assistance program providing direct benefits in Idaho.

***16-0739-2301, Designated Examiners and Dispositioners.** (*PH) Proposed rule comports statutory changes by updating the application and letter of designation, such as a Senior Designated Examiners, for designated examiners and dispositioners operating in the state.

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

PO Box 83720, Boise, ID 83720-0050

***20-0501-2301, Rules Pertaining to the Recreational Use of Endowment Land.** (*PH) New Chapter prescribes recent legislation mandating rules that govern the closure, restriction, regulation, or prohibition of certain regulated recreational uses on Idaho endowment lands.

IDAPA 24 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES

11341 W Chinden Blvd, Bldg 4, Boise, ID 83714

***24-1801-2301, Rules of the Real Estate Appraiser Board.** (*PH) ZBR Rewrite governs the practice of real estate appraisal in Idaho by

establishing: minimum standards of competency and qualifications for applicants; fees related to licensure; continuing education for trainees and licensees; requirements for registered trainees and supervisors; and uniform standards of professional appraisal practice and code of ethics.

***24-3301-2301, Rules of the Board of Medicine for the Licensure to Practice Medicine and Osteopathic Medicine in Idaho.** (*PH) Rulemaking addresses statutory changes resulting in the removal of the registration requirement for supervising physicians and the addition of a temporary registration for certain experienced international medical graduates.

***24-3910-2302, Rules of the Idaho Electrical Board.** (*PH) Rule change amends the Idaho Electrical Code, updates continuing education requirements, and adds residential electrician classification under supervision practice standards.

**IDAPA 26 – DEPARTMENT OF PARKS AND RECREATION
5657 Warm Springs Ave, Boise, ID 83716**

***26-0110-2301, Rules Governing the Administration of Temporary Permits on Lands Owned by the Idaho Department of Parks and Recreation.** (*PH) ZBR Rewrite sets forth procedures for administration of temporary permits on lands owned by the department by raising: 1) the processing fees for issuance or modification of a permit; and 2) the compensation for cost per acre, to be set by board action. Comment by 10-26-23.

***26-0120-2301, Rules Governing the Administration of Park and Recreation Areas and Facilities.** (*PH) Rulemaking updates definitions and standards, check-out time for facilities, fee caps on items currently at or near the cap, and the modification fee to separate out individual campsites and facilities from special use and group; removes redundant or unnecessary sections and fee schedules for winter recreational programs; and adds ability for day, month, season admission to the admission fee. Comment by 10-26-23.

**IDAPA 31 – IDAHO PUBLIC UTILITIES COMMISSION
11331 W Chinden Blvd, Bldg 8, Ste 201-A, Boise, ID 83714**

31-1201-2301, Systems of Accounts for Public Utilities Regulated by the Idaho Public Utilities Commission. ZBR Chapter Rewrite provides requirements for electric, gas, telephone, and water public utilities to maintain their books and records according to the systems of accounts.

31-2101-2301, Customer Relations Rules for Gas, Electric, and Water Public Utilities (The Utility Customer Relations Rules). ZBR Chapter Rewrite sets rules with regard to: deposits; guarantees; billing; application, denial or termination of service; and complaints to utilities.

31-2601-2301, Master-Metering Rules for Electric Utilities. ZBR Chapter Rewrite applies to electric utility companies that are defining when and under what circumstances their customers may master-meter tenants of the customer.

31-3101-2301, Gas Service Rules. ZBR Chapter Rewrite sets preliminary requirements and standards for service for gas utilities providing service.

**IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES
PO Box 83720, Boise, ID 83720-0098**

37-0308-2301, Water Appropriation Rules. ZBR Chapter Rewrite sets permitting procedures to divert and use unappropriated public waters.

**IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT
11331 W Chinden Blvd, Boise, ID 83714**

39-0204-2301, Rules Governing Manufacturer and New Vehicle Dealer Hearing Fees. ZBR Chapter Repeal due to changes in governing law.

39-0222-2301, Rules Governing Registration and Permit Fee Administration and Temporary Vehicle Clearance for Carriers. Rulemaking removes quarterly reporting provisions being moved and consolidated in companion docket 39-0301-2301 regarding special permit combinations.

39-0242-2301, Rules Governing Conditional Vehicle Registration When Proof of Ownership is Insufficient. ZBR Chapter Rewrite establishes conditional vehicle registration when applicant does not have sufficient proof of ownership and issuance of 30-day temporary motor vehicle permits.

39-0246-2301, Rules Governing Temporary Motor Vehicle Registration Permit. ZBR Chapter Repeal moves needed provisions to 39-0242-2301.

39-0260-2301, Rules Governing License Plate Provisions. ZBR Chapter Rewrite details various license plate allowances, special plate program provisions, and plate numbering structures necessary for managing the department's license plate programs.

39-0301-2301, Rules Governing Definitions Regarding Special Permits. ZBR Chapter Rewrite combines and consolidates IDAPA chapters 39.03.01 through 39.03.07 to form a single streamlined rule governing the conditions for issuing commercial vehicle special permits.

39-0302-2301, Rules Governing Movement of Disabled Vehicles. ZBR Chapter Repeal moves necessary provisions to 39-0301-2301.

39-0303-2301, Rules Governing Special Permits – General Conditions & Requirements. ZBR Chapter Repeal moves provisions to 39-0301-2301.

39-0304-2301, Rules Governing Special Permits – Overweight Non-Reducible. ZBR Chapter Repeal consolidates provisions in 39-0301-2301.

39-0305-2301, Rules Governing Special Permits – Oversize Non-Reducible. ZBR Chapter Repeal moves necessary provisions to 39-0301-2301.

39-0306-2301, Rules Governing Special Permits for Extra-Length/Excess Weight, Up to 129,000 Pound Vehicle Combinations. ZBR Chapter Repeal combines, consolidates, and moves necessary provisions to 39-0301-2301.

39-0307-2301, Rules Governing Special Permits for Reducible Loads. ZBR Chapter Repeal moves necessary provisions to 39-0301-2301.

39-0308-2301, Rules Governing Self-Propelled Snowplows. ZBR Chapter Rewrite addresses regulations, safety, and lighting systems standards for overwidth self-propelled snowplows operated by the department.

39-0340-2301, Rules Governing Junkyards and Dumps. ZBR Chapter Rewrite provides guidelines for the control of junkyards and dumps within 1,000 feet of the nearest edge of the right-of-way for interstate, primary freeways, and primary highways of the state.

39-0342-2301, Rules Governing Highway Right-of-Way Encroachments on State Rights-of-Way. ZBR Chapter Rewrite establishes standards and guidelines for encroachments on, and approaches of, state highway rights-of-way.

39-0348-2301, Rules Governing Routes Exempt From Local Plans and Ordinances. ZBR Chapter Rewrite clarifies provisions concerning the prevention of local control over improvements to transportation systems of statewide importance.

39-0350-2301, Rules Governing Safety Rest Areas. ZBR Chapter Rewrite sets standards not addressed in statute for use of developed rest areas.

39-0401-2301, Rules Governing Aeronautics and Aviation. ZBR Chapter Rewrite implements state law related to: aircraft registration; marking of hazards to air flight; restriction of flight in emergency areas; commercial, through-the-fence, and general state airport operations; aerial search and rescue; and Federal Aviation Regulations and the Idaho Airport Aid Program.

IDAPA 55 – STATE BOARD OF CAREER TECHNICAL EDUCATION

PO Box 83720, Boise, ID 83720-0037

55-0103-2301, Rules of Career Technical Schools. ZBR Chapter Rewrite serves measures and accountability standards, funding calculations, application process, and component criteria for Career Technical centers in Idaho and defines the duties of the Division of CTE.

55-0104-2301, Rules Governing Idaho Quality Program Standards Incentive Grants and Agricultural Education Program Start-Up Grants. ZBR Chapter Rewrite governs application to the Idaho Quality Program Standards Incentive Grants and the Agricultural Education Program Start-up Grants as administered by the Idaho Division of CTE.

IDAPA 62 – OFFICE OF ADMINISTRATIVE HEARINGS

816 W Bannock St, Ste 203, Boise, ID 83702

62-0101-2301, Idaho Rules of Administrative Procedure. New Chapter aims to simplify, modernize, and replace the existing Idaho Rules of Administrative Procedure of the Attorney General, which govern the conduct of contested cases before Idaho's administrative agencies.

NOTICES OF ADOPTION OF TEMPORARY RULE ONLY

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02-0609-2302, Rules Governing Invasive Species and Noxious Weeds

NOTICE OF PUBLIC HEARING AND EXTENSION OF WRITTEN COMMENT PERIOD

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16-0304-2301, Idaho Food Stamp Program. Comment period extended through 10/17/23.

NOTICES OF INTENT TO PROMULGATE RULES – NEGOTIATED RULEMAKING

(Please see the Administrative Bulletin for dates and times of meetings and other participant information)

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

20-0401-2301, Rules Pertaining to Forest Fire Protection

20-0402-2301, Rules Pertaining to the Idaho Forestry Act and Fire Hazard Reduction Laws

IDAPA 52 – IDAHO STATE LOTTERY

52-0103-2301, Rules Governing Operations of the Idaho State Lottery

Please refer to the Idaho Administrative Bulletin **October 4, 2023, Volume 23-10**, for the notices and text of all rulemakings, proclamations, negotiated rulemaking and public hearing information and schedules, executive orders of the Governor, and agency contact information.

Electronic issues of the Idaho Administrative Bulletin can be viewed at www.adminrules.idaho.gov/

Office of the Administrative Rules Coordinator, Division of Financial Management
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CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

*Office of the Administrative Rules Coordinator
Division of Financial Management
Office of the Governor*

July 1, 1993 – Present

[CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES](#)

This 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.

ABRIDGED RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

(Index of Current and Active Rulemakings)

*Office of the Administrative Rules Coordinator
Division of Financial Management*

April 6, 2023 – October 4, 2023

(PLR 2024) – Final Effective Date Is Pending Legislative Review in 2024

(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 02 – IDAHO DEPARTMENT OF AGRICULTURE

02-ZBRR-2301 *Rules of the Idaho Department of Agriculture* – Omnibus Notice of Intent to Promulgate Rules – Zero-Based Regulation (ZBR) Negotiated Rulemaking – Negotiates Title 02, Chapters 13, 15; Title 03, Chapter 03; Title 04, Chapters 14, 23, 30, 32; and Title 06, Chapters 04, 09, 10, 16 – Bulletin Vol. 23-5

02.02.13, Commodity Dealers’ Rules

02-0213-2301 Notice of Proposed Rulemaking (ZBR Chapter Rewrite, Fee Rule), Bulletin Vol. 23-10

02-ZBRR-2301 *Rules of the Idaho Department of Agriculture* – Omnibus Notice of Intent to Promulgate Rules – Zero-Based Regulation (ZBR) Negotiated Rulemaking – Negotiates Title 02, Chapter 13 – Bulletin Vol. 23-5

02.02.14, Rules for Weights and Measures

02-0214-2301 Notice of Proposed Rulemaking, Bulletin Vol. 23-10

02.02.15, Rules Governing the Seed Indemnity Fund

02-0215-2301 Notice of Proposed Rulemaking (ZBR Chapter Rewrite, Fee Rule), Bulletin Vol. 23-10

02-ZBRR-2301 *Rules of the Idaho Department of Agriculture* – Omnibus Notice of Intent to Promulgate Rules – Zero-Based Regulation (ZBR) Negotiated Rulemaking – Negotiates Title 02, Chapter 15 – Bulletin Vol. 23-5

02.03.03, Rules Governing Pesticide and Chemigation Use and Application

02-0303-2301 Notice of Proposed Rulemaking (ZBR Chapter Rewrite, Fee Rule), Bulletin Vol. 23-10

02-ZBRR-2301 *Rules of the Idaho Department of Agriculture* – Omnibus Notice of Intent to Promulgate Rules – Zero-Based Regulation (ZBR) Negotiated Rulemaking – Negotiates Title 03, Chapter 3 – Bulletin Vol. 23-5

02.04.14, Rules Governing Dairy Byproduct

02-0414-2301 Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 23-10

02-ZBRR-2301 *Rules of the Idaho Department of Agriculture* – Omnibus Notice of Intent to Promulgate Rules – Zero-Based Regulation (ZBR) Negotiated Rulemaking – Negotiates Title 04, Chapter 14 – Bulletin Vol. 23-5

02.04.23, Rules Governing Commercial Livestock Truck Washing Facilities

02-0423-2301 Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 23-10

02-ZBRR-2301 *Rules of the Idaho Department of Agriculture* – Omnibus Notice of Intent to Promulgate Rules – Zero-Based Regulation (ZBR) Negotiated Rulemaking – Negotiates Title 04, Chapter 23 – Bulletin Vol. 23-5

02.04.30, Rules Governing Environmental and Nutrient Management

02-0430-2301 Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 23-10

02-ZBRR-2301 *Rules of the Idaho Department of Agriculture* – Omnibus Notice of Intent to Promulgate Rules – Zero-Based Regulation (ZBR) Negotiated Rulemaking – Negotiates Title 04, Chapter 30 – Bulletin Vol. 23-5

02.04.32, Rules Governing Poultry Operations

02-0432-2301 Notice of Proposed Rulemaking (ZBR Chapter Rewrite, Fee Rule), Bulletin Vol. 23-10

02-ZBRR-2301 *Rules of the Idaho Department of Agriculture* – Omnibus Notice of Intent to Promulgate Rules – Zero-Based Regulation (ZBR) Negotiated Rulemaking – Negotiates Title 04, Chapter 32 – Bulletin Vol. 23-5

02.06.01, Rules Governing the Production and Distribution of Seed

02-0601-2301 Notice of Proposed Rulemaking (Fee Rule), Bulletin Vol. 23-10

02-0601-2301 Notice of Intent to Promulgate Rules – Negotiated Rulemaking, Bulletin Vol. 23-7

02.06.02, Rules Governing Registrations and Licenses

02-0602-2301 Notice of Proposed Rulemaking, Bulletin Vol. 23-10

02.06.04, Rules Governing Plant Exports

02-0604-2301 Notice of Proposed Rulemaking (ZBR Chapter Rewrite, Fee Rule), Bulletin Vol. 23-10

02-ZBRR-2301 *Rules of the Idaho Department of Agriculture* – Omnibus Notice of Intent to Promulgate Rules – Zero-Based Regulation (ZBR) Negotiated Rulemaking – Negotiates Title 06, Chapter 04 – Bulletin Vol. 23-5

02.06.09, Rules Governing Invasive Species and Noxious Weeds

02-0609-2302 Adoption of Temporary Rule, Bulletin Vol. 23-10 (eff. 9-21-23)T

02-0609-2301 Notice of Proposed Rulemaking, Bulletin Vol. 23-10

02-ZBRR-2301 *Rules of the Idaho Department of Agriculture* – Omnibus Notice of Intent to Promulgate Rules – Zero-Based Regulation (ZBR) Negotiated Rulemaking – Negotiates Title 06, Chapter 09 – Bulletin Vol. 23-5

02.06.10, Rules Governing the Growing of Potatoes

02-0610-2301 Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 23-10

02-ZBRR-2301 *Rules of the Idaho Department of Agriculture* – Omnibus Notice of Intent to Promulgate Rules – Zero-Based Regulation (ZBR) Negotiated Rulemaking – Negotiates Title 06, Chapter 10 – Bulletin Vol. 23-5

02.06.16, Rules Governing Honey Standards

02-0616-2301 Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 23-10

02-ZBRR-2301 *Rules of the Idaho Department of Agriculture* – Omnibus Notice of Intent to Promulgate Rules – Zero-Based Regulation (ZBR) Negotiated Rulemaking – Negotiates Title 06, Chapter 16 – Bulletin Vol. 23-5

02.06.33, Organic Food Products Rules

02-0633-2301 Notice of Proposed Rulemaking, Bulletin Vol. 23-10

IDAPA 04 – OFFICE OF THE ATTORNEY GENERAL

04.11.01, Idaho Rules of Administrative Procedure of the Attorney General

04-1101-2300 Notice of Revocation of Final Rule, Bulletin Vol. 23-7

IDAPA 05 – DEPARTMENT OF JUVENILE CORRECTIONS

05.01.02, Rules and Standards for Secure Juvenile Detention Centers

05-0102-2301 Notice of Proposed Rulemaking (ZBR Chapter Repeal), Bulletin Vol. 23-10

05-0102-2301 Notice of Intent to Promulgate Rules – Zero-Based Regulation (ZBR) Negotiated Rulemaking, Bulletin Vol. 23-6

05.01.04, Uniform Standards for Juvenile Probation Services

05-0104-2301* Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 23-10

**Changes chapter name from: “Uniform Standards for Juvenile Probation Services”*

05-0104-2301 Notice of Intent to Promulgate Rules – Zero-Based Regulation (ZBR) Negotiated Rulemaking, Bulletin Vol. 23-4

05.02.01, Rules for Residential Treatment Providers

05-0201-2301 Notice of Proposed Rulemaking (ZBR Chapter Repeal), Bulletin Vol. 23-10

05-0201-2301 Notice of Intent to Promulgate Rules – Zero-Based Regulation (ZBR) Negotiated Rulemaking, Bulletin Vol. 23-6

***IDAPA 08 – IDAHO STATE BOARD OF EDUCATION
AND STATE DEPARTMENT OF EDUCATION***

08.01.02, Rules Governing the Postsecondary Credit Scholarship Program

08-0102-2301 Notice of Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 23-10

08-0102-2301 Notice of Intent to Promulgate Rules – Negotiated Rulemaking, Bulletin Vol. 23-6

08.01.13, Rules Governing the Opportunity Scholarship Program

08-0113-2302 Notice of Proposed Rulemaking, Bulletin Vol. 23-10

08-0113-2302 Notice of Intent to Promulgate Rules – Negotiated Rulemaking, Bulletin Vol. 23-7

08-0113-2301 Adoption of Temporary Rule, Bulletin Vol. 23-7 (eff. 7-1-23)T

08.02.01, Rules Governing Administration

08-0201-2301 Adoption of Temporary Rule, Bulletin Vol. 23-6 (eff. 4-6-23)T

08.02.03, Rules Governing Thoroughness

08-0203-2301 Notice of Proposed Rulemaking, Bulletin Vol. 23-10

08-0203-2301 Notice of Intent to Promulgate Rules – Negotiated Rulemaking, Bulletin Vol. 23-6

08.04.01, Rules of the Idaho Digital Learning Academy

08-0401-2301 Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 23-10

08-0401-2301 Notice of Intent to Promulgate Rules – Zero-Based Regulation (ZBR) Negotiated Rulemaking, Bulletin Vol. 23-6

IDAPA 11 – IDAHO STATE POLICE

Idaho State Brand Board

11.02.01, Rules of the Idaho State Brand Board

- 11-0201-2301** Notice of Proposed Rulemaking (Fee Rule), Bulletin Vol. 23-10
- 11-0201-2301** Notice of Intent to Promulgate Rules – Negotiated Rulemaking, Bulletin Vol. 23-7

Idaho State Racing Commission

11.04.01, Rules Governing the Idaho State Racing Commission

- 11-0401-2301** Notice of Temporary and Proposed Rule (New Chapter, Fee Rule), Bulletin Vol. 23-5 (eff. 4-6-23)T

Alcohol Beverage Control Bureau

11.05.01, Rules Governing Alcohol Beverage Control

- 11-0501-2301** Adoption of Temporary Rule, Bulletin Vol. 23-7 (eff. 7-1-23)T

Commercial Vehicle Safety Division

11.07.01, Rules Governing Motor Vehicles – General Rules

- 11-0701-2301** Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 23-9
- 11-0701-2301** Notice of Intent to Promulgate Rules – Zero-Based Regulation (ZBR) Negotiated Rulemaking, Bulletin Vol. 23-7

11.07.03, Rules Governing Emergency Vehicles/Authorized Emergency Vehicles

- 11-0703-2301** Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 23-9
- 11-0703-2301** Notice of Intent to Promulgate Rules – Zero-Based Regulation (ZBR) Negotiated Rulemaking, Bulletin Vol. 23-7

11.10.01, Rules Governing Idaho Public Safety and Security Information System

- 11-1001-2301** Temporary and Proposed (Fee) Rule, Bulletin Vol. 23-9 (eff. 10-1-23)T

11.13.01, The Motor Carrier Rules

- 11-1301-2301** Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 23-9
- 11-1301-2301** Notice of Intent to Promulgate Rules – Zero-Based Regulation (ZBR) Negotiated Rulemaking, Bulletin Vol. 23-7

IDAPA 12 – DEPARTMENT OF FINANCE

- 12-ZBRR-2301** *Rules of the Department of Finance* – Omnibus Notice of Intent to Promulgate Rules – Zero-Based Regulation (ZBR) Negotiated Rulemaking – Negotiates Title 01, Chapters 04, 08, and 10 – Bulletin Vol. 23-8

12.01.04, Rules Pursuant to the Idaho Credit Union Act

- 12-0104-2301** Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 23-10
- 12-ZBRR-2301** *Rules of the Department of Finance* – Omnibus Notice of Intent to Promulgate Rules – Zero-Based Regulation (ZBR) Negotiated Rulemaking – Negotiates Title 01, Chapter 04 – Bulletin Vol. 23-8

12.01.08, Rules Pursuant to the Uniform Securities Act (2004)

- 12-0108-2301** Notice of Proposed Rulemaking (ZBR Chapter Rewrite, Fee Rule), Bulletin Vol. 23-10
- 12-ZBRR-2301** *Rules of the Department of Finance* – Omnibus Notice of Intent to Promulgate Rules – Zero-Based Regulation (ZBR) Negotiated Rulemaking – Negotiates Title 01, Chapter 08 – Bulletin Vol. 23-8

12.01.10, Rules Pursuant to the Idaho Residential Mortgage Practices Act

- 12-0110-2301** Notice of Proposed Rulemaking (ZBR Chapter Rewrite), Bulletin Vol. 23-10
- 12-ZBRR-2301** *Rules of the Department of Finance* – Omnibus Notice of Intent to Promulgate Rules – Zero-Based Regulation (ZBR) Negotiated Rulemaking – Negotiates Title 01, Chapter 10 – Bulletin Vol. 23-8

IDAPA 13 – IDAHO FISH AND GAME COMMISSION

Establishing Seasons and Limits for Hunting, Fishing, and Trapping in Idaho

- [13-0000-2300P7](#) Notice of Adopted / Amended Proclamations for Calendar Year 2023, Bulletin Vol. 23-9
- [13-0000-2300P6](#) Notice of Adopted / Amended Proclamations for Calendar Year 2023, Bulletin Vol. 23-7
- [13-0000-2300P5](#) Notice of Adopted / Amended Proclamations for Calendar Year 2023, Bulletin Vol. 23-6
- [13-0000-2300P4](#) Notice of Adopted / Amended Proclamations for Calendar Year 2023, Bulletin Vol. 23-5
- [13-0000-2300P3](#) Notice of Adopted / Amended Proclamations for Calendar Year 2023, Bulletin Vol. 23-4
- [13-0000-2300P2](#) Notice of Adopted / Amended Proclamations for Calendar Year 2023, Bulletin Vol. 23-3
- [13-0000-2300P1](#) Notice of Adoption of Proclamation for Calendar Year 2023, Bulletin Vol. 23-1

13.01.04, Rules Governing Licensing

- [13-0104-2301](#) Temporary and Proposed Rule, Bulletin Vol. 23-9 (eff. 7-27-23)T

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