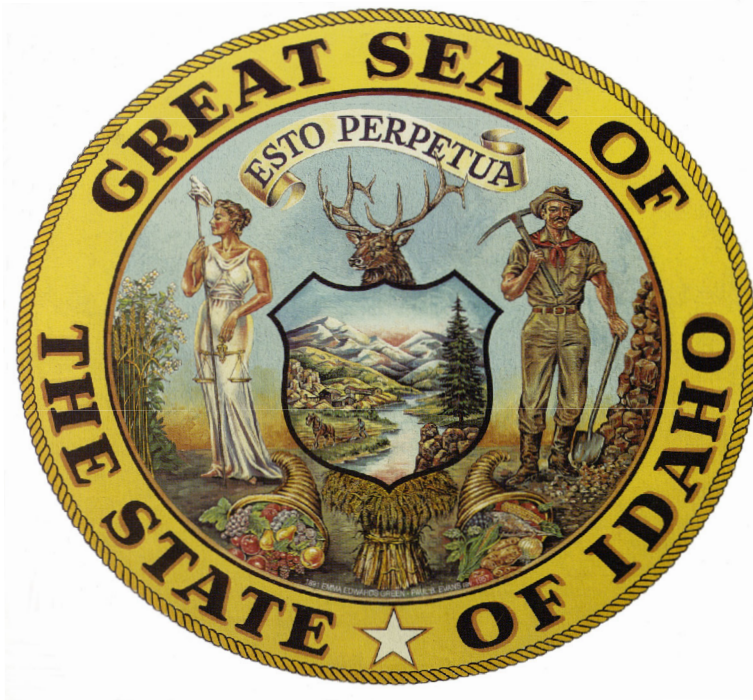


IDAHO ADMINISTRATIVE BULLETIN

July 6, 2022 – Vol. 22-7

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



The Idaho Administrative Bulletin is published monthly by the Office of the Administrative Rules Coordinator, Division of Financial Management, Office of the Governor, pursuant to Title 67, Chapter 52, Idaho Code.

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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 CALENDAR YEAR 2022

Vol. No.	Monthly Issue of Bulletin	ARRF Due to DFM	Closing Date for Agency Filing	Bulletin Publication Date	21-day Comment Period End Date
22-1	January 2022	November 15, 2022	*November 29, 2021	January 5, 2022	January 26, 2022
22-2	February 2022	December 23, 2022	January 7, 2022	February 2, 2022	February 23, 2022
22-3	March 2022	January 28, 2022	February 11, 2022	March 2, 2022	March 23, 2022
22-4	April 2022	February 25, 2022	March 11, 2022	April 6, 2022	April 27, 2022
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22-9	September 2022	July 22, 2022	August 5, 2022	September 7, 2022	September 28, 2022
22-10	October 2022	August 19, 2022	**September 2, 2022	October 5, 2022	October 26, 2022
22-11	November 2022	September 23, 2022	October 7, 2022	November 2, 2022	November 23, 2022
22-12	December 2022	October 28, 2022	November 10, 2022	December 7, 2022	December 28, 2022

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR 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
23-1	January 2023	November 14, 2022	*November 28, 2022	January 4, 2023	January 25, 2023
23-2	February 2023	December 23, 2022	January 6, 2023	February 1, 2023	February 22, 2023
23-3	March 2023	January 27, 2023	February 10, 2023	March 1, 2023	March 22, 2023
23-4	April 2023	February 24, 2023	March 10, 2023	April 5, 2023	April 26, 2023
23-5	May 2023	March 24, 2023	April 7, 2023	May 3, 2023	May 24, 2023
23-6	June 2023	April 21, 2023	May 5, 2023	June 7, 2023	June 28, 2023
23-7	July 2023	May 26, 2023	June 9, 2023	July 5, 2023	July 26, 2023
23-8	August 2023	June 23, 2023	July 7, 2023	August 2, 2023	August 23, 2023
23-9	September 2023	July 21, 2023	August 4, 2023	September 6, 2023	September 27, 2023
23-10	October 2023	August 18, 2023	**September 1, 2023	October 4, 2023	October 25, 2023
23-11	November 2023	September 22, 2023	October 6, 2023	November 1, 2023	November 22, 2023
23-12	December 2023	October 27, 2023	November 9, 2023	December 6, 2023	December 27, 2023

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

****Last day to submit a proposed rule to remain on course for rulemaking to be completed and submitted for review by upcoming legislature.**

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IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.01.04 – RULES GOVERNING THE VOLUNTARY IDAHO PREFERRED® PROMOTION PROGRAM

DOCKET NO. 02-0104-2201 (ZBR CHAPTER REWRITE, FEE RULE)

NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 6, 2022.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 22-112, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 27, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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 rule was open for Zero Based Rulemaking review, and two negotiated rulemaking meetings were held on March 16 and April 6. Proposed changes to the rule include the reduction of redundant, unnecessary, or out of date language. The most substantial change in the rule is to change the membership term from a fiscal year (July-June) term to a calendar year (Jan-Dec) term. The rule is proposed as temporary so that this change takes affect immediately for the benefit of program customers, who will now have an extra six months of membership prior to renewal in January.

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

Publishing this rule as a temporary rule will reduce confusion and immediately simplify renewals for the customer as well as the agency. The rule is changing the membership term from a fiscal year to calendar year-based term. This will ensure more consistency with agricultural production practices. Renewing membership in January will be more advantageous to producers who are extremely busy during the growing season in July. As a temporary rule, current memberships will be extended six months at no additional cost to customers, as the renewal period will change from an expiration date of July 2022 to January 2023 and will continue as a calendar year renewal going forward.

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

Fees will be offered on a one-year or three-year basis. Fees will be listed in the participation application and will not exceed one thousand dollars (\$1,000) per year. The total amount to not exceed is unchanged from the prior 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:

No changes to the fiscal impact of this rule are anticipated. The fee schedule is unchanged from the previous rule, with the only change being the timing of membership renewals.

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:

IDAPA 02.01.04 is neither broader in scope, nor more stringent than federal laws or regulations and do not regulate areas not already regulated by the federal government. The detailed 22-101A analysis can be found on the agency's website at www.agri.idaho.gov.

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 January 5, 2022 Idaho Administrative Bulletin, [Vol. 22-1, 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.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Laura Johnson, Bureau Chief, (208)332-8533.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2022.

DATED this July 6, 2022.

Lloyd B. Knight, Rules Review Officer
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249

Boise, Idaho 83707
Phone: (208) 332-8664
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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF FEE DOCKET NO. 02-0104-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)**

02.01.04 – RULES GOVERNING THE VOLUNTARY IDAHO PREFERRED® PROMOTION PROGRAM

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 22-112, Idaho Code. (7-6-22)T

001. SCOPE.

These rules govern the participation in, and product selection criteria for the voluntary Idaho Preferred® program. (7-6-22)T

002. -- 009. (RESERVED)

010. DEFINITIONS.

The following definitions apply in the interpretation and enforcement of this chapter. (7-6-22)T

01. Agricultural Product. Any fresh or processed apicultural, aquacultural, avicultural, beverage, cervidae, dairy, horticultural, livestock, forestry, viticultural, or other farm or garden product. (7-6-22)T

02. Apicultural Product. Products produced from or related to honey bees or honey. (7-6-22)T

- 03. Aquacultural Product.** Products produced from or related to fish, reptiles, or other aquatic animals. (7-6-22)T
- 04. Avicultural Product.** Products produced from or related to birds, including but not limited to, ratites or poultry. (7-6-22)T
- 05. Beverage.** Drinks including but not limited to wine, beer, distilled spirits, bottled water, or flavored drinks. (7-6-22)T
- 06. Cervidae Product.** Products produced from or related to fallow deer, elk, or reindeer owned by a person. (7-6-22)T
- 07. Co-Packer.** A co-packer is a food processor that processes and packages products for clients for a fee. (7-6-22)T
- 08. Dairy Product.** Products produced from or related to milk from cattle, goats, or sheep. (7-6-22)T
- 09. Forest Products.** All products made of wood fiber such as timber, wood chips, sawdust or shavings, including but not limited to lumber, paper, particleboard, fence or corral posts or rails, shingles, shakes, firewood or pellets, logs used in the construction of log homes or any other product sold commercially. (7-6-22)T
- 10. Fresh Produce, Commodities, and Fresh Meat.** Bulk or packaged agricultural products that have been cleaned, sorted, or otherwise prepared and are sold or distributed in an unprocessed or minimally processed condition. (7-6-22)T
- 11. Horticultural Products.** Plants, including but not limited to, fruits, vegetables, flowers, seeds, or ornamental plants. (7-6-22)T
- 12. Livestock.** Domestic animals including but not limited to cattle, sheep, pigs, goats, domestic cervidae, domestic bison, camelids, or horses. (7-6-22)T
- 13. Livestock Product.** Products produced from or related to livestock. (7-6-22)T
- 14. Non-Food Agricultural Products.** Products not intended for human consumption, including but not limited to, animal feed, compost, hides, or skins. (7-6-22)T
- 15. Supporting Organization.** Any commission, association, or incorporated group supporting the efforts of the Idaho Preferred® program. (7-6-22)T
- 16. Nursery Stock.** All botanically classified plants or any part thereof, such as aquatic or herbaceous plants, bulbs, sod, buds, corms, culms, roots, scions, grafts, cuttings, fruit pits, seeds of fruits, forest and ornamental trees, and shrubs, berry plants, and all trees, shrubs, vines, and plants collected in the wild that are grown or kept for propagation or sale. Nursery stock does not include field and forage crops, seeds of grasses, cereal grains, vegetable crops and flowers, bulbs and tubers of vegetable crops, vegetables or fruit used for food or feed, cut trees or cut flowers unless stems or other portions thereof are intended for propagation. (7-6-22)T
- 17. Participant.** A person who has applied to the Department and been approved for participation in the Idaho Preferred® program. (7-6-22)T
- 18. Processed Food.** Any food product which has been transformed from its natural state by methods including but not limited to freezing, cutting, heating, drying, treating, or adding ingredients. (7-6-22)T
- 19. Processor.** A person engaged in the manufacturing of processed food. (7-6-22)T
- 20. Producer.** A person engaged in the business of growing or raising food, fiber, feed, or other agricultural products. (7-6-22)T

21. **Viticultural Products.** Products produced from or related to grapes and wine. (7-6-22)T
011. -- 099. (RESERVED)
100. **APPLICATION FOR PARTICIPATION.**
01. **Application Requirement.** Applications will be made on a form prescribed by the Department, must be complete and may be submitted any time of the year. (7-6-22)T
101. **PARTICIPATION DURATION AND RENEWAL.**
01. **Duration.** Participation is on an annual basis, coinciding with the calender year beginning January 1 and ending December 31. (7-6-22)T
102. -- 109. (RESERVED)
110. **PARTICIPATION FEES.**
01. **Fee.** Participation is offered on a one-year basis. Fees will be listed in the participation application and will not exceed one thousand dollars (\$1,000) per year. (7-6-22)T
111. -- 199. (RESERVED)
200. **PRODUCT QUALIFICATION.**
01. **Authority of Determination.** The Director has sole authority in determining the eligibility of a product for participation in the program. (7-6-22)T
02. **Fresh Produce and Commodities.** Fresh produce and commodities are one hundred percent (100%) Idaho grown or raised. (7-6-22)T
03. **Processed Foods and Beverages.** Processed foods and beverages: (7-6-22)T
- a. Contain a minimum of twenty percent (20%) agricultural content by weight that has been grown or raised in Idaho; and (7-6-22)T
- b. Be processed in the state of Idaho. (7-6-22)T
- c. If a company registered in Idaho uses a co-packing facility and an acceptable co-packing facility is not available in Idaho, the company may request an exception from the Director under section 200.15 (7-6-22)T
04. **Non-Food Agricultural Products.** Non-food agricultural products must be at least twenty percent (20%) agricultural content by weight that has been grown or raised in Idaho and processing must occur in Idaho. (7-6-22)T
05. **Potatoes.** Only certification marks owned or administered by the Idaho Potato Commission may be branded on potatoes grown in Idaho unless prior Idaho Potato Commission approval in writing is secured and granted for the use of additional words or designs. Any person or participant applying to the Idaho Preferred® program, with the intention to promote Idaho-grown potatoes or products made from Idaho-grown potatoes, and provide proof of such permission prior to making application with the Department. (7-6-22)T
06. **Wine.** Wines contain a minimum of ninety-five percent (95%) Idaho grapes. (7-6-22)T
07. **Beer.** Beer will brewed in Idaho and at least one (1) Idaho agricultural product such as malt, wheat or hops, or soluble remnant thereof, but excluding water. (7-6-22)T
08. **Distilled Spirits.** Distilled spirits will be distilled in Idaho; and contain at least one (1) Idaho

agricultural product such as grains, potatoes or fruit, but excluding water. (7-6-22)T

09. Water. Water must be extracted from an Idaho water source. (7-6-22)T

10. Nursery Stock. Nursery stock will have been grown in Idaho a minimum of one (1) growing season or growing cycle. (7-6-22)T

11. Livestock Products. Livestock products come from livestock that: (7-6-22)T

a. Were born, raised and harvested in the United States. No livestock that originate from outside the United States may qualify. (7-6-22)T

b. Are raised, grazed, fed, or processed in Idaho. (7-6-22)T

12. Poultry and Poultry Products. Poultry and poultry products will come from fowl that: (7-6-22)T

a. Are hatched, raised and harvested in the United States. No fowl that originate from, or reside for any portion of their life outside the United States may qualify. (7-6-22)T

b. Are raised and processed in Idaho. Fertile eggs, also known as hatching eggs, or chicks less than three (3) days of age that originate outside of Idaho, but are raised or processed in Idaho, may qualify for Idaho Preferred®. (7-6-22)T

13. Apicultural Products. Products produced by honey bees including honey, wax, pollen, and propolis will be one hundred percent (100%) Idaho origin. Processed honey will be eighty percent (80%) Idaho origin. (7-6-22)T

14. Forest Products. Forest products will: (7-6-22)T

a. Contain a minimum of eighty percent (80%) of their wood fiber content from trees grown in Idaho; and (7-6-22)T

b. Be manufactured in Idaho. (7-6-22)T

15. Exceptions. The Director has the authority to establish product qualification requirements specific to individual products and commodities by written order. (7-6-22)T

201. -- 299. (RESERVED)

300. LOGO.

The Idaho Preferred® logo has been registered by the Department with the United States Library of Congress (Copyright registration), the United States Patent and Trademark Office (Certification Mark registration), the Idaho Secretary of State (Certificate of Trademark) and is afforded all protections provided for by law. The logo shall be used only by those participants in compliance with this chapter. The Department will provide a logo style manual specifying approved colors, treatments, and fonts for the Idaho Preferred® logo. (7-6-22)T

01. Approval for Use of Logo. Participants who wish to use the Idaho Preferred® logo on packaging, labels, flyers, promotional materials, or any other materials that will be viewed by the public must submit a proof of text and design to the Department for approval. Requests for approval must be submitted to the Idaho State Department of Agriculture, Marketing Division not less than five (5) working days prior to the proposed date of use. Written approval from the Department for logo use must be issued prior to use of the logo. (7-6-22)T

02. Repeal of Approval of Use of Logo. The Department reserves the right to repeal the approval of the use of the logo. The Department will provide notice in writing and the participant must cease use immediately. (7-6-22)T

301. OTHER IDAHO PROMOTION PROGRAMS.

01. Commodity-Specific Promotion Programs. Commissions, boards, associations, or other organizations authorized by statute to promote or regulate agricultural products grown, packed, or processed in the state of Idaho shall be the primary and principal promotion and certification mark and trademark organizations for the particular commodity they are authorized to promote or regulate. (7-6-22)T

02. Ownership of Marks. Any trademarks, certification marks, brands, seals, logos or other identification marks, that are established, owned or used by such commissions, boards, associations or organizations shall remain their sole property. Any use or infringement of their ownership right is prohibited unless written permission is obtained from an authorized representative of the commission, board, association or organization. (7-6-22)T

302. DISTRIBUTION OF PROMOTIONAL MATERIAL.

01. Authorized Use. The Idaho Preferred® program has the authority to provide retail and food service outlets, farmers' markets, schools, media, fairs, and other such businesses, organizations, and venues the opportunity to promote Idaho food and agricultural products using the program logo and promotional materials. Open distribution of any and all point-of-sale materials, signage, advertising, identification placards, and other such promotional material, in accordance with this chapter and other applicable laws and precedent, is acceptable use and not considered an infringement on the ownership rights of any mark or seal of a supporting organization as defined in this chapter. (7-6-22)T

303. -- 309. (RESERVED)

310. SELF-CERTIFICATION.

All participants shall self-certify that all products marked with the Idaho Preferred® logo meet the qualification criteria as set forth in this chapter. Self-certification is subject to verification through the application and compliance process. (7-6-22)T

311. COMPLIANCE.

01. Authority of Director. The Director has the authority to enter upon the premises of any participant to examine and copy any of the following items: (7-6-22)T

- a.** Books, papers, records, ledgers, journals, electronically or magnetically recorded data: (7-6-22)T
 - b.** Computers and computer records or memoranda bearing on the usage of the Idaho Preferred® logo; (7-6-22)T
- and
- c.** To secure all other information concerned in the enforcement of these rules. (7-6-22)T

02. Random Compliance Inspection. The Director may perform random compliance inspections. (7-6-22)T

03. Samples. The participant shall, upon the request of the Director, provide samples of the participant's labels, packaging, merchandising, and promotional materials featuring the Idaho Preferred® logo. (7-6-22)T

312. -- 314. (RESERVED)

315. VIOLATION.

Any person found in violation of these rules is subject to termination of participation privileges. (7-6-22)T

316. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.02.02 – RULES GOVERNING APPLE GRADING AND STORAGE
DOCKET NO. 02-0202-2201 (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 22-702, 22-802, and 22-803, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 20, 2022.

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

ISDA is required under 22-802, Idaho Code, to publish apple grades in a publication of regulations. Apple growers are then required to follow these grading regulations in the marketing of their produce.

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 associated with this rulemaking.

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:

IDAPA 02.02.02, Subchapter B – Controlled Atmosphere Storage, in its entirety, regulates an activity not already regulated by the federal government. The detailed 22-101A analysis can be found on the agency’s website at www.agri.idaho.gov.

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 January 5, 2022 Idaho Administrative Bulletin, [Vol. 22-1, page 11](#) under Docket No. 02-ZBRR-2201.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 Apples. This rule incorporates CFR Title 7 Subtitle B Chapter I Subchapter C Part 51, Subpart B: <https://www.ecfr.gov/current/title-7/subtitle-B/chapter-I/subchapter-C/part-51/subpart-B>; published Nov. 19, 2002.

Incorporating these standards ensures that the produce grown in Idaho is eligible for and consistent with grading and marketing of apples grown nationwide.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jared Stuart, Administrator, Division of Agricultural Inspection, at (208) 332-8500 or jared.stuart@isda.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 July 27, 2022.

DATED this July 6, 2022.

Lloyd B. Knight
Rules Review Officer
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8664
Fax: (208) 334-2170
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0202-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)

02.02.02 – RULES GOVERNING APPLE GRADING AND STORAGE

000. LEGAL AUTHORITY.

Sections 22-702, 22-802, and 22-803 Idaho Code. ()

001. SCOPE.

These rules govern the criteria and grades for Idaho Apples and Idaho Summer Apples, including color requirements, defects, tolerances, packing, and marking. These rules also govern registration requirements and prescribe the maximum oxygen levels for sealed controlled atmosphere storage of apples. ()

002. -- 008. (RESERVED)

009. INCORPORATION BY REFERENCE.

01. United States Standards for Apples. This rule incorporates CFR Title 7 Subtitle B Chapter I Subchapter C Part 51, Subpart B: <https://www.ecfr.gov/current/title-7/subtitle-B/chapter-I/subchapter-C/part-51/subpart-B>; published Nov. 19, 2002. ()

010. DEFINITIONS.

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

01. Carefully Hand-Picked. Apples do not show evidence of rough handling or of having been on the ground. ()

02. Lot. Any group of containers of apples from one (1) grower or orchard and of one (1) variety and that is set apart or is separate from any other group or groups by some evidence such as a lot number or similar mark of identification. ()

03. Packer or Repacker. A person other than an owner or operator of a controlled atmosphere storage plant who removes apples from the containers in which they were treated and places them into other containers or replaces them into the original containers. ()

011. -- 119. (RESERVED)

SUBCHAPTER A – APPLE GRADES

120. GRADES.

01. Idaho Extra Fancy. “Idaho Extra Fancy” consists of apples of one (1) variety that are mature but not overripe except that Red Delicious and Delicious are not further advanced in maturity than “Firm ripe”. All “Idaho Extra Fancy” apples are to be carefully hand-picked, clean, fairly well formed; free from decay, internal browning, internal breakdown, scald, bitter pit, scab, Jonathan spot, freezing injury, visible water core, and broken skins and bruises except those that are slight and incident to proper handling and packing. The apple is also free from injury caused by smooth net-like russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, disease, insects, or other means; and free from damage by smooth solid, slightly rough or rough russeting, or stem or calyx cracks, and free from damage by invisible water core after January 31st of the year following the year of production. Each apple of this grade has the amount of color specified in US Standards for Grades of Apples. ()

02. Idaho Fancy. “Idaho Fancy” consists of apples of one (1) variety that are mature but not overripe except that Red Delicious and Delicious are not further advanced in maturity than “Firm ripe”. All “Idaho Fancy” apples shall be carefully hand-picked, clean, fairly well formed; free from decay, internal browning, internal breakdown, bitter pit, Jonathan spot, scald, freezing injury, visible water core, and broken skins and bruises except those that are incident to proper handling and packing. The apples are also free from damage caused by russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, stem or calyx cracks, disease, insects, invisible water core after January 31st of the year following the year of production, or damage by other means. Each apple of this grade has the amount of color specified in US Standards for Grades of Apples. ()

03. Idaho No. 1. The requirements of this grade are the same as for “Idaho Fancy” except for color, russeting, and invisible water core. In this grade less color is required for all varieties with the exception of the yellow and green varieties other than Golden Delicious. Apples of this grade are free from excessive damage caused by russeting, which means that apples meet the russeting requirements for “Idaho Fancy” as defined under the definitions of “damage by russeting,” except the aggregate area of an apple that may be covered by smooth net-like russeting does not exceed twenty-five percent (25%); and the aggregate area of an apple that may be covered by smooth solid russeting does not exceed ten percent (10%): Provided, that in the case of the Yellow Newtown or similar varieties the aggregate area of an apple that may be covered with smooth solid russeting. This grade has the amount of color specified in US Standards for Grades of Apples. for the variety. There is no requirement in this grade pertaining to invisible water core. ()

a. Idaho No. 1 Hail consists of apples that meet the requirements of Idaho No. 1 grade except that hail marks where the skin has not been broken, and well healed hail marks where the skin has been broken, are permitted, provided the apples are fairly well formed. ()

04. Idaho Utility. “Idaho Utility” consists of apples of one (1) variety that are mature but not overripe, carefully hand-picked, not seriously deformed, free from decay, internal browning, internal breakdown, scald, and freezing injury. The apples are also free from serious damage caused by dirt or other foreign matter, broken skins, bruises, russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, stem or calyx cracks, visible water core, disease, insects, or other means. ()

05. Combination Grades. ()

a. Combinations of the above grades may be used as follows: ()

- i. Combination Idaho Extra Fancy and Idaho Fancy; ()
- ii. Combination Idaho Fancy and Idaho No. 1; ()
- iii. Combination Idaho No. 1 and Idaho Utility; ()

b. Combinations other than these are not permitted in connection with the Idaho apple grades. When combination grades are packed, at least fifty percent (50%) of the apples in any lot will meet the requirements of the higher grade in the combination. ()

121. UNCLASSIFIED DESIGNATION.

“Unclassified” consists of apples that have not been classified in conformity with any of the foregoing grades. The term “unclassified” is not a grade within the meaning of these standards, but is provided as a designation to show that no definite grade has been applied to the lot. ()

122. TOLERANCES.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances are provided as specified: ()

01. Defects. ()

a. Idaho Extra Fancy, Idaho Fancy, Idaho No. 1, Idaho No. 1 Early and Idaho No. 1 Hail grades: Ten percent (10%) of the apples in any lot may fail to meet the requirements of the grade, but not more than one-half (1/2) of this amount, or five percent (5%), is allowed for apples that are seriously damaged, including therein not more than one percent (1%) for apples affected by decay or internal breakdown. ()

b. Idaho Utility grade: Ten percent (10%) of the apples in any lot may fail to meet the requirements of the grade, but not more than one-half (1/2) of this amount, or five percent (5%), is allowed for apples that are seriously damaged by insects, and including in the total tolerance not more than one percent (1%) for apples affected by decay or internal breakdown. ()

02. Applying Tolerances to Combination Grades. When applying tolerances to combination grades, no part of any tolerance is allowed to reduce, for the lot as a whole, the fifty percent (50%) of apples of the higher grade required in the combination but individual containers will not have less than forty percent (40%) of the higher grade. ()

03. Size. When size is designated by the numerical count for a container, not more than five percent (5%) of the apples in the lot may vary more than one fourth (1/4) inch in diameter. When size is designated by minimum or maximum diameter, not more than five percent (5%) of the apples in any lot may be smaller than the designated minimum and not more than ten percent (10%) may be larger than the designated maximum. ()

04. Firmness. Not more than five percent (5%) of the apples in any lot of Red Delicious and Delicious varieties can be further advanced in maturity than “Firm ripe” as defined in Subsection 010.05.c. Provided, the Idaho No. 1, Idaho No. 1 Hail, and Idaho Utility grades are exempt from this requirement. ()

123. CALCULATION OF PERCENTAGES.

01. When Numerical Count is Marked On Container. Percentages are calculated on the basis of count. ()

02. When Minimum Diameter or Minimum and Maximum Diameters are Marked on Container. Percentages are calculated on the basis of weight. ()

03. Apples are in Bulk. Percentages are calculated on the basis of weight. ()

124. CONDITION AFTER STORAGE OR TRANSIT.

Decay, scald, or any other deterioration that may have developed on apples after they have been in storage or transit are considered as affecting condition and not the grade. ()

125. -- 129. (RESERVED)

130. SCORABLE DEFECTS.

01. Injury. Any specific defect defined in this subsection or an equally objectionable variation of any one (1) of these defects, any other defect, or any combination of defects, that more than slightly detracts from the appearance or the edible or shipping quality of the apple. The following specific defects are considered as injury: ()

a. Russetting in the stem cavity or calyx basin that cannot be seen when the apple is placed stem end or calyx end down on a flat surface, is not considered in determining whether or not an apple is injured by russetting. Smooth net-like russetting outside of the stem cavity or calyx basin is considered as injury when an aggregate area of more than ten percent (10%) of the surface is covered, and the color of the russetting shows no very pronounced contrast with the background color of the apple, or lesser amounts of more conspicuous net-like russetting when the appearance is affected to a greater extent than the above amount permitted. ()

b. Sunburn or sprayburn, when the discolored area does not blend into the normal color of the fruit. ()

c. Dark brown or black limb rubs that affect a total area of more than one-fourth (1/4) inch in diameter, except that light brown limb rubs of a russet character are considered under the definition of injury by russetting. The area refers to that area of a circle of the specified diameter. ()

d. Hail marks, drought spots, other similar depressions or scars. ()

i. When the skin is broken, whether healed or unhealed; ()

ii. When there is appreciable discoloration of the surface; ()

iii. When any surface indentation exceeds one-sixteenth (1/16) inch in depth; ()

iv. When any surface indentation exceeds one-eighth inch (1/8) in diameter; or ()

v. When the aggregate affected area of such spots exceeds one-half (1/2) inch in diameter. The area refers to that of a circle of the specified diameter. ()

e. Disease. ()

i. Cedar rust infection that affects a total area of more than three-sixteenths (3/16) inch in diameter. The area refers to that of a circle of the specified diameter. ()

ii. Sooty blotch or fly speck that is thinly scattered over more than five percent (5%) of the surface, or dark, heavily concentrated spots that affect an area of more than one-fourth (1/4) inch in diameter. The area refers to that of a circle of the specified diameter. ()

iii. Red skin spots that are thinly scattered over more than one-tenth (1/10) of the surface, or dark, heavily concentrated spots that affect an area of more than one-fourth (1/4) inch in diameter. ()

f. Insects. ()

i. Any healed sting or healed stings that affect a total area of more than one-eighth (1/8) inch in diameter including any encircling discolored rings. The area refers to that of a circle of the specified diameter. ()

- ii. Worm holes. ()

02. Damage. Any specific defect defined in this subsection or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, that materially detracts from the appearance, or the edible or shipping quality of the apple. The following specific defects are considered damage: ()

a. Russetting in the stem cavity or calyx basin that cannot be seen when the apple is placed stem end or calyx end down on a flat surface, is not considered in determining whether or not an apple is damaged by russetting, except that excessively rough or bark-like russetting in the stem cavity or calyx basin shall be considered as damage when the appearance of the apple is materially affected. The following types and amounts of russetting outside of the stem cavity or calyx basin are considered as damage: ()

- i. Russetting that is excessively rough on Roxbury Russet and other similar varieties. ()

- ii. Smooth net-like russetting, when an aggregate area of more than fifteen percent (15%) of the surface is covered, and the color of the russetting shows no very pronounced contrast with the background color of the apple, or lesser amounts of more conspicuous net-like russetting when the appearance is affected to a greater extent than the above amount permitted. ()

- iii. Smooth solid russetting, when an aggregate area of more than five percent (5%) of the surface is covered, and the pattern and color of the russetting shows no very pronounced contrast with the background color of the apple, or lesser amounts of more conspicuous solid russetting when the appearances affected to a greater extent than the above amount permitted. ()

- iv. Slightly rough russetting that covers an aggregate area of more than one-half (1/2) inch in diameter. ()

- v. Rough russetting that covers an aggregate area of more than one-fourth (1/4) inch in diameter. ()

b. Sunburn or sprayburn that has caused blistering or cracking of the skin, or when the discolored area does not blend into the normal color of the fruit unless the injury can be classed as russetting. ()

c. Limb rubs that affect a total area of more than one-half (1/2) inch in diameter, except that light brown limb rubs of a russet character are considered under the definition of damage by russetting. ()

- d.** Hail marks, drought spots, other similar depressions or scars. ()

- i. When any unhealed mark is present; ()

- ii. When any surface indentation exceeds one-eighth (1/8) inch in depth; ()

- iii. When the skin has not been broken and the aggregate affected area exceeds one-half (1/2) inch in diameter. The area refers to that of a circle of the specified diameter; or ()

- iv. When the skin has been broken and well healed, and the aggregate affected area exceeds one-fourth (1/4) inch in diameter. ()

e. Stem or calyx cracks that are not well healed, or well healed stem or calyx cracks that exceed an aggregate length of one-fourth (1/4) inch. ()

f. Invisible water core existing around the core and extending to water core in the vascular bundles; or surrounding the vascular bundles when the affected area surrounding three (3) or more vascular bundles meet or coalesce; or existing in more than slight degree outside the circular area formed by the vascular bundles. ()

- g.** Disease. ()

i. Scab spots that affects a total area of more than one-fourth (1/4) inch in diameter. The area refers to that of a circle of the specified diameter. ()

ii. Cedar rust infection that affects a total area of more than one-fourth (1/4) inch in diameter. The area refers to that of a circle of the specified diameter. ()

iii. Sooty blotch or fly speck that is thinly scattered over more than one-tenth (1/10) of the surface, or dark, heavily concentrated spots that affect an area of more than one-half (1/2) inch in diameter. The area refers to that of a circle of the specified diameter. ()

iv. Red skin spots that are thinly scattered over more than one-tenth (1/10) of the surface, or dark, heavily concentrated spots that affect an area of more than one-half (1/2) inch in diameter. The area refers to that of a circle of the specified diameter. ()

h. Insects. ()

i. Any healed sting or healed stings that affect a total area of more than three-sixteenths (3/16) inch in diameter including any encircling discolored rings. The area refers to that of a circle of the specified diameter. ()

ii. Worm holes. ()

03. Serious Damage. Any specific defect defined in this subsection or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects that seriously detracts from the appearance, or the edible or shipping quality of the apple. The following specific defects are considered as serious damage: ()

a. The following types and amounts of russetting are considered as serious damage: Smooth solid russetting, when more than one-half (1/2) of the surface in the aggregate is covered, including any russetting in the stem cavity or calyx basin, or slightly rough, or excessively rough or bark-like russetting, that detracts from the appearance of the fruit to a greater extent than the amount of smooth solid russetting permitted: Provided, that any amount of russetting is permitted on Roxbury Russet and other similar varieties. ()

b. Sunburn or sprayburn that seriously detracts from the appearance of the fruit. ()

c. Limb rubs that affect more than one-tenth (1/10) of the surface in the aggregate. ()

d. Hail marks, drought spots, or scars, if they materially deform or disfigure the fruit, or if such defects affect more than one-tenth (1/10) of the surface in the aggregate: Provided, that no hail marks that are unhealed are permitted and not more than an aggregate area of one-half (1/2) inch is allowed for well healed hail marks where the skin has been broken. The area refers to that of a circle of the specified diameter. ()

e. Stem or calyx cracks that are not well healed, or well healed stem or calyx cracks that exceed an aggregate length of one-half (1/2) inch. ()

f. Visible water core that affects an area of more than one-half (1/2) inch in diameter. ()

g. Disease. ()

i. Scab spots that affect a total area of more than three-fourths (3/4) inch in a circle of the specified diameter. ()

ii. Cedar rust infection that affects a total area of more than three-fourths (3/4) inch in diameter. The area refers to that of a circle of the specified diameter. ()

iii. Sooty blotch or fly speck that affects more than one-third (1/3) of the surface. ()

- iv. Red skin spots that affect more than one-third (1/3) of the surface. ()
- v. Bitter pit or Jonathan spot that is thinly scattered over more than one-tenth (1/10) of the surface and does not materially deform or disfigure the fruit. ()
- h. Insects. ()
- i. Healed stings that affect a total area of more than one-fourth (1/4) inch in diameter including any encircling discolored rings. The area refers to that of a circle of the specified diameter. ()
- ii. Worm holes. ()

131. -- 219. (RESERVED)

SUBCHAPTER B – CONTROLLED ATMOSPHERE STORAGE

220. APPLES, CONTROLLED ATMOSPHERE REGISTRATION.

01. Registration. Any person who owns or operates a controlled atmosphere room or storage building for apples in Idaho, and any person who engages in this State in the business of packing or repacking apples so treated in this State or any other state and who intends to, or does, represent such apples as having been exposed to “controlled atmosphere” storage, shall register with the Director on a form prescribed by the Director. ()

02. Registration Period. The registration period for owners or operators of controlled atmosphere rooms or storage buildings in this State commences on September 1 and end on August 31 of each year, and for packers or repackers of apples that have been held in a controlled atmosphere room or storage building in this State or in any other state, the registration period extends for a period not to exceed one (1) year. Owners or operators of such rooms or storage buildings shall register on or before September 1 of each year. ()

03. Interstate Registration. Any person who owns or operates a controlled atmosphere room or storage building located outside of Idaho or who engages at a place outside of this State in the business of packing or repacking apples that have been held in controlled atmosphere storage and who intends to, or does, market in the state of Idaho apples so treated and represented as having been exposed to “controlled atmosphere” storage, shall register with the Director in the same manner as required of any person within the State unless such person has registered with the proper authorities in the state of origin and has been assigned a comparable registration number or CA identification under authority of laws or rules of such state that at least conform to the provisions of these rules. ()

04. Written Agreement. The Director will assign each approved registrant a registration number preceded by the letters CA. The Director shall require from each applicant for registration, an agreement in writing in the form required by the Director that the apples so treated or packed or repacked by said applicant will be or have been kept in a room or storage building with not more than five percent (5%) oxygen for a minimum of not less than forty-five (45) days for Gala and Jonagold varieties and not less than sixty (60) days for other apples, and that the oxygen level in such room or storage building will be or has been reduced to five percent (5%) within twenty (20) days after the date of sealing of the storage room, and including any other pertinent facts as may be required by the Director to assure that the apples in question have been so treated. ()

05. Refusal Upon Violation. The Director may refuse to approve an application for registration and refuse to issue a registration number if the applicant previously has violated any of the provisions of these rules, or has failed or refused to furnish the information or evidence required by these rules. ()

06. Required Air Components Determinations. Each owner or operator of a controlled atmosphere room or storage building in this state shall make the required air components determinations as to the percentage of carbon dioxide and oxygen and temperature at least once each day and maintains a record in the form as required by the Director of Agriculture, including the name and address of the owner or operator, room number or numbers, room capacity, lot identification, quantity in each lot, date of sealing, date of opening; a daily record of date and time of test, percentage of carbon dioxide, percentage of oxygen and the temperature. ()

07. Written Reports. Each owner or operator of a controlled atmosphere room or storage building in this state will submit to the Idaho Director of Agriculture, within ten (10) days after the date of sealing, a written report pertaining to each room showing the owner's room number, or numbers, date of sealing, and variety and quantity of apples contained therein. ()

08. Maintaining Identity. The identity of all apples represented as having been exposed to “controlled atmosphere” storage will be maintained from the original room or storage building where they were treated through the various channels of trade to the retailer. ()

09. Investigations. Enforcing officers may investigate and examine records and invoices relating to any transactions in order to determine the identity of apples represented as having been exposed to controlled atmosphere storage and in this connection gives consideration to the presence of CA storage registration numbers on invoices submitted in transactions by the owners or operators and a combination of both the CA storage and packer or repacker's CA registration number on invoices submitted in transactions by said packer or repacker. ()

221. APPLES REPRESENTED AS HAVING BEEN EXPOSED TO “CONTROLLED ATMOSPHERE” STORAGE.

01. Registration Number -- Owner/Operator. Each container and consumer package of such apples moved into the channels of trade by the owner or operator of a controlled atmosphere room or storage building located in Idaho or by any other person, will be marked with said owner or operator's assigned registration number. ()

02. Registration Number -- Packer/Repacker. Each container and consumer package of such apples received from an owner or operator of a controlled atmosphere room or storage building located either in Idaho or in another state and that are packed or repacked by another person in this state, will be marked with the said packer or repacker's assigned registration number. ()

03. Controlled Atmosphere (CA) Identification. Each container and consumer package of such apples moved into the channels of trade in Idaho by the owner or operator of a controlled atmosphere room or storage building located outside of Idaho or by any other person or by a packer or repacker of such apples engaged in such business outside of Idaho will be marked with the proper registration number or CA identification. Such registration number or CA identification is the registration number assigned by the Director to such owner or operator of a CA plant or to such packer or repacker as the case may be or a comparable registration number of identification assigned under authority of laws or regulations of another state that at least conform to the provisions of Subsection 200.04 above. ()

04. Labeling Requirements. The registration number or other identification required to be marked on containers is in letters or figures at least one-half (1/2) inch in height, and all such markings are clear and conspicuous and in a place readily visible to the purchaser, and shall meet the rule requirements of Sections 22-801 and 22-802, Idaho Code. ()

05. Inspection and Certification. All apples sold as Controlled Atmosphere apples must be inspected and certified as to grade and condition and be marked with a state lot number in addition to the CA number. ()

06. Conditions and Standards. At the time of shipment, all apples shipped and marked with a CA number will meet the U.S. condition and maturity standards for Export. ()

07. Failure to Meet Requirements. Failure to meet any one of the requirements noted above will prohibit such apples from being sold as CA storage apples or the containers marked as such. ()

222. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.04.04 – RULES FOR ARTIFICIAL DAIRY PRODUCTS
DOCKET NO. 02-0404-2201 (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 37-303, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 20, 2022.

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

The rule provides the authority for the enforcement of a written stop sale for artificial dairy products as determined by the Department. This rule is authorized by 37-303, Idaho Code. The issue of artificial dairy products in the marketplace cannot be authorized by non-regulatory measures.

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 associated with this rulemaking.

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 an activity not regulated by the federal government. The detailed 22-101A analysis can be found on the agency’s website at www.agri.idaho.gov.

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 January 5, 2022 Idaho Administrative Bulletin, [Vol. 22-1, page 11](#) under Docket No. 02-ZBRR-2201.

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

No documents are incorporated by reference in this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dr. Scott Leibsle, Administrator, Division of Animal Industries, at (208) 332-8500 or scott.leibsle@isda.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 July 27, 2022.

DATED this July 6, 2022.

Lloyd B. Knight
Rules Review Officer
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8664
Fax: (208) 334-2170
Email: rulesinfo@isda.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0404-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)

02.04.04 – RULES FOR ARTIFICIAL DAIRY PRODUCTS

000. LEGAL AUTHORITY.
Section 37-303, Idaho Code. ()

001. SCOPE.
These rules govern the process, sale, and distribution of artificial dairy products. ()

002. – 099. (RESERVED)

100. GENERAL.
The Department will issue and enforce a written stop sale order to the owner or custodian of any quantity of artificial dairy products that has been determined by the Department to be in violation of Sections 37-315 through 37-318, Idaho Code. The order shall prohibit further sale, processing, or movement of such artificial dairy products, until the Department has evidence that the law has been complied with. ()

101. – 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.04.15 – RULES GOVERNING BEEF CATTLE ANIMAL FEEDING OPERATIONS
DOCKET NO. 02-0415-2201 (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 and 22-4903, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 20, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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, including regulated industry and other stakeholders.

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 associated with this rulemaking.

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

IDAPA 02.04.15.013, 02.04.15.031, 02.04.15.032, 02.04.15.040, are broader in scope than federal law or regulations.

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

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 January 5, 2022 Idaho Administrative Bulletin, [Vol. 22-1, page 11](#) under Docket No. 02-ZBRR-2201.

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

The following documents are incorporated by reference, and are important content due to the need for clear and standardized design specifications for nutrient containment and management.

The 1997 United States Department of Agriculture Natural Resources Conservation Service Agricultural Waste Management Field Handbook, Appendix 10 D.

Society of Agricultural and Biological Engineers Specification ASAE EP393.3 Manure Storages February 2004.

The 1999 Publication by the United States Department of Agriculture, Natural Resource Conservation Service, Conservation Practice Standard, Nutrient Management Code 590.

The Phosphorus Site Index: A Systematic Approach to Assess the Risk of Nonpoint Source Pollution of Idaho Waters by Agricultural Phosphorus, 2022.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dr. Scott Leibsle, Administrator, Division of Animal Industries, at (208) 332-8500 or scott.leibsle@isda.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 July 27, 2022.

DATED this July 6, 2022.

Lloyd B. Knight
Rules Review Officer
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8664
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0415-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)

02.04.15 – RULES GOVERNING BEEF CATTLE ANIMAL FEEDING OPERATIONS

000. LEGAL AUTHORITY.

Sections 22-110 and 22-4903, Idaho Code.

()

001. SCOPE.

These rules govern the design, function, and management practices of waste systems on beef cattle animal feeding operations. Nothing in this rule affects the authority of the Department of Environmental Quality to enforce an IPDES permit for dairy farms that discharge pollutants to waters of the United States, including without limitation, the authority to issue permits, access records, conduct inspections and take enforcement actions. The provisions of this rule do not alter the requirements, liabilities, and authorities with respect to or established by the IPDES program.

()

002. INCORPORATION BY REFERENCE.

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

01. The 1997 United States Department of Agriculture Natural Resources Conservation Service Agricultural Waste Management Field Handbook, Appendix 10 D. This document can be viewed online at <http://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=17767.wba>. ()

02. 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/>. ()

03. The 1999 Publication by the United States Department of Agriculture, Natural Resource Conservation Service, Conservation Practice Standard, Nutrient Management Code 590. This can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/08/nutrient_Management_code_590.pdf. ()

04. The Phosphorus Site Index: A Systematic Approach to Assess the Risk of Nonpoint Source Pollution of Idaho Waters by Agricultural Phosphorus, 2022. This document is available online at <https://agri.idaho.gov/main/wp-content/uploads/2022/03/PSIBeef.pdf>. ()

003. DEFINITIONS.

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

01. Animal. Bovidae, ovidae, suidae, equidae, captive cervidae, captive antilocapridae, camelidae, and ratiidae. ()

02. Animal Feeding Operation. A lot or facility where slaughter and feeder cattle or dairy heifers are confined and fed for a total of forty-five (45) days or more during any twelve-month (12) period and crops, vegetation forage growth, or post harvest residues are not sustained in the normal growing season over any portion of the lot or facility. ()

03. Compost. A biologically stable material derived from the biological decomposition of organic matter. ()

04. Concentrated Animal Feeding Operation. An AFO that is defined as a large CAFO or as a medium CAFO by the terms of this section and designated by the Director. Two (2) or more AFOs under common ownership on contiguous property are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other, or if they use a common area or system for the disposal of wastes. ()

05. Discharge. Release of process wastewater or manure from a beef cattle animal feeding operation to waters of the state. ()

06. 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. ()

07. Land Application. The spreading on, or incorporation of manure or process wastewater into the soil. ()

08. Large Concentrated Animal Feeding Operation. An AFO is defined as a large CAFO if it stables or confines as many as or more than the numbers of cattle specified in any of the following categories: ()

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

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

c. One thousand (1,000) cattle other than mature dairy cows or veal calves. Cattle includes but is not ()

limited to heifers, steers, bulls and cow/calf pairs; ()

09. Medium Concentrated Animal Feeding Operation. A medium CAFO includes any AFO that has been defined or designated as CAFO and stables or confines the number of cattle that fall within any of the following ranges: ()

a. Two hundred (200) to six hundred ninety-nine (699) mature dairy cows, whether milked or dry; ()

b. Three hundred (300) to nine hundred ninety-nine (999) veal calves; ()

c. Three hundred (300) to nine hundred ninety-nine (999) cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs; ()

10. Operate. Confining and feeding slaughter and feeder cattle in the state of Idaho. ()

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

12. 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. ()

13. Runoff. Any precipitation that comes into contact with manure, compost, bedding, or feed on a beef cattle animal feeding operation. ()

14. Slaughter and Feeder Cattle. All cattle except those cattle located on a dairy farm permitted by the Idaho State Department of Agriculture pursuant to IDAPA 02.04.14, "Rules Governing Dairy Byproduct." ()

15. Small Concentrated Animal Feeding Operation. An AFO that is designated as a CAFO and is not a medium or large CAFO. ()

004. ABBREVIATIONS.

01. AFO. Animal Feeding Operation. ()

02. CAFO. Concentrated Animal Feeding Operation. ()

03. IPDES. Idaho Pollutant Discharge Elimination System. ()

04. NMP. Nutrient Management Plan. ()

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

06. PSI. Phosphorus Site Index ()

005. PROHIBITED DISCHARGES.

Unauthorized discharges of manure or process wastewater from beef cattle AFOs or land application sites owned or controlled by a beef cattle AFO are prohibited. ()

006. NOTIFICATION OF DISCHARGE.

01. Notification Within Twenty-Four Hours of Discharge. Within twenty-four (24) hours of learning of a discharge, the operator of a beef cattle AFO shall verbally notify the Director of such a discharge. ()

007. -- 019. (RESERVED)

020. WASTEWATER STORAGE AND CONTAINMENT FACILITIES.

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

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

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

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

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

021. NEW OR MODIFIED BEEF CATTLE ANIMAL FEEDING OPERATIONS.

Each new or modified beef cattle AFO shall design and construct wastewater storage and containment facilities completed after July 1, 2000, 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. ()

022. -- 029. (RESERVED)

030. NUTRIENT MANAGEMENT.

Each beef cattle AFO shall submit a NMP for land owned or controlled by the operator, which conforms to the nutrient management standard and addresses odors generated in excess of odors normally associated with raising beef cattle in Idaho, to the Director for approval. Following department review and approval, the plan, and all copies of the plan, shall be returned to the operation and maintained on site. ()

01. Implementation of a Nutrient Management Plan. Failure to implement an approved NMP is a violation of these rules. ()

031. PHOSPHORUS MANAGEMENT.

Beef cattle AFOs must utilize either Phosphorus Indexing or Phosphorus Threshold to manage nutrient application. ()

01. Phosphorus Indexing. The PSI shall be calculated annually by a certified planner for each field receiving land application of manure or process wastewater. A beef cattle AFO must implement best management practices that fully conform to NRCS standards to receive full BMP Coefficient credit. The Department may award zero (0) or partial credit for non-conformity to NRCS standards. ()

02. Phosphorus Threshold. Land application of phosphorus to fields that have exceeded the soil phosphorus threshold established in the NMS shall be limited to the appropriate crop uptake rate. ()

032. NUTRIENT MANAGEMENT RECORDS.

The operators of beef cattle AFOs shall keep complete and accurate records of: ()

01. Land Application. The dates and amounts of any manure or process wastewater applied on land owned or controlled by the operator. ()

02. Manure Transferred to Another Person. The name and address of any third party that receives manure or process wastewater from the operation, including the dates of the transfer and the amount of manure or process wastewater transferred. ()

033. -- 039. (RESERVED)

040. DESIGNATION OF BEEF CATTLE ANIMAL FEEDING OPERATIONS.

01. Designation of Animal Feeding Operations. The Director, on a case by case basis, may designate any AFO that confines slaughter and feeder cattle as a beef cattle AFO if, after an inspection, the Director determines that the AFO is a significant contributor of pollution to waters of the state. When designated, these operations shall be considered existing beef cattle AFOs. The Director considers the following factors when making such designation: ()

- a. Size of the AFO and the amount of manure, process wastewater, and runoff reaching waters of the state; ()
- b. Location of the AFO relative to waters of the state; ()
- c. Means of conveyance of manure, process wastewater, and runoff into waters of the state; and ()
- d. Slope, vegetation, precipitation, and other factors affecting the likelihood or frequency of discharge of manure, process wastewater, or runoff into waters of the state. ()

02. Redesignation of a Beef Cattle Animal Feeding Operation. Upon request by the operator, the Director will redesignate a facility previously designated under Section 040, if the facility is no longer a significant contributor of pollution to waters of the state. Such redesignation is provided to the operator in writing. ()

041. -- 049. (RESERVED)

050. ADMINISTRATION OF IPDES PROGRAM.

The Director of the Department of Agriculture and the Director of the Department of Environmental Quality shall, as appropriate, establish an agreement relating to the administration of an IPDES program that recognizes the expertise of the Department of Agriculture. ()

051. COMPLIANCE WITH IDAHO POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES.

The Department of Environmental Quality shall be solely responsible and authorized to determine whether the discharge of pollutants from a beef cattle feeding operation is required to be authorized by an IPDES permit. The provisions of this rule do not define when a beef cattle feeding operations is required to obtain a permit for a discharge, do not exempt a beef cattle feeding operation from permitting requirements for such discharges or alter the authority of DEQ with respect to such discharges. ()

052. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.04.17 – RULES GOVERNING DEAD ANIMAL MOVEMENT AND DISPOSAL
DOCKET NO. 02-0417-2201 (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 25-203 and 25-237, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 20, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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, including regulated industry and other stakeholders.

This rule is necessary to effectively enforcement the statutory authorities found in 22-237, Idaho Code. The proposed changes ensure that the rule is clear and concise in accordance with the Executive Order.

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 associated with this rulemaking.

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

The entire rule in its entirety regulates an activity not regulated by the federal government. The detailed 22-101A analysis can be found on the agency’s website at www.agri.idaho.gov.

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 January 5, 2022 Idaho Administrative Bulletin, [Vol. 22-1, page 11](#) under Docket No. 02-ZBRR-2201.

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

Livestock Carcass Composting Best Practices. 2022. Compiled by ISDA from other sources and housed on the ISDA website or available upon request.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dr. Scott Leibsle, Administrator, Division of Animal Industries, at (208) 332-8500 or scott.leibsle@isda.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 July 27, 2022.

DATED this July 6, 2022.

Lloyd B. Knight
Rules Review Officer
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8664
Fax: (208) 334-2170
Email: rulesinfo@isda.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0417-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)

02.04.17 – RULES GOVERNING DEAD ANIMAL MOVEMENT AND DISPOSAL

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 25-203 and 25-237, Idaho Code. ()

001. SCOPE.

These rules govern the management, movement and disposal of dead animals. ()

002. INCORPORATION BY REFERENCE.

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

01. Livestock Carcass Composting Best Practices, 2022. This document can be viewed online at <https://agri.idaho.gov/main/wp-content/uploads/2022/06/Dead-Animal-Composting-BMPs-final-6.13.22.pdf>. ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. Abandon. To desert or intentionally leave a dead animal without proper disposal as provided in these rules. ()

02. Air Curtain Incineration. A mechanical process of incineration by which super-heated air is continuously circulated to enhance combustion. ()

03. Burning. The act of consuming or destroying by fire with or without the use of an accelerant. ()

- 04. Composting.** The biological decomposition of organic matter under controlled conditions. ()
- 05. Dead Animals.** Carcasses and parts of carcasses from domestic livestock including, but not limited to: bovidae, suidae, equidae, captive cervidae, camelidae, ratitidae, gallinaceous birds and captive waterfowl. ()
- 06. Decomposition.** The decay of dead animals under natural conditions. ()
- 07. Digestion.** A process by which organic matter is hydrolyzed. ()
- 08. Harvested.** Domesticated livestock killed by a person if any portion of the carcass is salvaged. ()
- 09. Incineration.** The controlled and monitored combustion of dead animals for the purposes of volume reduction and pathogen control. ()
- 10. Pets.** Cats, dogs, and other non-human species of animals that are kept as household companions. ()
- 11. Rendering.** The process or business of recycling dead animals and animal by-products. ()
- 12. Sanitary Landfill.** A solid waste disposal site permitted or approved by the Idaho Department of Environmental Quality. ()
- 011. EXCLUSIONS.**
The following establishments and animals are excluded from the provisions of these rules. ()
- 01. Slaughter Establishments.** Establishments that slaughter livestock for human consumption. ()
- 02. Free-Ranging Wildlife.** Non-captive wildlife or wild fish. ()
- 03. House Pets.** House pets less than one hundred (100) pounds in weight. ()
- 04. Pets Buried in a Licensed Pet Cemetery.** Pets of any weight buried in a licensed pet cemetery. ()
- 012. -- 019. (RESERVED)**
- 020. ABANDONMENT OF DEAD ANIMALS.**
No person who owns or is caring for an animal that has died may abandon the dead animal. Animals that are being disposed of by decomposition in accordance with these rules are not considered abandoned. ()
- 021. -- 029. (RESERVED)**
- 030. DISPOSAL OF DEAD ANIMALS.**
Dead animals shall be disposed of within seventy-two (72) hours, by one (1) of the following methods, after knowledge of the death of the animal or as provided by the Administrator. No person shall dispose of a dead animal on the land of another without the permission of the property owner. ()
- 01. Dead Animals on Federally Managed Land.** Animals that die on federally managed rangeland from causes other than significant infectious or contagious diseases or agents shall be disposed of as provided by the regulations of the responsible land management agency. ()
- 02. Disposal Methods Determined by the Administrator.** The Administrator may determine the appropriate method of disposal for animals that die of significant infectious or contagious diseases or agents. ()
- a.** The owner of any dead animal known to be infected with a prion disease must notify the

Administrator prior to disposing of the carcass. ()

03. Rendering. If a licensed and approved rendering facility accepts the dead animal, rendering is an approved method of disposal. ()

a. When carcasses are held for pickup, the site shall be screened from public view, in a dry area and not in a water runoff or drainage area. ()

b. Run-off from the holding area must be contained. ()

04. Burial. Dead animals shall be buried to such a depth that no part of the dead animal may be nearer than three (3) feet to the natural surface of the ground. Every part of the dead animal shall be covered with at least three (3) feet of earth. The location of a burial site shall be: ()

a. At least three hundred (300) feet from any wells, surface water intake structures, and public or private drinking water supply lakes or springs. ()

b. At least three hundred (300) feet from any existing residences. ()

c. At least fifty (50) feet from property lines. ()

d. At least one hundred (100) feet from public roadways. ()

e. At least two hundred (200) feet from any body of surface water such as a river, stream, lake, pond, intermittent stream, or sinkhole. Elevated or up-gradient surface waters are not subject to this setback. ()

f. Burial sites shall not be located in low-lying areas subject to flooding, or in areas with a high water table where the seasonal high water level may contact the burial pit. ()

05. Disposal in an Approved Sanitary Landfill. Arrangements shall be made with a city, county, regional, or private landfill official in order to dispose of a dead animal in a city, county, regional, or private landfill. ()

06. Composting. ()

a. Composting of dead animals may be allowed in a manner approved by the Administrator. ()

b. No composters that have been approved by other agencies shall begin composting dead animals without the approval of the Administrator. ()

07. Digestion. Digestion of dead animals may be accomplished in a properly designed and sized dead animal digester approved by the Administrator. ()

08. Incineration. ()

a. Incineration of dead animals shall be accomplished in an approved incineration facility, or by a mobile air curtain incinerator at a site approved by the Administrator. ()

b. The incineration shall be thorough and complete, reducing the carcass to mineral residue. ()

09. Burning. Open burning of dead animals is not allowed, except as authorized by the Administrator, in coordination with the Department of Environmental Quality. ()

10. Decomposition. Animals that die on private or state rangeland, except domesticated livestock that are harvested, from causes other than significant infectious or contagious diseases or agents may be left to decompose naturally provided that they are at least one thousand three hundred twenty (1,320) feet from any surface water (public or private), wells, springs, public roadways and residences. ()

031. -- 039. (RESERVED)

040. MOVEMENT OF DEAD ANIMALS.

No dead animals may be loaded into the same vehicle with live animals. ()

01. Vehicles Used for Transporting Dead Animals. Vehicles used for transporting dead animals shall be constructed and maintained, or be prepared prior to receiving dead animals into the vehicle, so that no liquid or fluid from the dead animals is allowed to drip or seep from the vehicle during transport. ()

02. Dead Animals Concealed from View. Dead animals shall be concealed from public view during transportation. ()

03. Direct to Destination. Vehicles hauling dead animals shall travel to their destination directly. ()

04. Disinfection. Vehicles that have hauled dead animals off an owner's property shall not be used to haul live animals, feeds or similar commodities to the property of another person until they have been thoroughly cleaned and disinfected. ()

05. Transport of Dead Animals. No person may transport a dead animal across or through the property of another person without the landowner's permission. ()

041. -- 049. (RESERVED)

050. DEAD ANIMAL EMERGENCIES.

Dead animal emergencies are those situations involving dead animals that have been determined by the Administrator to require extraordinary disposal measures. ()

01. Situations Requiring Extraordinary Disposal Measures. These situations include, but are not limited to, the following: ()

a. Situations where one (1) or more animals die of an infectious or contagious disease or agent that may pose a significant threat to humans or animals; ()

b. Situations wherein the number of dead animals is large enough to require extraordinary disposal measures. ()

02. Administrator to Determine Disposal Methods. The Administrator may employ exceptional or extraordinary methods of dead animal disposal as necessary to protect the health and welfare of the human and animal populations of the state of Idaho. Such methods may include, but not be limited to: ()

a. Open burning; ()

b. Pit burning; ()

c. Burning with accelerants; ()

d. Pyre burning; ()

e. Air curtain incineration; ()

f. Mass burial; or ()

g. Natural decomposition. ()

051. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.04.29 – RULES GOVERNING TRICHOMONIASIS
DOCKET NO. 02-0429-2201 (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 25-203 Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 20, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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, including regulated industry and other stakeholders.

The rule fulfills the statutory authorization and direction to prevent the spread of disease. As proposed, the rule fulfills the need for a regulatory framework to prevent the spread of trichomoniasis, while also meeting the expectations of the Executive Order.

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 associated with this rulemaking.

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 sections of the rule which 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 an activity not regulated by the federal government. The detailed 22-101A analysis can be found on the agency’s website at www.agri.idaho.gov.

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 January 5, 2022 Idaho Administrative Bulletin, [Vol. 22-1, page 11](#) under Docket No. 02-ZBRR-2201.

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

This rule incorporates the official 2022 Edition of Idaho’s “Protocol for Trichomonas fetus Diagnosis in Cattle”, which can be viewed online at <https://agri.idaho.gov/main/laboratories/animal-health-laboratories/>.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dr. Scott Leibsle, Administrator, Division of Animal Industries, at (208) 332-8500 or scott.leibsle@isda.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 July 27, 2022.

DATED this July 6, 2022.

Lloyd B. Knight
Rules Review Officer
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0429-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)

02.04.29 – RULES GOVERNING TRICHOMONIASIS

000. LEGAL AUTHORITY.

Section 25-203, Idaho Code. ()

001. SCOPE.

These rules govern procedures for the prevention, control and eradication of Trichomoniasis, a venereal disease of cattle caused by the organism *Tritrichomonas foetus*. ()

002. -- 003. (RESERVED)

004. INCORPORATION BY REFERENCE.

IDAPA 02.04.29 incorporates by reference the official 2022 Edition of Idaho “Protocol for *Trichomonas foetus* Diagnosis in Cattle” which can be viewed online at <https://agri.idaho.gov/main/laboratories/animal-health-laboratories/>. ()

005. -- 009. (RESERVED)

010. DEFINITIONS.

The following definitions apply: ()

01. Cattle. All bovidae, except bison. ()

02. Exposed Cattle. Any cattle that have been in contact with cattle infected with or affected by Trichomoniasis. ()

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

04. Infected Cattle. Any cattle determined by an official test or diagnostic procedure to be infected with Trichomoniasis or diagnosed by a veterinarian as infected. ()

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

06. Negative. Cattle that have been found to be free from infection with Trichomoniasis using an official test. ()

07. PCR. Polymerase Chain Reaction. ()

08. Positive. Cattle that have been found to be infected with Trichomoniasis using an official test. ()

09. T Brand. A two inch by three inch (2" x 3") single-character hot iron T brand, applied to the left of the tail-head of a bull, signifying that the bull is infected with Trichomoniasis. ()

10. Trichomoniasis. A venereal disease caused by the organism *Tritrichomonas foetus*. ()

011. – 099. (RESERVED)

100. TRICHOMONIASIS CONTROL AND ERADICATION PROGRAM.

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

01. Bulls in Public Grazing Allotments. Bulls that are to be turned out on public grazing allotments shall be tested for Trichomoniasis by April 15 of each Trichomoniasis testing season or prior to turnout, which ever occurs first. ()

02. Virgin Bulls. All bulls native to Idaho that are less than twenty-four (24) months of age and have never serviced a cow are exempt from the Trichomoniasis testing requirements. ()

a. Such bulls shall be identified by an accredited veterinarian with an official Trichomoniasis bangle tag for the current testing season and the identification recorded on an electronic Trichomoniasis Test and Report Form. ()

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

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

04. Bulls Consigned to Slaughter or to an Approved Feedlot. Bulls consigned directly to slaughter at an approved slaughter establishment or to an approved feedlot are exempt from testing requirements. ()

05. Extension of Testing Deadline. The Administrator may grant an extension of time beyond April 15 to accomplish Trichomoniasis testing after the owner submits a written request, outlining the reasons for the extension and requested length of extension, to the Division of Animal Industries. ()

a. The herd of bulls shall be put under Hold Order until the owner furnishes documentation that the

bulls have been tested. ()

101. – 109. (RESERVED)

110. TRICHOMONIASIS TESTING IDENTIFICATION.

All bulls tested and tagged for Trichomoniasis shall be identified by an official Trichomoniasis bangle tag of for the current testing season and the identification recorded on a Trichomoniasis Test and Report Form approved by the Administrator. Beginning with the September 2021 testing season, annual tag colors will be rotated in the following order: White, Orange, Blue, Yellow, and Green. ()

111. -- 199. (RESERVED)

200. BULLS FOR SALE.

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

01. Returned to Home Premises. Such bulls shall be returned to home premises for official testing; or ()

02. Sold Directly to Slaughter. Such bulls shall be sold directly to slaughter at an approved slaughter establishment, an Idaho approved feedlot, as defined in IDAPA 02.04.20, “Rules Governing Brucellosis”; or ()

03. Placed Under a Hold Order. Such bulls will be placed under Hold Order by the livestock market veterinarian or a private veterinarian and have three (3) consecutive negative Trichomoniasis PCR or culture tests. The samples for each test shall be collected at least seven (7) days apart and tested for Trichomoniasis to be eligible to receive a certificate of negative test; or ()

04. Virgin Bulls. Virgin bulls native to Idaho that are less than twenty-four (24) months of age and have never serviced a cow shall be identified with an official Trichomoniasis bangle tag for the current testing season. ()

05. Period of Validity. For resident breeding bulls sold in Idaho, the negative test is valid for up to ninety (90) days provided the bull(s) has had no contact with female cattle from the time of test to the time of sale. ()

06. Contact with Female Cattle. Bulls that have had contact with female cattle subsequent to testing must be retested prior to sale. ()

201. -- 299. (RESERVED)

300. PUBLIC GRAZING.

All bulls that are turned out on public grazing allotments shall be certified and identified as virgin bulls, or tested negative for Trichomoniasis prior to the turnout date, or before April 15 of each testing season, which ever occurs first. ()

01. Grazing Associations. All bulls that are in a public grazing association or run in common on an allotment will be considered part of one (1) herd. ()

02. Positive Tests. If any bull owned by any of the producers in a grazing association or allotment tests positive on an official test, all other producers in the association or allotment are considered part of an infected bull herd and handled in accordance with Section 310 of this rule. ()

301. -- 309. (RESERVED)

310. INFECTED BULLS AND HERDS.

Any bull or cow that is positive to an official Trichomoniasis test is considered infected. A herd in which one (1) or

more bulls or cows are found infected with Trichomoniasis is considered infected. ()

01. Confirmatory Testing of Culture Positive Bulls. Any culture positive bull must be confirmed by PCR test at an approved laboratory unless the animal is destined directly to slaughter. The result of the PCR will be the final determinant of the test status. ()

02. Quarantine of Infected Herds. Any veterinarian that discovers an infected herd shall notify the Division of Animal Industries within forty-eight (48) hours that the test was positive. A quarantine will be issued and may include a provision requiring all breeding age female cattle in the infected herd to be held in isolation from all bulls for a period of up to one hundred twenty (120) days as determined by the Administrator. ()

03. Exposed Herds. Herds identified as exposed through an epidemiological investigation will be placed under a Hold Order. ()

a. Bulls in exposed herds will be tested as determined by the Administrator. ()

b. All bulls tested in exposed herds shall be individually identified pursuant to Section 110. ()

04. Testing of Infected Herds. Bulls in infected herds shall be tested negative for Trichomoniasis three (3) consecutive times, using PCR, before the quarantine can be released. Samples for each test must be collected at least seven (7) days apart and tested for Trichomoniasis to be eligible to receive a certificate of negative test. ()

a. All bulls tested in the infected herd and all purchased and home raised additions to the bull herd, including virgin bulls, shall be individually identified and recorded pursuant to Section 110. ()

b. Bulls that have three (3) consecutive negative PCR tests conducted at least seven (7) days apart shall be considered negative for Trichomoniasis and can be so certified. ()

05. Identifying Infected Bulls. The administrator may require all bulls testing positive for trichomoniasis, to be identified with a hot iron T brand applied to the left of the tail-head indicating that the bull is positive for trichomoniasis. ()

311. -- 319. (RESERVED)

320. MOVEMENT OF INFECTED CATTLE.

All infected cattle shall be consigned to slaughter at an approved slaughter establishment or consigned to an approved livestock market for sale to an approved slaughter establishment and remain under quarantine until moved to slaughter. All infected cattle being moved from the premise of origin to an approved livestock market for sale to slaughter, or directly to an approved slaughter establishment for slaughter, shall move on a valid VS 1-27 form. ()

01. Slaughter Within Thirty Days. All infected cattle shall be moved to slaughter within thirty (30) days of the issuance of the quarantine. All infected cattle are to be kept separate and apart from cattle or domestic bison of the opposite sex. The infected cattle will remain under quarantine until moved to slaughter. ()

02. Exceptions. Upon request the Division of Animal Industries may grant an extension of time after the owner submits a written request for extension of time for movement to slaughter to the Division of Animal Industries. ()

321. TREATMENT OF INFECTED BULLS.

There are no treatments for Trichomoniasis approved for use in Idaho. ()

322. -- 329. (RESERVED)

330. OFFICIAL LABORATORIES.

Only laboratories approved by the Division of Animal Industries as official laboratories may test official Trichomoniasis samples. ()

01. Protocols. Official laboratories will operate in accordance with the official Idaho “Protocol for *Trichomonas foetus* Diagnosis in Cattle.” ()

02. Check Test. Official laboratories personnel responsible for conducting trichomoniasis testing must be trained and certified by ISDA in the detection of trichomonad organisms and must pass a certifying check test administered by the Division of Animal Industries. ()

331. OFFICIAL TRICHOMONIASIS TESTS.

01. Culture Tests. An official test is one in which the sample is received in the official laboratory, in good condition, and tested according to the official Idaho “Protocol for *Trichomonas foetus* Diagnosis in Cattle.” Samples which have been frozen or exposed to high temperatures shall be discarded. ()

02. Polymerase Chain Reaction. PCR test completed by a qualified laboratory, approved by the Administrator. ()

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

04. Use of Official Laboratories. Accredited veterinarians are to utilize only official laboratories for testing of Trichomoniasis samples. ()

332. SAMPLE SUBMISSION AND REPORTING OF TEST RESULTS AND OFFICIAL IDENTIFICATION.

Accredited veterinarians must submit samples, test results, and official identification of all Trichomoniasis tests on a form approved by the Administrator within five (5) business days of: ()

01. Collecting the Sample. If submitting to an official lab for PCR testing; or ()

02. Finalizing Culture Results. or ()

03. Identifying Virgin Bulls. Identifying virgin bulls with official Trichomoniasis bangle tags. ()

333. -- 399. (RESERVED)

400. RODEO BULLS.

Bulls currently in a rodeo string, bulls purchased under the feedlot exemption at an approved livestock market, bulls purchased by private treaty, and bulls purchased in other states and imported into Idaho for rodeo purposes are exempt from Trichomoniasis testing under the following conditions: ()

01. Division Approval. The owner of the rodeo bulls has completed and submitted an application to the Division of Animal Industries, which the Division has approved; and ()

02. Not Mixed with Cows. The rodeo bulls are confined to a dry lot and not mixed with cows or used for breeding purposes; and ()

03. Permanently Identified. All bulls in the rodeo string are officially identified; and ()

04. Records Maintained. Official identification records are maintained in a permanent record file at the owner’s premises and a copy of the record will be provided to the Division of Animal Industries upon request; and ()

05. Bulls Purchased. Bulls purchased for addition to the rodeo string shall meet all other health requirements. Purchased bulls shall be immediately officially identified as specified in Subsection 400.03 of this rule.

Official back tag and ear tag numbers on the bull at time of purchase shall be correlated to the official identification in the official record; and ()

06. Bulls Removed for Slaughter. Removal of bulls to slaughter is documented in the permanent record; and ()

07. Bulls Removed for Breeding Purposes. Bulls that are removed from the rodeo string for breeding purposes shall undergo three (3) consecutive negative official tests for Trichomoniasis. The samples for each test are to be collected at least seven (7) days apart and tested for Trichomoniasis to be eligible to receive a certificate of negative test. ()

401. -- 409. (RESERVED)

410. FEEDING BULLS OF UNKNOWN TRICHOMONIASIS STATUS.

Bulls of unknown Trichomoniasis status may be fed for slaughter in an Idaho approved feedlot. ()

01. Removal of Untested Bulls. Untested bulls shall be sold directly to slaughter at an approved slaughter establishment. ()

02. Removal of Bulls for Breeding Purposes. Bulls that are removed for breeding purposes shall undergo three (3) consecutive negative official tests for Trichomoniasis. The samples for each test are to be collected at least seven (7) days apart and tested for Trichomoniasis to be eligible to receive a certificate of negative test. ()

411. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.06.02 – RULES GOVERNING REGISTRATIONS AND LICENSES

DOCKET NO. 02-0602-2201 (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 22-604, 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 July 20, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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, including regulated industry and other stakeholders.

This rule includes subchapters that allow for the enforcement of statutes related to commercial feed, fertilizer, soil and plant amendments, and bee registration. The rule as presented, significantly reduces language that is redundant to language found in statute and/or incorporated documents. The rule ensures consistency and a clear outline of requirements between the authorizing statutes, incorporated documents, and details left to the rule.

The subchapters are consistent with similar programs in other states, and they regulate activities not otherwise regulated by the federal government.

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

- Subchapter A – A product registration fee of \$40 per product, as authorized in statute.
- Subchapter B – No fee included.
- Subchapter C – No fee included in rule, fee is outlined in statute.
- Subchapter D – No fee included in rule, fee is outlined in statute.

FISCAL IMPACT: The following is a specific description, if applicable, of 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.

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 sections of the rule which 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 an activity not regulated by the federal government. The detailed 22-101A analysis can be found on the agency's website at www.agri.idaho.gov.

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 January 5, 2022 Idaho Administrative Bulletin, [Vol. 22-1, page 11](#) under Docket No. 02-ZBRR-2201.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 are necessary in order to ensure that the registration programs for commercial feed, fertilizer, and soil amendments are consistent with other states. As currently written, the rule now relies on the standards outlined in the incorporated documents rather than re-writing standards in the agency rule.

Subchapter A:

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 “2022 Official Publication” of AAFCO where those statements do not conflict with Title 25, Chapter 27, Idaho Code, and any rule promulgated thereunder.

02. The Merck Index. The “Merck Veterinary Manual,” 11th Edition”, as published by Merck Research Laboratories Division of Merck & Co., Incorporated.

Subchapter B:

No documents incorporated.

Subchapter C:

01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication. The Officially Adopted Documents, Official Terms, and Policies, as published in the “2022 Official Publication” of AAPFCO where those statements do not conflict with Title 22, Chapter 6, Idaho Code, and any rule promulgated thereunder.

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.

Subchapter D:

01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication. The Terms, Ingredient Definitions, and Policies, as published in the “2022 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.

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.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Andrea Thompson, Section Manager, Division of Plant Industries, at (208) 332-8500 or andrea.thompson@isda.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 July 27, 2022.

DATED this July 6, 2022.

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THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 02-0602-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)

02.06.02 – RULES GOVERNING REGISTRATIONS AND LICENSES

000. LEGAL AUTHORITY.

Sections 22-604, 22-2204, 22-2303(5), 22-2503, 22-2511, and 25-2710, Idaho Code. ()

001. SCOPE.

These rules specify general commercial feed, fertilizer, and soil and plant amendment product registration and label requirements. These rules are also to prevent the introduction or further dissemination of certain bee diseases and establish registration and collection of fees. ()

002. -- 103. (RESERVED)

SUBCHAPTER A – COMMERCIAL FEED

104. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into this Subchapter A: ()

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 “2022 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. ()

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>. ()

105. -- 114. (RESERVED)

115. REGISTRATION AND FEES.

01. Product Registration Fee. Whenever a commercial feed is registered for distribution in the state of Idaho, a fee of forty dollars (\$40) per product will be collected. ()

02. Product Registration Fee Exemption. Sellers who are not regularly engaged in the business of manufacturing or selling commercial feed and whose total amount of gross annual sales does not exceed five hundred dollars (\$500) are exempt from payment of the registration fee. This registration fee exemption does not exempt anyone from other sections of Subchapter A and/or the Idaho Commercial Feed Law. ()

116. -- 119. (RESERVED)

120. LABEL FORMAT.

01. Label Format. Commercial feeds shall be labeled with the information prescribed in Section 25-2705 of the Commercial Feed Law and Subchapter A on the principal display panel of the product and in the following general format. ()

- a. Net Weight. ()
 - b. Product name and brand name if any. ()
 - c. If a drug is used, the required directions for use and precautionary statements or reference to their location if the detailed feeding directions and precautionary statements appear elsewhere on the label. ()
 - d. The guaranteed analysis of the feed as required under the provisions of Section 25-2705(1)(c) of the Commercial Feed Law includes the following items, unless exempted, and in the order listed: ()
 - i. Minimum percentage of crude protein. ()
 - ii. Maximum or minimum percentage of equivalent protein from non-protein nitrogen. ()
 - iii. Minimum percentage of crude fat. ()
 - iv. Maximum percentage of crude fiber. ()
 - v. Minerals, to include, in the following order: minimum and maximum percentages of calcium (Ca), minimum percentage of phosphorus (P), minimum and maximum percentages of salt (NaCl), and other minerals. ()
 - vi. Vitamins. ()
 - vii. Total sugars as invert on dried molasses products or products being sold primarily for their sugar content. ()
 - viii. Exemptions. Guarantees for minerals are not required when there are no specific label claims and when the commercial feed contains less than six and one-half percent (6 1/2%) of Calcium, Phosphorus, Sodium, or Chloride. Guarantees for vitamins are not required when the commercial feed is neither formulated for nor represented in any manner as a vitamin supplement. Guarantees for crude protein, crude fat, and crude fiber are not required when the commercial feed is intended for purposes other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, such as drug premixes, mineral or vitamin supplements, and molasses. ()
 - e. Feed ingredients, collective terms for the grouping of feed ingredients, or appropriate statements as provided under the provisions of Section 25-2705(1)(d) of the Commercial Feed Law shall be listed in decreasing order of predominance by weight: ()
 - i. The name of each ingredient as defined in the AAFCO Official Publication, common or usual name, or one approved by the Director. ()
 - ii. Collective terms for the grouping of feed ingredients as defined in the Official Definitions of Feed Ingredients published in the AAFCO Official Publication in lieu of the individual ingredients; provided that when a collective term for a group of ingredients is used on the label, individual ingredients within that group shall not be listed on the label. The manufacturer shall provide the feed control official, upon request, with a list of individual ingredients within a defined group, that are or have been used at manufacturing facilities distributing in or into the state. ()
- 02. Guidelines for “Human Grade” Claims.** In order to substantiate that a “human grade” claim is truthful and not misleading, a manufacturer making such claims must have documentation as required in the AAFCO Official Publication. Submitted documentation will not be reviewed as part of the label approval process, excepting any legal question or action requiring such.

121. -- 129. (RESERVED)

130. EXPRESSION OF GUARANTEES.

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

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

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

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

131. -- 144. (RESERVED)

145. ADULTERANTS.

01. Screenings or By-Products. All screenings or by-products of grains and seeds containing weed seeds, when used in commercial feed or sold as such to the ultimate consumer, shall be ground fine enough or otherwise treated to destroy the viability of such weed seeds. ()

146. -- 309. (RESERVED)

SUBCHAPTER B – BEE INSPECTION

310. REGULATED BEE DISEASES.

American foulbrood, European foulbrood, sac brood and bee paralysis, Varroa mite, tracheal mite, or any other disease or abnormal condition of egg, larval, pupal, or adult stages of honey bees. ()

311. -- 329. (RESERVED)

330. REGULATED PRODUCTS AND RELATED EQUIPMENT.

Subchapter B concerns any stage of the common honey bee, *Apis mellifera* L., all equipment used in handling and manipulation of bees, wax, and hives, and includes any containers for honey and wax that may be used in any apiary or in transporting bees and their products and apiary supplies that are located within the state of Idaho. ()

331. -- 339. (RESERVED)

340. REGISTRATION AND COLLECTION OF FEES.

On or before July 1 of each year any person engaging in the activities of apicultural shall file with the Idaho Department of Agriculture a "Registration" form provided by the Idaho Department of Agriculture specifying the name, residence, place of apiaries, number of hives or colonies of bees owned or controlled, and such other information as may be required, accompanied by the applicable registration fee. ()

341. -- 403. (RESERVED)

SUBCHAPTER C – FERTILIZER

404. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into Subchapter C: ()

01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication. The Officially adopted Documents, Official Terms, and Policies, as published in the “2022 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. ()

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. ()

405. -- 419. (RESERVED)

420. SAMPLING AND ANALYSIS.

The methods of sampling are those of AAPFCO and analysis are those of the Association of Official Analytical Chemists (AOAC) or other methods as approved by the department. ()

421. -- 439. (RESERVED)

440. WARNING OR CAUTION STATEMENTS.

A warning or cautionary statement is required on any fertilizer product: ()

01. Containing Boron. If the fertilizer product contains one tenth of a percent (.10%) or more boron in a water soluble form, the statement shall include: ()

a. The word “Warning” or “Caution” conspicuously displayed; ()

b. The crops for which the fertilizer is recommended; and ()

c. That the use of the fertilizer on any crop(s) other than those recommended may result in serious injury to the crop(s). ()

02. Containing Molybdenum. If the fertilizer product contains one thousandths of a percent (.001%) or more molybdenum, the statement shall include: ()

a. The word “Warning” or “Caution” conspicuously displayed; and ()

b. That the application of fertilizers containing molybdenum may result in forage crops containing levels of molybdenum that are toxic to ruminant animals. ()

441. -- 469. (RESERVED)

470. INVESTIGATIONAL ALLOWANCES.

01. Deeming a Fertilizer Deficient. A fertilizer will be deemed deficient if the analysis of any nutrient is below the guarantee by an amount exceeding the values in the following schedules, or if the overall index value of the fertilizer is below ninety-seven percent (97%). Note: For these investigational allowances to be applicable, the recommended AOAC International procedures for obtaining samples, preparation and analysis must be used. These are described in Official Methods of Analysis of the Association of Official Analytical Chemists, 13th Edition, 1980, and in succeeding issues of the Journal of the Association of Official Analytical Chemists. In evaluating replicate data, Table 19, page 935, Journal of the Association of Official Analytical Chemists, Volume 49, No. 5, October, 1966, should be followed. ()

02. Investigational Allowances for Nitrogen, Phosphate and Potash. For guaranteed percentages not listed in the following table, calculate the appropriate investigational allowance by interpolation.

Guaranteed Percent	Nitrogen Percent	Available Phosphate Percent	Potash Percent
04 or less	0.49	0.67	0.41
05	0.51	0.67	0.43
06	0.52	0.67	0.47
07	0.54	0.68	0.53
08	0.55	0.68	0.60
09	0.57	0.68	0.65
10	0.58	0.69	0.70
12	0.61	0.69	0.79
14	0.63	0.70	0.87
16	0.67	0.70	0.94
18	0.70	0.71	1.01
20	0.73	0.72	1.08
22	0.75	0.72	1.15
24	0.78	0.73	1.21
26	0.81	0.73	1.27
28	0.83	0.74	1.33
30	0.86	0.75	1.39
32 or more (*)	0.88	0.76	1.44

(*For DAP and MAP, the Investigational Allowance for Available Phosphate is zero point seventy (0.70); for TSP, the Investigational Allowance shall be: one point fifty-two (1.52)). For dry custom mix fertilizers, an additional five percent (5%) of the guaranteed percentage shall be granted in addition to the allowances made in Subsection 470.02. ()

471. -- 503. (RESERVED)

SUBCHAPTER D – SOIL AND PLANT AMENDMENTS

504. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into Subchapter D: ()

01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication. The Terms, Ingredient Definitions, and Policies, as published in the “2022 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. ()

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. ()

505. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.06.05 – RULES GOVERNING PLANT DISEASE AND QUARANTINES
DOCKET NO. 02-0605-2201 (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 22-2004 and 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 July 20, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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, including regulated industry and other stakeholders.

This rule includes subchapters that provide for quarantine activities that are authorized in statute (Plant Pest Act). These quarantines provide for two primary services: First, the quarantines are in place to protect from the spread of pests and disease that can be harmful to the production of certain crops. Second, quarantine activities can be necessary to provide verification of disease or pest activities in order for Idaho grown crops to be eligible for export.

There are no comparable federal quarantine regulations. These quarantines are state specific, although there is consistency between Oregon, Washington, and Idaho related to the quarantines for hops and grapes.

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

There are no fees 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.

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 sections of the rule which 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 an activity not regulated by the federal government.

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

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 January 5, 2022 Idaho Administrative Bulletin, [Vol. 22-1, page 11](#) under Docket No. 02-ZBRR-2201.

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

There are no documents incorporated by reference.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Andrea Thompson, Section Manager, Division of Plant Industries, at (208) 332-8500 or andrea.thompson@isda.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 July 27, 2022.

DATED this July 6, 2022.

Lloyd B. Knight
Rules Review Officer
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0605-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)

02.06.05 – RULES GOVERNING PLANT DISEASE AND QUARANTINES

000. LEGAL AUTHORITY.

Sections 22-2004, and 22-2006, Idaho Code.

()

001. SCOPE.

This rule establishes regulated pests, regulated products, regulated articles, control areas, quarantine areas and special permits for certain crops to prevent the spread of plant disease and pests. This rule will provide regional consistency for plant pest quarantines.

()

002. -- 009. (RESERVED)

010. DEFINITIONS.

The definitions set forth in Section 22-2005, Idaho Code, apply in the interpretation and enforcement of this rule.

()

SUBCHAPTER A – DISEASES OF HOPS

011. -- 111. (RESERVED)

112. REGULATED PESTS.

01. Verticillium Wilt. Plant Material infected with the disease caused by the fungus *Verticillium nonalfalfae* (formerly known as *Verticillium albo-atrum Reinke and Berth*) and any species or strains of the genus *Verticillium* pathogenic to hops. ()

02. Powdery Mildew. Plant Material infected with the disease caused by the fungus *Podosphaera macularis* (Wallr. Fr.), synonyms *Sphaerotheca macularis* (Wallr. Fr.) Lind and *Sphaerotheca humuli* (Burril) Lind. ()

03. Hop Stunt Viroid. Plant Material infected with the disease caused by the viroid *Hostuviroid hop stunt viroid* and all strains and genetic variants associated with the genus. ()

04. Ilarvirus Species. Plant Material infected with the disease caused by virus species within the Genus *Ilarvis*, including but not limited to Apple Mosaic Virus and Prunus Necrotic Ringspot Virus. ()

113. -- 119. (RESERVED)

120. REGULATED ARTICLES.

01. Plant Material. Plants and all plant parts of hops, except kiln dried cones. ()

121. -- 129. (RESERVED)

130. QUARANTINE AREA.

All areas outside of the territorial borders of Idaho, Oregon, and Washington. ()

131. -- 139. (RESERVED)

140. RESTRICTIONS ON IMPORT.

No person may import restricted articles from the quarantined area into Idaho unless the person importing the regulated articles first obtains a special permit from the department as set forth in Section 160. ()

141. --159. (RESERVED)

160. SPECIAL PERMITS.

Any person(s) or agencies wishing to import covered commodities from the quarantine area must apply in writing for a special permit as authorized by the department. ()

01. Application. Application for special permits must list the prospective buyer and seller; the number, and origin of stock; location of proposed planting site; and any other relevant information. ()

02. Conditions. Special permits, when granted, may include such conditions as may be necessary to prevent disease establishment. All permitted material must be found free from regulated pests by a federal, state, or university laboratory. ()

161. -- 211. (RESERVED)

SUBCHAPTER B – WHITE ROT DISEASE OF ONION

212. REGULATED PEST.

Onion white rot (*Sclerotium cepivorum*). ()

213. -- 219. (RESERVED)

220. DESIGNATED COUNTIES.

Ada, Bingham, Blaine, Boise, Bonneville, Canyon, Cassia, Elmore, Gem, Gooding, Jefferson, Jerome, Lincoln, Madison, Minidoka, Owyhee, Payette, Power, Twin Falls, and Washington Counties, state of Idaho. ()

221. -- 229. (RESERVED)

230. REGULATED PRODUCTS.

Bulbs, sets, or seedlings of onion, garlic, leek, chive, shallot or other Allium species, including all ornamental Allium species, for planting purposes. ()

231. -- 249. (RESERVED)

250. RULES GOVERNING SHIPMENTS.

01. Shipment for Planting Purposes. No person may import into the designated counties bulbs, sets or seedlings of onion, garlic, leek, chives, shallots or other Allium species, including ornamentals, for planting purposes except as provided in Subsections 250.02 through 250.04. ()

02. Designated Counties. Allium production within the designated counties shall be limited to production from seed, or from vegetative propagative material produced from seed within the designated counties. Bulbs, sets or seedlings of Allium species produced within the designated counties then exported from the designated counties for processing or other purposes cannot be returned to the designated counties for planting purposes. ()

03. Vegetative Propagative Material. Vegetative propagative material, produced under aseptic conditions or field inspected annually by the Department during active growth, may be brought into the designated counties if an exemption is granted by the Department. ()

04. Allium Exemption. Bulbs, sets, or seedlings of Allium species, for planting purposes, produced in Malheur County, Oregon, and regulated by similar rules are exempt from the restrictions of Subsection 250.01. ()

251. -- 309. (RESERVED)

SUBCHAPTER C – APPLE AND CHERRY PESTS

310. DEFINITIONS.

The definitions found in section 310 apply to the interpretation and enforcement of Subchapter C only: ()

01. Commercial Fruit. Fruit harvested from a commercial orchard and destined to a commercial processing plant, packing plant, or for retail or wholesale sales. ()

02. Commercial Orchard. An orchard in which fruit is grown for commercial purposes under accepted industry, university agricultural extension service, and regulatory guidelines. ()

03. Graded Culls. Apples that have failed to meet industry quality standards for fresh markets, yet meet industry quality standards for processing purposes. ()

04. Infested Area. An area where a regulated pest is known to be present and is capable of reproducing and maintaining a viable population. ()

05. Threatened with Infestation. The entire commercial orchard is threatened with infestation when an outside boundary is within one-half (1/2) mile of an established regulated pest even if a portion of the commercial orchard is beyond one-half (1/2) mile of an established regulated pest. ()

311. – 319. (RESERVED)

320. REGULATED PESTS.

01. Apple Maggot. (*Rhagoletis pomonella*). ()

02. Plum Curculio. (*Conotrachelus nenuphar* (Coleoptera: Curculionidae)). ()

321. REGULATED ARTICLES.

All commercially packed fresh fruit of apple (including crabapple), cherry, hawthorn (haw), pear, plum, prune, and quince. ()

322. --329. (RESERVED)

330. REGULATED AREAS.

01. Non-Infested Areas -- Within Idaho. Any commercial orchard surveyed for verification of pest freedom and found negative. ()

331. -- 339. (RESERVED)

340. RESTRICTIONS.

Any shipment of regulated articles shall be free from infestation of regulated pests. ()

341. -- 511. (RESERVED)

SUBCHAPTER D – PEACH TREE DISEASES

512. REGULATED PESTS.

The viral diseases known as Peach Yellows, Peach Rosette, and Little Peach. ()

513. -- 519. (RESERVED)

520. AREA UNDER QUARANTINE.

All states or foreign countries or portion thereof where Peach Yellows is known to occur. ()

521. -- 524. (RESERVED)

525. REGULATED ARTICLES.

All trees, cuttings, grafts, scions, or buds of all Prunus species and varieties including the flowering forms of peach, nectarine, apricot, almond, plum, and prune, and any trees budded or grafted on peach stock or peach roots, coming from a regulated area. ()

526. -- 529. (RESERVED)

530. RESTRICTIONS GOVERNING SHIPMENTS.

The regulated articles will not be admitted into Idaho from the regulated areas unless the state of origin certifies that they were produced in a county free from infection with the regulated pests, as determined by adequate annual surveys satisfactory to the Director, and from disease-free bud sources, rootstocks, and environs. ()

531. -- 539. (RESERVED)

540. OFFICIAL CERTIFICATE REQUIREMENTS.

The certificates required by Section 530 of these rules, will state the names and addresses of the shipper and consignee, the number and kind of regulated articles in the shipments, and the area where grown. A copy of the certificate accompanies the shipment, and one (1) copy is forwarded at the time of shipment to the Division of Plant Industry, Idaho State Department of Agriculture, Boise, Idaho. ()

541. -- 549. (RESERVED)

550. EXEMPTIONS.

This quarantine does not apply to experiments of the United States Department of Agriculture in the state of Idaho

nor to experiments of the College of Agriculture, Department of Pathology of the University of Idaho. ()

551. -- 609. (RESERVED)

SUBCHAPTER E – DISPOSAL OF CULL ONIONS AND POTATOES

610. DEFINITIONS.

The definitions found in section 610 apply to the interpretation and enforcement of Subchapter E only. ()

01. Cull Onions. Refers to those onions that are not marketable or usable for consumption or are generally considered waste, and includes the residue left in the field from the production of onion seed as well as commercial onions. ()

02. Cull Potatoes. Refers to those potatoes that are not marketable or usable for consumption or as seed potatoes and includes the residue left in the field from commercial or seed potato production, or as a result of spoilage while in storage. ()

611. -- 619. (RESERVED)

620. REGULATED AREA.

01. Onions. Ada, Canyon, Gem, Payette, Owyhee, and Washington Counties, state of Idaho. ()

02. Potatoes. The entire state of Idaho. ()

621. -- 629. (RESERVED)

630. REGULATED PRODUCTS.

01. Cull Onions. All cull onions produced as a result of market conditions, the grading process, or as a result of breakdown in storage or sorted out in the field during harvest and bulbs and waste left over from seed production. ()

02. Cull Potatoes. All cull potatoes produced as a result of market conditions, the grading process, or as a result of breakdown in storage, or sorted out in the field during harvest and tubers and waste left over from potato seed production. ()

631. -- 639. (RESERVED)

640. DISPOSITION OF CULL ONIONS.

All cull onions existing in the control area shall be disposed of by a method approved of in Section 641 of this rule, to prevent sprouting. Disposal of all existing cull onions and debris must be completed prior to March 15th, of each year; provided; however, that in the case of onions sorted on or after March 15th of each year, the cull onions resulting therefrom shall be disposed of within one (1) week after such sorting regardless of the disposal method. The Department only enforces the cull onion disposal portions of this rule from March 15th through July 1st of each year. ()

641. DISPOSAL METHODS.

To control the spread of the onion maggot and related onion diseases, all disposal methods listed in Section 641 must be carried out to the extent that control of the regulated pest(s) is achieved in order to be in compliance with Subchapter E. ()

01. Disposal by Covering in Dumps or Pits. ()

a. Cull onions disposed of by being dumped in pits shall be managed and covered as recommended by the University of Idaho Agricultural Extension Service. ()

b. Covering shall be accomplished by March 15th of each year or as provided in Section 640 of this rule. ()

02. Disposal by Feeding After March 15th of Each Year. ()

a. Onion debris shall be completely removed from feeding areas and buried under twelve (12) inches or more of onion-free soil by March 15th of each year. ()

b. In the case of residues of onion debris two (2) inches or less in depth, or onions tramped into the soil so that they cannot be removed, such areas shall be disked and plowed as deep as possible, and such that all onions and debris are buried under eight (8) inches or more of onion-free soil by March 15th of each year. ()

c. Feeding areas and areas where onions are buried shall be treated in the manner set out in Section 641. ()

03. Disposal by Composting. Cull onions being composted shall be covered by twelve (12) inches or more of onion-free soil or composting material until the onions have turned to compost. ()

04. Disposal of Residue in Onion Producing Fields. ()

a. Commercial onion fields where sort-out bulbs are left at harvest shall be disked and plowed as deep as possible, and such that all onions and debris are buried under eight (8) inches or more of onion-free soil by March 15th of each year. ()

b. Following final seed harvest, seed bulbs shall be disked and plowed as deep as possible, and such that all onions and debris are buried under eight (8) inches or more of onion-free soil by March 15th of each year. ()

05. Disposal by Chopping or Shredding. Cull onions that have been chopped or shredded to the point that they are incapable of sprouting, shall be disked and plowed as deep as possible, and such that all onions and debris are buried under eight (8) inches or more of onion-free soil by March 15th of each year. ()

06. Disposal by Spreading. Cull Onions may be disposed of by being spread on agricultural fields destined to be planted to a crop other than onions provided the onions are disked and plowed as deep as possible, and such that all onions and debris are buried under eight (8) inches or more of onion-free soil. ()

642. INCLEMENT WEATHER.

If inclement weather prevents disposal by the methods in Subsections 641.01 through 641.06, culls shall be treated with an EPA-labeled insecticide at prescribed intervals as recommended by the University of Idaho Agricultural Extension Service until proper disposal as prescribed in Subsections 641.01 through 641.06 can be carried out. ()

643. (RESERVED)

644. NOTIFICATION REQUIRED.

Any person or entity delivering cull onions for disposal in the area regulated for cull onion disposal shall provide written notification to the recipient of those cull onions advising the recipient of this rule and the recipient's obligations for the disposal of the cull onions under this rule. If the recipient is not the property owner, written notification shall also be made to the owner of the property where the onions are to be disposed of. Failure to make such notification in writing is a violation of Subchapter E. ()

645. -- 649. (RESERVED)

650. DISPOSITION OF CULL POTATOES.

All cull potatoes existing west of the Raft River shall be rendered non-viable by April 15th of each year and all cull potatoes generated after April 15th shall be rendered non-viable on a daily basis until September 20th. All cull potatoes existing east of the Raft River shall be rendered non-viable by May 15th of each year and all cull potatoes

generated after May 15th shall be rendered non-viable on a daily basis until September 20th. ()

651. CULL POTATO DISPOSAL METHODS.

Cull potatoes shall be disposed of in a manner as to render them non-viable. Disposal methods are those as recommended by the University of Idaho Agricultural Extension Service. ()

652. -- 709. (RESERVED)

SUBCHAPTER F – MINT ROOTSTOCK AND CLONE PRODUCTION

710. DEFINITIONS.

The definitions found in section 710 apply in the interpretation and enforcement of Subchapter F only: ()

01. Field. A parcel of land submitted to the department for inspection of the mint being grown thereon, and physically separated by a minimum of five (5) feet of bare ground, or irrigation ditch, or road, or other physically discernible barrier separating it from an adjacent parcel of land planted with mint. ()

711. (RESERVED)

712. REGULATED PESTS.

01. Diseases. Verticillium wilt (*Verticillium dahliae* Kleb) a persistent soil-borne fungal disease of mint and any virulently pathogenic, persistent disease known to be detrimental to the production of mint rootstock. ()

02. Insects. Mint stem borer (*Pseudobaris nigrina*), insect pests of mint rootstocks and any persistent insect pest known to be detrimental to the production of mint rootstocks and without effective control options. ()

03. Noxious Weeds. Those weeds declared noxious by authority of Title 22, Chapter 24, Idaho Code (Noxious Weed Law) and Rules. Growers will be notified by the Department of existing noxious weed problems. If noxious weeds have not been effectively controlled as determined by the Department, prior to the second inspection, the field will be rejected for certification by the Department. ()

713. -- 714. (RESERVED)

715. REGULATED PRODUCTS.

01. Mentha. Rootstocks of all species of the genus *Mentha*. ()

716. -- 719. (RESERVED)

720. CONTROL AREAS.

To facilitate inspection and control, the areas, currently defined as: Cassia, Gooding, Jerome, Minidoka, and Twin Falls counties. ()

01. Certified mint shall not be grown when the specific location is within five (5) miles of uncertified mint unless there are adequate physical and cultural barriers. ()

721. -- 729. (RESERVED)

730. REQUIREMENTS FOR PLANTING MINT ROOTSTOCK.

01. State of Origin Phytosanitary Certificate. Healthy clones shall be accompanied by a phytosanitary certificate or transfer permit issued by a regulatory agency of the state of origin with zero (0) tolerance for regulated disease(s), insect(s) and noxious weed(s). ()

02. Greenhouse Requirements. Greenhouses shall be screened and tightly constructed to preclude entry of any regulated pest. Planting media shall be sterilized prior to planting and not re-used for planting of any mint destined to be entered in mint certification. Greenhouses shall be disinfected annually with a ten percent (10%) sodium hypochlorite solution. ()

731. -- 739. (RESERVED)

740. DETECTION OF REGULATED PESTS.

In the event visual examination reveals evidence of a regulated pest, laboratory tests, if necessary to determine the causal organism, will be conducted by the Idaho Department of Agriculture laboratory on official samples in addition to the field inspection. In the case of a disagreement between the state Department of Agriculture and the interested party concerning the identity of the regulated pest in question, the state Department of Agriculture will submit an official sample to any lab of the University of Idaho, for a final determination. ()

741. -- 779. (RESERVED)

780. EXEMPTIONS.

01. Government Agencies. Subchapter F does not apply to any governmental agency growing mint in experimental plots approved by the Director of the Idaho Department of Agriculture and under the supervision of qualified plant scientists. ()

02. Private Home Use. These rules do not apply to species of the genus *Mentha* intended for private home use. ()

781. -- 819. (RESERVED)

SUBCHAPTER G – GRAPE PLANTING STOCK

820. REGULATED AREAS.

All areas outside of the territorial borders of the state of Idaho. ()

821. -- 829. (RESERVED)

830. REGULATED COMMODITIES.

Planting stock of grape (*Vitis* species) including live plants, hardwood cuttings, softwood cuttings, rootstocks, and any other parts of the grape plant, except fruit, capable of propagation (except fruit). ()

831. REGULATED PESTS.

Regulated pests include, but are not limited to: ()

01. Grapevine Fanleaf Virus. ()

02. Grapevine Leaf Roll - Associated Viruses. ()

03. Red Blotch Virus. ()

04. Grapevine Corky Bark Disease. Which include, but may not be limited to: ()

a. Grapevine virus A. ()

b. Grapevine virus B. ()

05. Grape Phylloxera. (*Daktulosphaira vitifoliae*); ()

06. Pierce's Disease. As caused by the bacterium *Xylella fastidiosa*; ()

- 07. Vine Mealybug. (*Planococcus ficus*) ()
- 08. Glassy-Winged Sharpshooter. (*Homalodisca vitripennis*). ()
- 09. European Grapevine Moth. (*Lobesia botrana*) ()
- 10. Xiphinema Index. ()

832. -- 834. (RESERVED)

835. RULES GOVERNING SHIPMENTS.

01. Admittance into Idaho. Each shipment of a regulated article from a regulated area must be accompanied by a certificate issued by the state or country of origin's plant protection organization, stating that the grape planting stock to be imported has been certified in accordance with the regulations of an official grapevine certification program of the state or country of origin's plant protection organization, that includes annual inspections at all certification levels and testing at the foundation level for regulated pests and: ()

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

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

c. The grapevines, rootstock or softwood cuttings were grown under a sterile soil-less media and treated with a soil or systemic insecticide and a hot water dip treatment, as outlined in Section 840 of this rule, proven to be effective against vine mealybug and any other pests that may be present on the roots; or ()

d. The grapevines, rootstock, and/or softwood cuttings were subject to one (1) of the two (2) treatments outlined in Section 840 of this rule, or such additional methods as may be determined to be effective and are approved by the director and were stored in a manner after treatment that would prevent re-infestation. ()

02. Marking Contents. All shipments of grape planting stock must be plainly marked with the contents on the outside of the package or container. ()

03. Shipment Notification. Persons shipping or transporting grape planting stock into this state from areas under regulation shall notify the department by electronic mail, regular mail or fax prior to shipment including the nature of the grape planting stock (such as live plants, hardwood cuttings, softwood cuttings, rootstocks, or other similar categories), the quantity in each shipment, the expected date of arrival, the name of the intended receiver and the destination. An official certificate issued by the plant protection organization of the state of origin certifying that the grapevines meet the requirements of this chapter must accompany the grape planting stock into the state. All treatments and inspections must have been witnessed or performed by an official of the state of origin's plant protection organization. ()

836. -- 839. (RESERVED)

840. ACCEPTABLE TREATMENTS.

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

02. Fumigation. Grapevines, rootstock or softwood cuttings may be treated with a fumigant approved for the regulated pests. ()

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

841. -- 854. (RESERVED)

SUBCHAPTER H – JAPANESE BEETLE

855. REGULATED PEST.
Japanese beetle (*Popillia japonica*). ()

856. -- 859. (RESERVED)

860. AREAS UNDER QUARANTINE.
Any areas known to be infested or subsequently found to be infested. ()

861. -- 869. (RESERVED)

870. ARTICLES AND COMMODITIES UNDER QUARANTINE.

01. Possible Hosts and Carriers. The following are hereby declared to be hosts and possible carriers of the Japanese beetle: ()

- a.** Soil, humus, compost, and manure (except when commercially packaged); ()
- b.** All plants with roots (except bareroot plants free from soil); ()
- c.** Grass sod; ()
- d.** Plant crowns or roots for propagation (except when free from soil or under 50mm plug or liner rooting media); ()
- e.** Bulbs, corms, tubers, and rhizomes of ornamental plants (except when free from soil); ()
- f.** Any other plant, plant part, article, or means of conveyance when it is determined by the Director or authorized agent to present a hazard of spreading live Japanese beetle due to infestation or exposure to infestation by Japanese beetle. ()

02. Soil. For the purposes of this quarantine, soil is defined as all growing media in which the plants are actually rooted. Packing material other than soil, added to bareroot plants after harvesting would not normally pose a pest risk. Packing material would be covered under (Subsection 870.01.f.), at the inspector's discretion. ()

03. Free from Soil. For the purposes of this quarantine, free from soil is defined as soil in amounts that could not contain concealed Japanese beetle larvae or pupae. ()

871. -- 879. (RESERVED)

880. RESTRICTIONS.

All articles and commodities under quarantine are prohibited entry into Idaho from an area under quarantine with the following exceptions: ()

01. Certificate of Treatment. All of the articles and commodities covered are approved for entry into Idaho when accompanied by a certificate issued by an authorized state agricultural official at origin stating that the article or shipment was treated for Japanese beetle or grown in accordance with methods and procedures approved and prescribed by the Director. A Certificate of Treatment shall include the date of treatment. During the adult flight period (June to September), the treatment must occur no more than 2 weeks prior to shipment or be retreated. If plants are exposed to a second or additional flight season, they must be retreated during each flight season. Plants that are treated outside of the adult flight season are certified until the next flight season; at which time they must be retreated

if not sold before the next flight season begins. ()

02. Certificate of Origin. Commercial plant shipments with soil may be shipped from an area under quarantine into Idaho provided such shipments are accompanied by a certificate issued by an authorized state agricultural official at origin. Such certificates shall be issued only if the shipment confirms fully with either Subsections 880.02.a., 880.02.b., or 880.02.c. of Subchapter H: ()

a. The greenhouse in which the plants were produced was tightly constructed so that adult Japanese beetles would not gain entry, the plants and greenhouses were inspected and found to be free from all stages of Japanese beetle, and the plants and soil were protected from subsequent infestation while being stored, packed and shipped; or ()

b. The plants were not produced in the regulated area, were transported into the regulated area in a closed conveyance or closed containers and at all times thereafter were protected from becoming infested with Japanese beetle; or ()

c. States or portions of states listed in the area under quarantine may have counties that are not infested with Japanese beetle. Shipments of articles and commodities covered will be accepted from these noninfested counties if annual surveys are made in such counties and the results of such surveys are negative for Japanese beetle. A list of counties so approved will be maintained by the Director. Agricultural officials of other states may recommend a noninfested county be placed on the approved county list by writing for such approval and stating how the surveys were made giving the following information: ()

i. Area surveyed. ()

ii. How survey was carried out. ()

iii. Personnel involved. ()

iv. If county was previously infested, give date of last infestation. ()

v. The recommendation for approval of such counties will be evaluated by the Department of Feeds and Plant Services, Division of Plant Industries, Idaho Department of Agriculture. ()

03. Denial of Approval. If heavy infestations occur in neighboring counties, approval may be denied. To be maintained on the approved list, each county will be reapproved every twelve (12) months. Shipments of articles and commodities under quarantine from noninfested counties will only be allowed entry into Idaho if the noninfested county has been placed on the approved list prior to the arrival of the shipment to Idaho. ()

04. Privately Owned House Plants. Privately owned house plants grown indoors are exempt from Subchapter H. ()

05. Certificate Requirements. A copy shall be forwarded at the time of shipment to the Division of Plant Industry, Idaho State Department of Agriculture, Boise, Idaho. ()

881. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.06.33 – ORGANIC FOOD PRODUCTS RULES

DOCKET NO. 02-0633-2201 (FEE RULE)

NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is May 4, 2022.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 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 July 20, 2022.

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

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

These rules were open for negotiated rulemaking in 2021. The subject of fees was discussed at length with stakeholders during that rulemaking, and support was expressed to increase the fees for this voluntary program. In addition, the Organics Advisory Committee also expressed support for these new fees. All negotiated rules were published as Temporary Rules in 2022, but the agency did not want to publish the fee increase as a temporary rule without review by the Legislature. The rule and new fee structure was presented to the Idaho Legislature during the 2022 legislative session, and the rule was approved by joint resolution.

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

This new temporary rule adds the new fee table that is supported by stakeholders and the Organic Advisory Committee and was presented to and approved by the Idaho Legislature. The fee increase is necessary to ensure the financial stability of this dedicated fund program.

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

The fee is authorized under 22-1103, Idaho Code. It is necessary to maintain services to customers of this voluntary certification program.

301. GRADUATED GROSS SALES FEE SCHEDULE.

~~01. Graduated Gross Sales Fee Table.~~ In addition to the fees prescribed above, all producers and handlers certified by the Department must remit with their certification application an amount based on their annual gross organic sales during the last calendar year, or in the case of a first-time applicant, a projected gross organic sale dollar amount for the upcoming calendar year, with a minimum fee of ~~ten~~ thirty-five dollars (~~\$1035~~). The graduated gross organic sales fee structure is as follows:

0-2,000	<u>\$10</u>
2,001-5,000	<u>\$235</u>
5,001 - 10,000	<u>\$650</u>
10,001 - 15,000	<u>\$75100</u>
15,001 - 20,000	<u>\$1030</u>
20,001 - 25,000	<u>\$1265</u>

25,001 - 30,000	\$ 1950
30,001 - 35,000	\$ 175230
35,001 - 50,000	\$ 3250
50,001 - 75,000	\$ 375490
75,001 - 100,000	\$ 6500
100,001 - 150,000	\$ 9750
150,001 - 200,000	\$1, 0300
200,001 - 280,000	\$1, 40820
280,001 - 375,000	\$ 1,8752,440
375,001 - 500,000	\$ 2,5003,250
500,001 and up	0. 75 % of gross organic sales up to \$ 5,0006,500

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

This rule change will not have a negative impact on the general fund due to the program being operated by a fee for service dedicated fund. These fee changes are needed to provide the services requested by organic certifiers in a growing voluntary program and align with recommendations from industry to increase the graduate gross fee schedule fees by 30%, hour rate by 42%, and nominal fee increases to three other categories. Total potential impact to dedicated funds is a \$168,000 increase with 93% coming from the fee schedule and hour rate increase.

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

This rule is neither broader in scope nor more stringent than federal laws or regulations and does not regulate an activity not already regulated by the federal government. The detailed 22-101A analysis can be found on the agency’s website at www.agri.idaho.gov.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted under docket 02-ZBRR-2101. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the April 7, 2021 Idaho Administrative Bulletin, Vol. 21-4, page 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 Code of Federal Regulations, Title 7, Part 205, National Organic Program Regulations (July 7, 2010), except sections 205.620 through 205.622, is incorporated by reference and can be viewed online at <http://www.ecfr.gov/cgi-bin/textidx?c=ecfr&SID=b885492294d6e01d334ae6076da2c3c2&rgn=div5&view=text&node=7:3.1.1.9.32&idno=7>. Copies of this document may be obtained from the Idaho State Department of Agriculture (ISDA), 2270 Old Penitentiary Road, Boise, Idaho 83712.

Incorporating this document is necessary as it ensures organic certifications facilitated by ISDA comply with and are consistent with the national regulations. Organic certification is voluntary, but for those that decide that certification is necessary, compliance with the federal regulation is essential.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Jared Stuart, Administrator of the Division of Agricultural Inspections, at (208)332-8500 or jared.stuart@isda.idaho.gov. Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2022.

DATED this July 6, 2022.

Lloyd B. Knight, Rules Review Officer
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249

Boise, Idaho 83707
Phone: (208) 332-8664
Fax: (208) 334-2170
Email: rulesinfo@isda.idaho.gov

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF FEE DOCKET NO. 02-0633-2201
(Only Those Sections With Amendments Are Shown.)**

300. CERTIFICATION REQUIREMENTS AND FEES.

01. Certification Requirements. All applicants applying for certification with the Department, must submit the application to the Department on forms prescribed or approved by the Department. (3-15-22)

a. All organic food producers/handlers in Idaho with annual gross organic sales of more than five thousand dollars (\$5,000) must be certified with the Department, unless certified by agents other than the Department accredited under the National Organic Program. (3-15-22)

b. Producers/handlers with annual gross organic sales of five thousand dollars (\$5,000) or less may select certification. (3-15-22)

c. All organic food producers and organic handlers certifying with the Department are subject to an annual on-site inspection. (3-15-22)

02. Certification Fees. (3-15-22)

a. Organic producers/handlers ~~with annual gross organic sales of more than five thousand dollars (\$5,000) up to fifteen thousand dollars (\$15,000) or producers with annual gross income of five thousand dollars (\$5,000) or less~~ requesting certification – Certification Application Fee of ~~one~~ **two** hundred ~~twenty-five~~ dollars (~~\$125~~**200**) that is non-refundable. ~~(3-15-22)~~**(5-4-22)T**

~~**b.** Organic producer/handler with annual gross organic sales of more than fifteen thousand dollars (\$15,000) – Certification Application Fee of two hundred dollars (\$200) that is non-refundable. (3-15-22)~~

eb. A person who produces and handles their own organic food products pays only one (1) annual certification fee based on gross annual organic sales. (3-15-22)

03. Certification Inspection Fees. (3-15-22)

a. The hourly rate is ~~thirty-five~~ **fifty** dollars (~~\$35~~**50**) including travel time. ~~(3-15-22)~~**(5-4-22)T**

b. Travel time from an inspector’s normal duty station to the inspection site and return to normal duty station will be compensable time charged to the applicant. (3-15-22)

c. There will be a minimum charge of ~~thirty-five~~ **fifty** dollars (~~\$35~~**50**) plus mileage ~~as approved by the Board of Examiners~~ **as approved by the Board of Examiners** for any inspection. ~~(3-15-22)~~**(5-4-22)T**

~~d.~~ *A mileage rate as approved by the Board of Examiners will be included in the inspection fees.* (3-15-22)

~~ed.~~ Inspections conducted on weekends, holidays, or after normal office hours will be charged at an hourly rate of ~~forty-seven~~ sixty-five dollars ~~and fifty cents~~ (\$~~47.50~~65) including travel time with a minimum charge of one (1) hour plus mileage. (3-15-22)(5-4-22)T

~~fe.~~ Upon approval by the Department, private inspectors may be utilized. The applicant bears the total cost of the private inspection. (3-15-22)

04. Additional Services/Charges. (5-4-22)T

~~a.~~ Private Label Arrangement – Annual fee of two hundred dollars (\$200) per arrangement assessed to ISDA certified co-packer or handler packaging and/or affixing a private label for a non-ISDA certified entity. (5-4-22)T

~~b.~~ Export and Transaction Certifications – Twenty-five dollars (\$25) will be assessed for each international export and transaction certificate requested. (5-4-22)T

301. GRADUATED GROSS SALES FEE SCHEDULE.

~~01.~~ ~~Graduated Gross Sales Fee Table.~~ In addition to the fees prescribed above, all producers and handlers certified by the Department must remit with their certification application an amount based on their annual gross organic sales during the last calendar year, or in the case of a first-time applicant, a projected gross organic sale dollar amount for the upcoming calendar year, with a minimum fee of ~~ten~~ thirty-five dollars (\$~~10~~35). The graduated gross organic sales fee structure is as follows:

0 <u>0</u> – 2,000	\$10 <u>\$10</u>
2,001 <u>0</u> - 5,000	\$235 <u>\$235</u>
5,001 - 10,000	\$650 <u>\$650</u>
10,001 - 15,000	\$75100 <u>\$75100</u>
15,001 - 20,000	\$1030 <u>\$1030</u>
20,001 - 25,000	\$1265 <u>\$1265</u>
25,001 - 30,000	\$1950 <u>\$1950</u>
30,001 - 35,000	\$475230 <u>\$475230</u>
35,001 - 50,000	\$3250 <u>\$3250</u>
50,001 - 75,000	\$375490 <u>\$375490</u>
75,001 - 100,000	\$6500 <u>\$6500</u>
100,001 - 150,000	\$9750 <u>\$9750</u>
150,001 - 200,000	\$1,0300 <u>\$1,0300</u>
200,001 - 280,000	\$1,40820 <u>\$1,40820</u>
280,001 - 375,000	\$1,8752,440 <u>\$1,8752,440</u>
375,001 - 500,000	\$2,5003,250 <u>\$2,5003,250</u>
500,001 and up	0.75% of gross organic sales up to \$5,000 <u>\$6,500</u>

(3-15-22)(5-4-22)T

IDAPA 02.08 – IDAHO SHEEP AND GOAT HEALTH BOARD

02.08.01 – SHEEP AND GOAT RULES OF THE IDAHO SHEEP AND GOAT HEALTH BOARD

DOCKET NO. 02-0801-2201 (NEW CHAPTER, FEE RULE)

NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is April 27, 2022.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 25-1296(1), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 20, 2022.

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

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

This temporary and proposed rulemaking adopts and republishes the chapter previously submitted to and reviewed by the Idaho Legislature under IDAPA 02.08, rules of the Idaho Sheep and Goat Health Board (Board.) There are no changes to the temporary and proposed rule chapter and it is being promulgated as it was previously approved during legislative review.

The Board is not including any changes to the rules and is requesting that the rule is accepted as it is currently formatted and was approved in the previous years to maintain industry consistency and regulatory transparency.

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

These rules protect the public health, safety, and welfare by governing the prevention and control of transmissible diseases. They also comply with governing law for the Board to carry out its statutory obligations.

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

The fees or charges, authorized in Section 25-131, Idaho Code, remain unchanged and are part of the agency's 2023 budget that relies upon the existence of these fees or charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these temporary rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget.

The following is a specific description of the fees or charges being imposed and collected at the same rate in the previous year:

- Section 700 – Sheep Assessments
- Section 701 – Goat Assessments
- Section 900 – Violations

FISCAL IMPACT: The following is a specific 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 are no fiscal impact changes requested. The fiscal impact shall remain the same as previous years.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Idaho Sheep and Goat Health Board has no rule changes. The Board is made up of small ruminant producers who together share information, knowledge and expertise that qualify them to make decisions on behalf of the sheep and goat industries.

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 temporary and proposed rule attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Emily Merrigan at 208-803-5084.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2022.

DATED this 6th day of July, 2022.

Emily Merrigan
Executive Secretary
Idaho Sheep and Goat Health Board
2118 W Airport Way
Boise, ID 83705
208-803-5084

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF FEE DOCKET NO. 02-0801-2201
(New Chapter)**

02.08.01 – SHEEP AND GOAT RULES OF THE IDAHO SHEEP AND GOAT HEALTH BOARD

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 25-129(1) and 25-147, Idaho Code. (4-27-22)T

001. TITLE AND SCOPE.

01. Title. The title of this chapter is the “Sheep and Goat Rules of the Idaho Sheep and Goat Health Board.” (4-27-22)T

02. Scope. These rules govern procedures for the prevention, control and eradication of diseases among sheep and goats, the interstate and intrastate movement of sheep and goats and the assessment of fees on sheep and goats to provide resources to carry out these functions. (4-27-22)T

002. – 003. (RESERVED)

004. INCORPORATION BY REFERENCE.

Copies of the following documents may be obtained from the Idaho State Department of Agriculture Division of Animal Industries. IDAPA 02.08.01 incorporates by reference: (4-27-22)T

01. The Code of Federal Regulations Title 9, Parts 54.1, 54.2, 54.8, 54.9, 54.10, 54.11, 54.20, 54.21, 54.22 and 79, January 1, 2015. (4-27-22)T

02. The Voluntary Scrapie Flock Certification Program Standards, USDA, June 2013. (4-27-22)T
03. The Code of Federal Regulations, Title 9, Part 161, January 1, 2009. (4-27-22)T
005. -- 009. (RESERVED)
010. DEFINITIONS.
01. **Accredited Veterinarian.** A veterinarian approved by the Administrator and USDA/APHIS/VS in accordance with provisions of Title 9, Part 161, Code of Federal Regulations to perform functions of State-Federal animal disease control programs. (4-27-22)T
02. **Animals.** All vertebrates, except humans. (4-27-22)T
03. **Authorized Federal Inspector.** An employee of USDA authorized by the Board to perform the functions of the Idaho Sheep and Goat Health Board. (4-27-22)T
04. **Authorized State Inspector.** An employee of the state of Idaho authorized by the Board to perform the functions of the Idaho Sheep and Goat Health Board. (4-27-22)T
05. **Board.** The Idaho Sheep and Goat Health Board or its designee. (4-27-22)T
06. **Breeding Stock.** Intact male or female sheep or goats of any age. (4-27-22)T
07. **Brucellosis.** An infectious disease of animals and humans caused by bacteria of the genus *Brucella*. (4-27-22)T
08. ***Brucella Ovis* Test Positive.** An animal that tests in the positive range on an approved *Brucella Ovis* ELISA test. (4-27-22)T
09. ***Brucella Ovis* Test Suspect.** An animal that tests in the suspect range on an approved *Brucella Ovis* ELISA test. (4-27-22)T
10. ***Brucella Ovis* Test Negative.** An animal that tests in the negative range on an approved *Brucella Ovis* ELISA test. (4-27-22)T
11. **Certificate.** An official certificate of veterinary inspection or other approved certificate issued by an accredited veterinarian, state or federal animal health official, or other approved official at the point of origin of the shipment of animal(s) being imported. (4-27-22)T
12. **Commercial Low-Risk Goats.** Intact or castrated goats, raised for fiber or meat, that are not registered or exhibited, that are not scrapie positive, suspect, high risk, or exposed animals and that have not been exposed to sheep or are not from a state that has scrapie in goats. (4-27-22)T
13. **Contemporary Lambing Group.** The time from the first birth to sixty (60) days post birthing of the entire group in a given lambing season. (4-27-22)T
14. **Exposed.** Animals that have had direct contact with other animals, herds, or materials that have been determined to be infected with or affected by any infectious, contagious, or communicable disease. (4-27-22)T
15. **Federal Animal Health Official.** An employee of USDA/APHIS/VS who has been authorized to perform animal health activities. (4-27-22)T
16. **Flock.** Flock or flocks are interchangeable with the terms herd or herds and denote a group of one (1) or more animals that are fed, housed and birthed together on the same premises, or animals maintained in separate geographic areas that have interchange at or around the time of birth. Changes in ownership of a flock do not change the identity of the flock or the regulatory requirements applicable to the flock. (4-27-22)T

17. Flock Plan. A written flock management agreement signed by the owner, his accredited veterinarian if there is one, a representative of the Division of Animal Industries, and an APHIS representative in which each signatory agrees to undertake action specified in the Flock Plan to eradicate or control scrapie as defined in 9 CFR Part 54.8 a-f. Goats exposed to scrapie will be subjected to the same rules as sheep. (4-27-22)T

18. Goats Requiring Premises/Flock Identification Number. Sexually intact goats or goats that have resided on the same premises as sheep or any other goats not defined in Subsection 010.13. (4-27-22)T

19. Idaho Premises/Flock Identification Number. A unique identification number or alphanumeric designation approved by APHIS, and assigned by the Board to each premises/flock of breeding sheep or goats, as defined in Subsection 010.21, in the state of Idaho. (4-27-22)T

20. Low Risk Commercial Sheep. Commercial whiteface, white-faced cross, or commercial hair sheep from a flock with no known risk factors for scrapie, including any exposure to female black-faced sheep, that are identified with a permanent brand or ear notch pattern registered with an official brand registry and that are not scrapie-positive, suspect, high-risk, or exposed animals and are not animals from an infected, source, or exposed flock. (4-27-22)T

21. Negative. Animals are classified as negative when they have been subjected to official tests for a disease, and the tests performed have failed to disclose evidence of the disease. (4-27-22)T

22. Official Individual Identification. The unique identification of individual animals with an alpha numeric number applied as a tag, a legible tattoo, electronic device, or any other device approved by APHIS. The Idaho Premises/Flock Identification number can serve as the official individual identification number if it contains a unique individual animal number in addition to the Idaho premises/flock identification number. (4-27-22)T

23. Post Exposure Monitoring and Management Plan. A monitoring plan which includes a written agreement signed by the owner of the flock and a representative of the Division of Animal Industries and an APHIS representative in which each participant agrees to undertake actions specified in the agreement to monitor for the occurrence of scrapie in the flock for at least five (5) years after an approved Flock Plan has been completed. The PEMMP requires at least once a year flock inspections and prompt reporting of any animal over fourteen (14) months of age which dies in the flock so that some of these animals can be selected and submitted for scrapie testing. The Plan also includes the requirements outlined in 9 CFR Part 54.8. Owners may request to join the Scrapie Flock Certification Program after two (2) years of participation in the PEMMP. (4-27-22)T

24. Premises. The ground, area, buildings and equipment utilized to raise, propagate or control sheep and goats. (4-27-22)T

25. Quarantine. A written order, executed by the Board or the Administrator of Animal Industries, to confine or hold animals on a premises or any other location, where found, and prevent movement of animals from a premises or any other location. (4-27-22)T

26. Scrapie. A transmissible spongiform encephalopathy that is a nonfebrile, transmissible, insidious, degenerative disease affecting the central nervous system of sheep and goats. (4-27-22)T

27. Scrapie Exposed Animal. Any animal which has been in the same flock at the same time within the previous seventy-two (72) months as a scrapie positive female animal excluding limited contacts. Limited contacts are contacts between animals that occur off the premises of the flock and do not occur during or within sixty (60) days after parturition for any of the animals involved. (4-27-22)T

28. Scrapie Flock Certification Program. A cooperative Federal-State-Industry voluntary program for reducing the incidence and controlling the spread of scrapie through flock certification. (4-27-22)T

29. Scrapie High Risk Animal. An animal determined by epidemiologic investigation to face a high risk of developing clinical scrapie because the animal was: (4-27-22)T

- a. Progeny of a scrapie-positive dam; (4-27-22)T
 - b. Born in the same contemporary lambing group as a scrapie-positive animal, or (4-27-22)T
 - c. During any subsequent lambing season if born before the flock completes the requirements of a flock plan; or (4-27-22)T
 - d. Born in the same contemporary lambing group as progeny of a scrapie-positive dam or any QQ, at codon 171, sheep present in the lambing facility/area where a scrapie-positive animal was born during the contemporary birth of a scrapie-positive animal. (4-27-22)T
 - e. Animals that fit the criteria for high risk animals which are determined by genetic testing to be QR or RR at the 171 codon, or are determined by other recognized testing procedures to pose no risk, may be exempted as high risk animals by the Board, upon the recommendation of the State Scrapie Certification Board, based upon evidence from the latest research information available. (4-27-22)T
- 30. Scrapie Infected Flock.** Any flock in which a scrapie-positive animal has been born, birthed or aborted. A flock will no longer be considered infected after an approved Flock Plan has been completed. (4-27-22)T
- 31. Scrapie-Positive Animal.** An animal for which a diagnosis of scrapie has been made by the National Veterinary Services Laboratories, or another laboratory authorized by state or federal officials to conduct scrapie tests approved for scrapie diagnosis by APHIS or the Administrator. (4-27-22)T
- 32. Scrapie Source Flock.** A flock in which an animal was born and subsequently diagnosed as scrapie-positive at less than seventy-two (72) months of age. The flock will no longer be considered a source flock after the requirements of an approved Flock Plan have been completed. A trace to a flock must meet the following criteria to designate the flock as a source flock: The scrapie-positive animal must: (4-27-22)T
- a. Be identified with a Premises/Flock Identification Number, or on an official ear tag, electronic device, ear tattoo, or flank tattoo which is correlated to the Premises/Flock Identification number on flock records; or (4-27-22)T
 - b. Be identified with a genetic heredity test or nose print; or (4-27-22)T
 - c. Possess the original registry ear tag or individual identification ear tag along with the movement, production, or registry records indicating birth in the source flock; or (4-27-22)T
 - d. Be traced to the flock by a veterinary epidemiologist through a thorough epidemiological investigation of records and all other available evidence. (4-27-22)T
- 33. State Animal Health Official.** The Administrator, or his designee, responsible for disease control and eradication programs. (4-27-22)T
- 34. State Scrapie Certification Board.** The State Scrapie Certification Board will consist of APHIS-AVIC, the State animal health official, animal producers and accredited veterinarians. Animal producers and accredited veterinarians will be appointed by the AVIC and the State animal health official. (4-27-22)T
- 35. Terminal Feedlot.** As defined in Title 9 CFR, Parts 54 and 79. (4-27-22)T
- 36. Trace.** All actions required to identify the flock of origin or destination of an animal. (4-27-22)T
- 011. ABBREVIATIONS.**
- 01. APHIS.** Animal Plant Health Inspection Service. (4-27-22)T
 - 02. AVIC.** Area Veterinarian in Charge. (4-27-22)T

- 03. CFR. Code of Federal Regulations. (4-27-22)T
- 04. PEMMP. Post Exposure Monitoring and Management Plan. (4-27-22)T
- 05. USDA. United States Department of Agriculture. (4-27-22)T
- 06. VS. Veterinary Services. (4-27-22)T

012. APPLICABILITY.

These rules apply to all domestic sheep and goats located in, imported into, exported from, or transported through the state of Idaho. (4-27-22)T

013. ADDITIONAL IMPORT REQUIREMENTS.

The Board may impose additional or more restrictive import requirements than the requirements in this chapter by issuing a written order stating the additional requirements and the reasons for the requirements. (4-27-22)T

014. -- 099. (RESERVED)

100. SHEEP AND GOAT STATE ENTRANCE REQUIREMENTS.

01. Entrance Requirements. All breeding sheep and goat stock entering the state of Idaho except as provided in Sections 103, 105, and 107 of these rules will be accompanied by a permit issued by the Board together with a certificate of veterinary inspection certifying that such sheep or goats are free from scrapie, scabies, foot rot, brucella or symptoms of any communicable disease and are not known to have been exposed to scrapie for at least seventy-two (72) months prior to the date of inspection, scabies for a period of at least six (6) months immediately prior to date of inspection and are not known to have been exposed to any communicable disease for at least thirty (30) days immediately prior to date of inspection. All breeding sheep and goats with the exception of low-risk commercial goats imported into the state of Idaho must be individually identified with an official premises/flock identification number, or legible tattoo or other form of individual identification approved by the Board. The premises/flock identification number must be listed on the certificate of veterinary inspection. The original or true copy of the permit and certificate of veterinary inspection required by this rule will be attached to the waybill covering such shipments. No sheep will be shipped, trailed, or in any manner moved into the state of Idaho for any purpose if they originate in a state or area where sheep scabies is known to exist until the Board has been notified by the APHIS that such state or area where sheep scabies is known to exist has been classified by the APHIS as a sheep scabies eradication area. (4-27-22)T

02. Brucella Ovis. Intact male sheep six (6) months of age or older must test negative for *Brucella Ovis* within thirty (30) days prior to entry. Rams entering for exhibition only and returning to the state of origin are exempt from testing. Rams imported from a state certified *Brucella Ovis* free flock are also exempt. (4-27-22)T

101. PERMITS.

01. Request for Permits. Request for the permits required under Section 100 are to be in writing, by telephone or facsimile and set forth the name and address of the owner of the animals offered for movement into the state of Idaho, the number and class of sheep and goats to be brought in, the destination, the name and address of the consignee, and the approximate date and place of entry. A copy of the permit, or permit number written on the face of the waybill or certificate of veterinary inspection accompanying movement, will be shown to a representative of the Board or any law enforcement officer of the state, county, or municipality of the state of Idaho upon request. (4-27-22)T

02. Certificates of Veterinary Inspection to Be Furnished. Copies of the certificates of veterinary inspection from the point of origin must accompany the shipment and include a copy of the permit or the permit number written on the face of the certificate of veterinary inspection and will be shown to a representative of the Board or any law enforcement officer of the state, county, or municipality of the state of Idaho upon request, and a copy forwarded to the Idaho Department of Agriculture, Division of Animal Industries, c/o Idaho Sheep and Goat Health Board, P.O. Box 7249, Boise, Idaho 83707, immediately after issuance for sheep and goats entering the state of Idaho. (4-27-22)T

03. Inspection Fees. An inspection fee of one hundred dollars (\$100) per incidence, plus mileage, will be paid on all sheep and goats exported from or imported into Idaho in violation of these rules. Such incidences require an inspection of animals, certificates of veterinary inspection and permit. (4-27-22)T

04. Examination and Treatment Fees. The Board may assess a fee on sheep and goat producers who receive services from the Board or its representatives, such as examination and treatment of animals for diseases or parasites. The fees assessed are not to exceed the actual costs for the services rendered. (4-27-22)T

102. SCABIES.

All sheep and goats, including rams and bucks, entering Idaho and which have originated in an area or areas in which scabies is known to exist within the past six (6) months must be treated with a product approved by the APHIS under the supervision of an authorized state or federal inspector or accredited veterinarian. At the time of shipment, such sheep or goats must be accompanied by a permit from the Board and a certificate of veterinary inspection from the state of origin and also a treatment certificate showing that such sheep or goats have been treated at point of origin as herein required. Any and all shipments of sheep and goats entering Idaho, and which have originated in states where scabies is known to exist, are subject to a thirty (30) to sixty (60) day quarantine and inspection at the time of arrival at destination, and a second inspection at the time of quarantine release, or as often as it may be deemed necessary by the Board. (4-27-22)T

103. ANIMALS IN TRANSIT.

Sheep and goats in course of transit through the state of Idaho, in trucks, or other vehicles from a point outside the state of Idaho to another state or country, are not to be unloaded in Idaho except in pens designated by APHIS for purpose of feed, water and rest for a period of time not to exceed ten (10) days, need not comply with Section 100, provided waybills or other documents accompanying the sheep or goats show origin and destination of such sheep and goats. Failure to have such waybills or other documents with the sheep or goats constitutes a violation of these rules. The Board, however, may prohibit the transportation of any sheep or goats through the state it feels represents a threat to the general health and welfare of the Idaho sheep industry. (4-27-22)T

104. DAIRY GOATS.

All dairy type goats, including bucks, entering the state of Idaho must be accompanied by a permit issued by the Board, together with a certificate of veterinary inspection issued at point of origin by an authorized veterinarian. All dairy type goats, including bucks, aged six (6) months or older must have been tested negative for *Brucella Melitensis* within thirty (30) days of the date of entry into the state of Idaho accompanied by the negative test chart signed by the person in charge of the laboratory where the test was made and approved by the state animal health official of the state of origin and attached to the certificate of veterinary inspection. Goats entering Idaho on a short-term temporary basis for show or other temporary purposes may be exempted from having a negative test for *Brucella Melitensis* completed, with permission from the Board. (4-27-22)T

105. IMPORTATION OF SCRAPIE EXPOSED, SUSPECT AND HIGH RISK ANIMALS.

Sheep and goats that are scrapie suspect, exposed, or high risk animals or from scrapie infected, source, or exposed flocks, as defined Title 9, Parts 54.1 and 79.1, Code of Federal Regulations, are not allowed entry into Idaho except as follows: (4-27-22)T

01. Valid Permit. Scrapie suspect, exposed or high-risk animals and animals from infected, source or exposed flocks may be imported directly to scrapie research facilities, or to approved slaughter establishments for immediate slaughter, or other destinations approved by the Administrator, if accompanied by a permit issued by the Board or its representative; and (4-27-22)T

02. Officially Identified. The animals are individually identified by official identification tattoos, tags, or devices on a VS 1-27 or other approved movement document. (4-27-22)T

106. IDAHO ORIGIN SHEEP INTERSTATE GRAZING PERMIT.

Idaho origin, low-risk commercial sheep breeding stock with no history of scrapie exposure returning to Idaho from seasonal grazing in other states may return to Idaho without a certificate of veterinary inspection if they are accompanied by an Idaho Origin Sheep Interstate Grazing Permit and a waybill. The Idaho Origin Sheep Interstate Grazing Permit is to be obtained from the Board. (4-27-22)T

107. INTERSTATE SHIPMENTS.

01. Waybill Requirement. All sheep and goats leaving the state of Idaho by any common carrier, by private conveyance, or any kind of transportation must be accompanied by a waybill, stating the owner's name and indicating destination of sheep or goats, or be accompanied by a certificate of veterinary inspection issued by an inspector appointed by the Board or a representative of the APHIS or accredited veterinarian; said certificates of veterinary inspection to be dated not more than thirty (30) days prior to date of movement, and comply with the rules for the state of destination. (4-27-22)T

02. Waybill Violation. Failure to have such waybills or other documents accompanying the sheep or goats constitutes a violation of these rules and is punishable as provided in Section 900. (4-27-22)T

03. Carriers. No common or contract carrier or owner or caretaker will unload any breeding sheep, breeding goats, or dairy goats within the state of Idaho from other states or country, other than as provided in Sections 103, 105, 106, and 107, of these rules, unless such shipments be accompanied by an Idaho Origin Sheep Interstate Grazing Permit issued by the Board or other permit issued by the Board, and the official certificate as provided herein. The original or true copy of each certificate with permit must be attached to the waybill covering such shipments or be in possession of the owner or caretaker of shipment. (4-27-22)T

04. Who May Inspect? Authorized state or federal inspectors and accredited veterinarians may inspect sheep and goats. (4-27-22)T

108. -- 199. (RESERVED)

200. SCRAPIE PROGRAM STANDARDS, SCRAPIE FLOCK CERTIFICATION, SCRAPIE CONTROL AND ERADICATION.

The Board adopts the provisions of the Voluntary Scrapie Flock Certification Program Standards, which were effective June 2013, and 9 CFR, Parts 54.1, 54.2, 54.8, 54.9, 54.10, 54.11, 54.20, 54.21, 54.22 and 79, January 1, 2015, as the minimum standards for the scrapie certification program in Idaho. (4-27-22)T

201. IDENTIFICATION OF BREEDING SHEEP.

01. Assignment of APHIS Approved Idaho Premises/Flock Identification Numbers. The Board or its designee will assign APHIS-approved Idaho premises/flock identification numbers with unique individual animal identification numbers to Idaho sheep and goat flocks/herds. (4-27-22)T

02. Responsibility for Identification. Owners and possessors of breeding sheep and goats bear the cost and responsibility of obtaining the identification devices and placing the device in or on the animal. (4-27-22)T

03. Time of Identification. All owners or possessors of breeding sheep and goats in Idaho will identify all breeding stock in the flock of any age with a premises/flock identification number before transfer of ownership or possession, show, sale, or other movement unless the animals are under eighteen (18) months of age and are in slaughter channels. (4-27-22)T

04. Importation Identification. Breeding sheep or goats imported into the state must be identified with a premises/flock identification number before entry into the state. (4-27-22)T

05. Loss of Identification. Breeding sheep or goats sold within the state retain the original premises/flock identification number. In the event an animal loses a premises/flock identification device, the owner of the animal will re-identify the animal with his or her flock identification number and maintain records to document the original and new flock identification numbers. (4-27-22)T

06. Acceptable Identification. Acceptable devices for application of the premises/flock identification number to breeding sheep and goats include: APHIS-approved ear tags bearing the premises/flock identification number, legible tattoos bearing the premises/flock identification number, approved Scrapie Flock Certification Program identification devices, except electronic identification, and other identification devices approved by APHIS

except electronic identification. (4-27-22)T

07. Identification Exemption. Animals exempt from the requirement for identification with a premises/flock identification number include: (4-27-22)T

a. Neutered animals under eighteen (18) months of age. (4-27-22)T

b. Sexually intact market lambs under eighteen (18) months of age shipped directly to an approved slaughter establishment or shipped directly to a feedlot for finish feeding for slaughter only. (4-27-22)T

c. Animals which have not been removed from their premises of origin and/or transferred ownership with the exception of white-face low-risk range sheep as defined in the 9 CFR Part 79 which are moved for grazing or other management purposes and do not change ownership. (4-27-22)T

d. Castrated or low-risk commercial goats. (4-27-22)T

e. Registered sheep and goats accompanied by registration papers or a certificate of veterinary inspection with legible unique registration tattoos. (4-27-22)T

f. Goats registered with a National Goat Registry that allows for electronic implant identification, as recorded on a registration certificate, may be identified with an electronic implant. (4-27-22)T

202. QUARANTINE.

Infected and source flocks or flocks that have received high-risk animals will be placed and held under quarantine until the infected or high-risk animals have been slaughtered or depopulated, an approved Flock Plan has been completed and the flock is participating in a Post Exposure Monitoring Program. Flocks that do not participate in a Post Exposure Monitoring Program remain under quarantine until the entire flock has been depopulated. Flocks which are removed from the Post Exposure Monitoring Program before the agreed time will be re-quarantined. (4-27-22)T

203. RESTRICTION OF HIGH-RISK ANIMALS.

High-risk animals will be placed under a quarantine when the flock or animals are determined to be exposed. An epidemiological investigation will be conducted on the flock or animals to determine the risk of infection with scrapie. The flock or animals will be maintained under quarantine until the flock is in compliance with the Scrapie Uniform Methods and Rules in effect or until the scrapie epidemiologist has determined that the flock or animals do not pose a substantial risk to other flocks. (4-27-22)T

204. MOVEMENT OF RESTRICTED ANIMALS.

Animals from infected and source flocks and high-risk animals may be moved from quarantined premises only under the following conditions: (4-27-22)T

01. Individually Identified on Approved Document. The animals are individually identified on a VS 1-27 form or other approved document, by official ear tags, tattoos or devices; or (4-27-22)T

02. Indelibly Marked. The animals are indelibly marked with an "S" at least one (1) inch high on the left jaw; and (4-27-22)T

03. Consigned Directly to Approved Destination. The animals are consigned directly to an approved slaughter facility for immediate slaughter or to a terminal feedlot for finish feeding for slaughter only; or (4-27-22)T

a. The animals are consigned directly to an approved livestock market for sale directly to an approved slaughter facility for immediate slaughter or to a feedlot for finish feeding for slaughter only. The animals must be individually identified on a VS 1-27 form or other approved document for movement from the approved livestock market to final destination; or (4-27-22)T

b. The Board or its representative may, by written permission, allow the animals to be moved, under quarantine, to other pre-approved locations. The animals may be moved in sealed vehicles or be accompanied in

transit by representatives of the Board in lieu of individual identification. Animals so moved will be retained under quarantine at the new location. (4-27-22)T

205. -- 399. (RESERVED)

400. CONDEMNATION AND DESTRUCTION OF DISEASED ANIMALS OR FLOCKS.

01. Animals or Flocks Infected. Animals or flocks determined by representatives of the Board or APHIS to be infected with scrapie or other contagious, infectious, or communicable diseases which have been identified by the Board to be diseases of concern to human health or the livestock industry of the state may be condemned by order of the Board. (4-27-22)T

02. Animals or Flocks Condemned. Animals or flocks condemned by order of the Board will be destroyed or otherwise disposed of as directed by order of the Board and under the conditions set by the Board. (4-27-22)T

401. -- 499. (RESERVED)

500. INDEMNIFICATION.

01. Owners, Individuals, Partnerships, Corporations or Other Legal Entities. Owners, individuals, partnerships, corporations or other legal entities whose animals or flocks have been destroyed or otherwise disposed of by order of the Board may be eligible for indemnification in the form of cash payment from the Sheep and Goat Disease Indemnity Fund for all or part of the value of the animals destroyed or otherwise disposed of and for the actual cost for burial or disposal of animal carcasses. (4-27-22)T

02. Indemnity Payments Paid. Indemnity payments are paid only to an owner of sheep or goats that were born in the state of Idaho or were imported into the state in compliance with existing Idaho statutes and rules promulgated thereunder. (4-27-22)T

03. Amount of Indemnity to Be Paid for Each Animal. The amount of indemnity to be paid for each animal is determined by the Board and does not exceed the difference between the appraised price, less federal indemnity, and the salvage value of the animal. In the event federal indemnity is not available the amount of indemnity will not exceed the difference between the appraised price and salvage value. (4-27-22)T

04. Appraisals. Appraisals are to be performed by a team comprised of an Animal Health representative, the owner, and a person with experience in sheep or goat marketing. (4-27-22)T

05. Maximum Amount of Indemnity. The maximum amount of indemnity for each animal will not exceed: (4-27-22)T

a. Ewes or does one (1) year of age or older - two hundred dollars (\$200) per head. (4-27-22)T

b. Rams or bucks one (1) year of age or older - four hundred dollars (\$400) per head. (4-27-22)T

c. Lambs or kids under one (1) year of age - current market price per pound with a maximum of one hundred dollars (\$100) per head. (4-27-22)T

06. Indemnity Payment upon Approval of Appraisal. Upon approval of the appraisal by the Board, one-half (1/2) of the indemnity payment will be paid at that time. The other one-half (1/2) of the indemnity payment, or the prorated portion thereof, will be paid at the end of the fiscal year. Indemnity payments are paid in their entirety in a single fiscal year and do not exceed the amount in the fund. (4-27-22)T

501. -- 599. (RESERVED)

600. CLEANING AND DISINFECTION.

Barns, sheds, stockyards, trucks, aircraft, ferryboats and other vehicles, feed yards, stables, pens, corrals, lanes and

premises that have been used in confining, trailing, or transporting any sheep or goats affected or infected with any contagious, infectious or communicable diseases, will be cleaned and disinfected under state or federal supervision as directed by the Board, or an authorized representative of the Board, and the owner of such premises, conveyances, or carrier are responsible for such cleaning and disinfecting. (4-27-22)T

601. -- 699. (RESERVED)

700. SHEEP ASSESSMENTS.

The following rules apply to all sheep. (4-27-22)T

01. Payment of Assessment. The owner of sheep on July 1st of the assessment year is responsible for the payment of the assessment levied by the Boards as provided for in Section 25-130 and 25-131, Idaho Code. The rate of assessment is eight cents (\$.08) per pound on all wool, in the grease basis, except tags, crutchings, and dead wool. (4-27-22)T

02. Assessment as Resident Sheep. The assessment is levied and assessed to the producer at the time of the first sale of wool and is deducted by the first purchaser from the price paid to the producer at the time of such sale. (4-27-22)T

03. Migratory Sheep. In the event that a sheep, which produces wool subject to this assessment, is located outside the state of Idaho during a part of the assessment year, the amount of the assessment is reduced on a prorated basis. A grower will be required to request a prorated adjustment in writing to the Board. (4-27-22)T

04. Costs of Collection. All costs of collection of delinquent assessments are borne as an additional charge against the delinquent assessee first purchaser. (4-27-22)T

701. GOAT ASSESSMENTS.

The following rules apply to all goats. (4-27-22)T

01. Payment of Assessment. The owner of goat(s) is responsible for the payment of the assessment levied by the Board as provided for in Sections 25-130 and 25-131, Idaho Code. The rate of assessment is eighty cents (\$.80) per head. (4-27-22)T

02. Assessment as Resident Goats. The assessment is levied and assessed to the producer at the time of the sale of said goat(s). (4-27-22)T

a. Auction Yards: Auction yards will deduct the assessment from the price paid to the producer at the time of sale. All goat assessments will be sent to the Idaho Sheep and Goat Health Board (ISGHB) from the auction yards after each sale, but no later than thirty (30) days after the sale. Assessments will be accompanied by a board approved form that includes a list of the producers (sellers) name, address, and number of head sold. (4-27-22)T

b. Private Sales: The producer will handle assessment on private sales. The producer will send at minimum an annual assessment to the ISGHB on all private sales no later than the end of December of the current year. (4-27-22)T

03. Costs of Collection. All costs of collection of delinquent assessments are borne as an additional charge against the delinquent assessee. (4-27-22)T

702. -- 899. (RESERVED)

900. VIOLATIONS.

Any person, company, corporation or association, or any agent, servant or employee of such, who violates or disregard any of these sheep and goat rules or any other sanitary or quarantine rule, order of the Board or inspector thereof, is deemed guilty of a misdemeanor and upon conviction be fined not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) for each offense. (4-27-22)T

901. -- 999. (RESERVED)

IDAPA 05 – IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

05.01.03 – RULES OF THE CUSTODY REVIEW BOARD

DOCKET NO. 05-0103-2201 (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 20-520(1)(t), Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

<p>Monday, July 25, 2022, at 2:30 p.m. MT</p>
<p><i>Physical Location:</i> 954 W. Jefferson St Boise, Idaho 83702</p> <p><i>To participate virtually via BlueJeans meeting:</i> contact Estela.Cabrera@idjc.idaho.gov or call (208) 577-5451 to obtain meeting login information</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:

This proposed rulemaking updates the Rules of the Custody Review Board to comply with [Executive Order 2020-01, Zero-Based Regulation](#) and updates Sections 20-502, 20-532, and 39-1202, Idaho Code, approved during the 2022 Legislative Session.

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

This rulemaking does not involve imposing or increasing 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:

No fiscal impact is anticipated with this rule. The Board is already in operation and this rule serves to update operating procedures.

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, [Volume 22-4, 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: 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 July 27, 2022.

DATED this sixth day of July, 2022.

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. 05-0103-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)

05.01.03 – RULES OF THE CUSTODY REVIEW BOARD

000. LEGAL AUTHORITY.

Title 20, Chapter 5, Idaho Code. ()

001. SCOPE.

These rules are established to ensure that the juvenile corrections system in Idaho and determinations of the Custody Review Board are based on the principles of accountability, community protection, and competency development.

()

002. -- 009. (RESERVED)

010. DEFINITIONS.

In addition to the definitions in Section 20-502, Idaho Code, the following definitions apply: ()

01. Case Management Team. A team consisting of juvenile services coordinator, rehabilitation specialist and juvenile probation officer who provide input in setting and following through with treatment goals.

()

02. Extended Time in Custody. Any period a juvenile remains in custody after age nineteen (19) or beyond eighteen (18) consecutive months and not to exceed age twenty-one (21).

()

011. -- 099. (RESERVED)

100. GENERAL PROVISIONS.

01. Hearings. All matters and testimony concerning juveniles, before the Board, are confidential and are conducted in accordance with Title 74, Chapters 1 and 2, Idaho Code; and Title 20, Chapter 5, Idaho Code, regarding juvenile records and proceedings.

()

101. POWERS AND DUTIES.

01. Review. The Board reviews cases that are referred according to Section 201 of these rules.

()

02. Board Determinations. The Board will determine whether the juvenile needs an extended time in custody to address accountability, community protection, and competency. ()

03. Placement. The Board cannot direct the placement or treatment of a juvenile. ()

04. Release Date for Juveniles. If the Board determines that a juvenile not be retained in custody, the Director sets a release date, as follows: ()

a. A juvenile referred per Subsection 201.01.a. who appears before the Board prior to his nineteenth birthday is released by his nineteenth birthday. The Department may retain the juvenile up to forty-five (45) days after the juvenile's nineteenth birthday only if necessary to finalize an appropriate release plan. ()

b. In cases referred per Subsection 201.01.b., the Department may retain the juvenile long enough to finalize an appropriate release plan, not to exceed forty-five (45) days after the Director signs the Board's determination. ()

c. The Director retains release authority for cases referred per Subsection 201.01.c. ()

102. STRUCTURE AND COMPOSITION OF THE CUSTODY REVIEW BOARD.

01. Board Members and Appointment. The Board is composed of four (4) members appointed by the Director who represent a variety of experiences. Terms are four (4) years, at the pleasure of the Director. In the case of vacancies, appointments are for the remainder of the original term. ()

02. Compensation of Board Members. Members serve without honorarium or compensation but are reimbursed for expenses, subject to the limits provided in Section 67-2008, Idaho Code. ()

103. -- 199. (RESERVED)

200. REVIEW PROCESS.

A juvenile in the custody of the Department does not have the legal right or ability to request or demand a case review by the Board. A review by the Board does not create a liberty interest for the juvenile, and cannot be appealed. All cases come before the Board as outlined in Section 201 of these rules ()

201. REFERRAL OF CASES TO THE BOARD.

01. Cases Eligible for Referral. A case is eligible for referral to the Board if: ()

a. The juvenile is no more than six (6) months from his nineteenth birthday and one (1) or more members of the case management team believes that the juvenile needs extended time in custody beyond that juvenile's nineteenth birthday; ()

b. The juvenile, at the time of commitment to the Department, is past age nineteen (19) or will reach age nineteen (19) prior to the next scheduled meeting of the Board; or ()

c. The juvenile is no more than three (3) months from being in custody for eighteen (18) consecutive months and one (1) or more members of the case management team believes that the juvenile needs extended time in custody beyond eighteen (18) months. ()

d. Cases referred per Subsection 201.01.c. will be heard every six (6) months thereafter until the juvenile is released from custody. ()

02. Hearing Schedules. The Board will set a dates for the hearings annually. ()

03. Written Submissions. All documents to be considered at a particular hearing need to be submitted

in advance of the scheduled hearing. ()

202. PERSONS TO ATTEND OR COMMENT.

01. Juvenile. The subject of a hearing is required to appear either in person or by video. ()

02. Witnesses. The Board allows victims, attorneys, members of the case management team, and approved family members or others who have a direct relationship to the specific hearing or subject of the hearing to participate. ()

03. Participation. Persons who want to participate in hearings shall notify the Board staff in advance of the scheduled hearing. Children, including victims, under the age of fourteen (14), are not allowed to attend the hearings without prior approval of the Board. Parents or guardians of child victims in a case may participate. ()

04. Time Limited. The Board may limit the time allotted to each participant during the hearing. ()

05. Exclusion. The Board may exclude witnesses or participants for inappropriate or disruptive behavior, or other good cause. ()

203. CONFLICT OF INTEREST.

A member of the Board who has personal knowledge of a case, shall notify all other Board members prior to the hearing where that case is to be considered. The remaining members will determine whether that member should be disqualified from participating in the review of that case and determination. ()

204. -- 299. (RESERVED)

300. BOARD DETERMINATIONS.

01. Board's Determination. The Board's written determination will be given to the Director no later than thirty (30) calendar days after the date the Board receives the last documents or interviews the last witness pertaining to the case. All determinations will be held by the Department in the case management file. ()

02. Reconsideration. The Board may reconsider its determination prior to the determination being given to the Director. Only the members who heard the case may discuss or vote on any reconsideration. ()

a. Any member of the Board who was present for and heard the case may call for a vote to reconsider the Board's determination by making a request through the Board chair. ()

b. The chair will call for a motion to reconsider, and a vote. ()

03. Indeterminate Sentence Remains. If the Board determines that extended time in custody is necessary, that determination does not create a determinate sentence of any kind, and the Director retains the authority to release the juvenile at any time deemed appropriate. ()

04. Official Record of Hearing/Review. The signed summary minutes are the official record of a hearing or case review and are maintained with records of the Department. ()

05. Evaluation of Juvenile Cases. Cases are evaluated on the individual merits of each case. The Board's evaluation of a case and a juvenile's need for extended time in custody are not based upon any predetermined hearing standard, criteria, or precedent. Factors that may be considered by the Board include, but are not limited to: ()

a. Seriousness of the crime; ()

b. Prior criminal history; ()

- c. Progress or completion of program, treatment plan, accountability; ()
- d. Institutional history to include conformance to established rules, involvement in programs and overall behavior; ()
- e. Evidence of the development of a positive social attitude and the willingness to fulfill the obligations of a good citizen; and ()
- f. Information regarding physical, psychological, or other conditions. ()

301. -- 399. (RESERVED)

400. VICTIMS.

The Department and the Board will respect the rights of victims of crime, pursuant to the Idaho Constitution and statute. When a case is referred, the Department will provide the Board with a list of crime victims who were officially identified by the adjudicating court or prosecuting attorney. ()

01. Notice to Victims. The Board will notify identified victims of a juvenile's crime that a custody review hearing is scheduled and of their right to submit written statements or information and testimony. After the hearing, the Department shall notify victims of the Board's determination. ()

a. Notices including the Board's final determination and any anticipated release documents will be sent to the victim of record at the last known address or through a victim witness coordinator. The victim is responsible for providing any change of address. ()

b. Victims may request that they not be notified or contacted. ()

02. Victim Testimony. A victim may attend all hearings pertinent to their case and provide testimony. The victim may be allowed to testify before the Board members during a hearing session outside the juvenile's presence. ()

401. -- 999. (RESERVED)

IDAPA 08 – STATE BOARD OF EDUCATION

08.01.11 – REGISTRATION OF POSTSECONDARY EDUCATIONAL INSTITUTIONS AND PROPRIETARY SCHOOLS

DOCKET NO. 08-0111-2201

NOTICE OF INTENT TO PROMULGATE RULES – ZERO-BASED REGULATION NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, 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 33-105, 33-107, 33-2402, and 33-2403, Idaho Code, to implement the provisions of Chapter 24, Title 33, Idaho Code.

METHOD OF PARTICIPATION: Interested persons wishing to participate in the negotiated rulemaking must respond to this notice by contacting the undersigned either in writing, by email, or by calling the phone number listed below. To participate, responses must be received by July 14, 2022.

At least one negotiated meeting will be scheduled, should a reasonable number of persons respond to this notice, negotiated meetings will be scheduled and all scheduled meetings shall be posted and made accessible on the agency website at the address listed below.

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.

Upon the 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: The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principal issues involved:

In accordance with [Executive Order 2020-01](#): Zero-Based Regulation, this rulemaking will be a review of the chapter for evaluation on how it can be improved, simplified, and streamlined. Any provisions duplicative of statutory language will be removed.

ASSISTANCE ON TECHNICAL QUESTIONS, MEETING ACCOMMODATIONS, 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 Tracie Bent at (208)332-1582 or tracie.bent@osbe.idaho.gov. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the Idaho State Board of Education web site at the following web address: <https://boardofed.idaho.gov/>.

DATED this 6th day of July, 2022.

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

IDAPA 08 – STATE BOARD OF EDUCATION

08.01.13 – RULES GOVERNING THE OPPORTUNITY SCHOLARSHIP PROGRAM

DOCKET NO. 08-0113-2201

NOTICE OF INTENT TO PROMULGATE RULES – ZERO-BASED REGULATION NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, 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 33-105, and 33-4303, Idaho Code, for implementing the provisions of Title 33, Chapter 56, Idaho Code.

METHOD OF PARTICIPATION: Interested persons wishing to participate in the negotiated rulemaking must respond to this notice by contacting the undersigned either in writing, by email, or by calling the phone number listed below. To participate, responses must be received by July 14, 2022.

At least one negotiated meeting will be scheduled, should a reasonable number of persons respond to this notice, negotiated meetings will be scheduled and all scheduled meetings shall be posted and made accessible on the agency website at the address listed below.

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.

Upon the 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: The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principal issues involved:

In accordance with [Executive Order 2020-01](#): Zero-Based Regulation, this rulemaking will be a review of the chapter for evaluation on how it can be improved, simplified, and streamlined. Any provisions duplicative of statutory language will be removed.

ASSISTANCE ON TECHNICAL QUESTIONS, MEETING ACCOMMODATIONS, 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 Tracie Bent at (208)332-1582 or tracie.bent@osbe.idaho.gov. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the Idaho State Board of Education web site at the following web address: <https://boardofed.idaho.gov/>.

DATED this 6th day of July, 2022.

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

IDAPA 08 – STATE BOARD OF EDUCATION

08.02.02 – RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-2201

NOTICE OF INTENT TO PROMULGATE RULES – ZERO-BASED REGULATION NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, 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 Article IX, Section 2 of the Idaho Constitution and under Sections 33-105, 33-107, 33-116, 33-1006, 33-1201 and 33-1612, Idaho Code.

METHOD OF PARTICIPATION: Interested persons wishing to participate in the negotiated rulemaking must respond to this notice by contacting the undersigned either in writing, by email, or by calling the phone number listed below. To participate, responses must be received by July 14, 2022.

At least one negotiated meeting will be scheduled, should a reasonable number of persons respond to this notice, negotiated meetings will be scheduled and all scheduled meetings shall be posted and made accessible on the agency website at the address listed below.

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.

Upon the 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: The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principal issues involved:

In accordance with [Executive Order 2020-01: Zero-Based Regulation](#), this rulemaking will be a review of the chapter for evaluation on how it can be improved, simplified, and streamlined. Any provisions duplicative of statutory language will be removed. Additional amendments being considered would streamline and clarify the certification requirements for certificated staff in our public schools and provide clarification to certification and endorsement requirements due to legislative changes made during the 2022 Legislative Session; and amendments to transportation reimbursement requirements for electronic buses and parts and extending the maximum mileage reimbursement. Additional technical corrections identified as part of the negotiated rulemaking process may be made.

ASSISTANCE ON TECHNICAL QUESTIONS, MEETING ACCOMMODATIONS, 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 Tracie Bent at (208)332-1582 or tracie.bent@osbe.idaho.gov. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the Idaho State Board of Education web site at the following web address: <https://boardofed.idaho.gov/>.

DATED this 6th day of July, 2022.

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

IDAPA 08 – STATE BOARD OF EDUCATION

08.02.03 – RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-2201

NOTICE OF INTENT TO PROMULGATE RULES – ZERO-BASED REGULATION NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, 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 Article IX, Section 2 of the Idaho Constitution and under Sections 33-105, 33-116, 33-118, and 33-1612, Idaho Code.

METHOD OF PARTICIPATION: Interested persons wishing to participate in the negotiated rulemaking must respond to this notice by contacting the undersigned either in writing, by email, or by calling the phone number listed below. To participate, responses must be received by July 14, 2022.

At least one negotiated meeting will be scheduled, should a reasonable number of persons respond to this notice, negotiated meetings will be scheduled and all scheduled meetings shall be posted and made accessible on the agency website at the address listed below.

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.

Upon the 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: The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principal issues involved:

In accordance with [Executive Order 2020-01: Zero-Based Regulation](#), this rulemaking will be a review of the chapter for evaluation on how it can be improved, simplified, and streamlined. Any provisions duplicative of statutory language will be removed. Additional proposed amendments would update the state and federal accountability framework to include chronic absenteeism as the school quality measure; restructure the accountability section; review the high school graduation requirements; and make any technical edits identified as part of the negotiated rulemaking process. Additional amendments would remove the English language arts, mathematics, and science content standards from the incorporated by section and replace it with a reference to the new statutory language for these standards; and update the physical education and health and social studies standards incorporated by reference.

ASSISTANCE ON TECHNICAL QUESTIONS, MEETING ACCOMMODATIONS, 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 Tracie Bent at (208)332-1582 or tracie.bent@osbe.idaho.gov. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the Idaho State Board of Education web site at the following web address: <https://boardofed.idaho.gov/>.

DATED this 6th day of July, 2022.

Tracie Bent
Chief Planning and Policy Officer
State Board of Education
650 W State ST.

PO Box 83720
Boise, Idaho 83720-0037
Phone: (208)332-1582
Fax: (208)334-2632

IDAPA 08 – STATE BOARD OF EDUCATION
08.02.04 – RULES GOVERNING PUBLIC CHARTER SCHOOLS
DOCKET NO. 08-0204-2201
NOTICE OF INTENT TO PROMULGATE RULES –
ZERO-BASED REGULATION NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, 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 33-105, chapter 52, title 33, Idaho Code.

METHOD OF PARTICIPATION: Interested persons wishing to participate in the negotiated rulemaking must respond to this notice by contacting the undersigned either in writing, by email, or by calling the phone number listed below. To participate, responses must be received by July 14, 2022.

At least one negotiated meeting will be scheduled, should a reasonable number of persons respond to this notice, negotiated meetings will be scheduled and all scheduled meetings shall be posted and made accessible on the agency website at the address listed below.

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.

Upon the 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: The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principal issues involved:

In accordance with [Executive Order 2020-01](#): Zero-Based Regulation, this rulemaking will be a review of the chapter for evaluation on how it can be improved, simplified, and streamlined. Any provisions duplicative of statutory language will be removed. Provisions contained in IDAPA 08.03.01 are being combined with IDAPA 08.02.04 allowing for duplicative language to be removed.

ASSISTANCE ON TECHNICAL QUESTIONS, MEETING ACCOMMODATIONS, 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 Tracie Bent at (208)332-1582 or tracie.bent@osbe.idaho.gov. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the Idaho State Board of Education web site at the following web address: <https://boardofed.idaho.gov/>.

DATED this 6th day of July, 2022.

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

IDAPA 08 – STATE BOARD OF EDUCATION
08.03.01 – RULES OF THE PUBLIC CHARTER SCHOOL COMMISSION
DOCKET NO. 08-0301-2201
NOTICE OF INTENT TO PROMULGATE RULES –
ZERO-BASED REGULATION NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, 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 33-105, chapter 52, title 33, Idaho Code.

METHOD OF PARTICIPATION: Interested persons wishing to participate in the negotiated rulemaking must respond to this notice by contacting the undersigned either in writing, by email, or by calling the phone number listed below. To participate, responses must be received by July 14, 2022.

At least one negotiated meeting will be scheduled, should a reasonable number of persons respond to this notice, negotiated meetings will be scheduled and all scheduled meetings shall be posted and made accessible on the agency website at the address listed below.

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.

Upon the 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: The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principal issues involved:

In accordance with [Executive Order 2020-01](#): Zero-Based Regulation, this rulemaking will be a review of the chapter for evaluation on how it can be improved, simplified, and streamlined. IDAPA 08.03.01 is being repealed in its entirety. Provisions that are not duplicative of IDAPA 08.02.04 are being moved to IDAP 08.02.04.

ASSISTANCE ON TECHNICAL QUESTIONS, MEETING ACCOMMODATIONS, 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 Tracie Bent at (208)332-1582 or tracie.bent@osbe.idaho.gov. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the Idaho State Board of Education web site at the following web address: <https://boardofed.idaho.gov/>.

DATED this 6th day of July, 2022.

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

**IDAPA 11.04 – IDAHO STATE POLICE
IDAHO STATE RACING COMMISSION**

DOCKET NO. 11-ZBRR-2201

**NOTICE OF INTENT TO PROMULGATE RULES –
ZERO-BASED REGULATION 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 54-2506, Idaho Code.

MEETING SCHEDULE: A public meeting on the negotiated rulemaking meeting will be held as follows. Additional meetings may be scheduled and will be posted on the Idaho State Racing Commission (ISRC) website.

<p>Wednesday, July 27, 2022 1:30 p.m. to 3:00 p.m. MT</p>
<p><i>In-person participation is available at:</i> Idaho State Police District 3 Conference Room 700 S Stratford Dr Meridian, Idaho 83642</p> <p><i>To participate virtually via web conference or telephone contact:</i> ardie.noyes@isp.idaho.gov</p>

Rulemaking meeting(s) will be held via web conferencing in order to provide a rulemaking platform that enables broad participation by stakeholders from across the state, and minimize travel for stakeholders.

METHOD OF PARTICIPATION: Those interested in participating in the negotiated rulemaking process are encouraged to attend the scheduled meeting via telephone, web conferencing, or in person. Individuals interested in participating by telephone, web conferencing, or in person per the open meetings act should contact ardie.noyes@isp.idaho.gov. For those who cannot participate by attending the meeting, information for submitting written comments is provided below.

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 and made available on the agency website.

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

These rules are being presented for authorization as part of the ISRC's plan to review each rule every 5 years. There are no specific rulemaking changes planned by the ISRC at this time except for evaluation and amendment consistent with the Governor's [Executive Order 2020-01: Zero-Based Regulation](#). It is anticipated that rulemaking stakeholders will propose and advocate for rulemaking changes as part of the negotiated rulemaking process. The ISRC intends to carefully consider all changes presented by the public and may propose certain changes so long as they are consistent with the rules' statutory authority and the Governor's Executive Order. The ISRC will review the documents that are currently incorporated by reference in this rule and update that list as applicable.

Incorporated by reference documents presented for review will be part of informal negotiated rulemaking and stakeholders will provide input on that process.

The following rule chapters are germane to this rulemaking:

- IDAPA 11.04.02 – Rules Governing Simulcasting
- IDAPA 11.04.03 – Rules Governing Licensing and Fees
- IDAPA 11.04.04 – Rules Governing Disciplinary Hearing and Appeals
- IDAPA 11.04.05 – Rules Governing Advanced Deposit Wagering
- IDAPA 11.04.06 – Rules Governing Racing Officials
- IDAPA 11.04.07 – Rules Governing Racing Associations
- IDAPA 11.04.08 – Rules Governing Pari-Mutuel Wagering
- IDAPA 11.04.09 – Rules Governing Claiming Races
- IDAPA 11.04.10 – Rules Governing Live Horse Races
- IDAPA 11.04.11 – Rules Governing Equine Veterinary Practices, Permitted Medications, Banned Substances and Drug Testing of Horses
- IDAPA 11.04.13 – Rules Governing the Idaho State Racing Commission
- IDAPA 11.04.14 – Rules Governing Owners, Trainers, Authorized Agents, Jockeys, Apprentice Jockeys, and Jockey Agents
- IDAPA 11.04.15 – Rules Governing Controlled Substance and Alcohol Testing of Licensees and Applicants

ASSISTANCE ON TECHNICAL QUESTIONS, OBTAINING DRAFT COPIES: For assistance on technical questions concerning this negotiated rulemaking, contact Lt. Col William Gardiner, Rules Review Officer at (208) 884-7004. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the ISRC web site at the following web address <https://isp.idaho.gov/racing/>.

SUBMISSION OF WRITTEN COMMENTS: 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 July 27, 2022.

DATED this 16th day of June, 2022.

Lt. Col William Gardiner
Rules Review Officer
Idaho State Police
700 S Stratford Dr
Meridian, Idaho 83642
Phone: (208) 884-7004
Fax: (208) 884-7098

IDAPA 13 – IDAHO FISH AND GAME COMMISSION
ESTABLISHING SEASONS AND LIMITS FOR HUNTING, FISHING, AND TRAPPING IN IDAHO
DOCKET NO. 13-0000-2200P4
NOTICE OF ADOPTION / AMENDED PROCLAMATION FOR CALENDAR YEAR 2022

AUTHORITY: As authorized by Section 36-104, Idaho Code, and in compliance with Section 36-105(3), Idaho Code, the Commission adopts proclamations establishing seasons and limits for hunting, fishing, and trapping in Idaho.

AVAILABILITY OF OFFICIAL PROCLAMATIONS: Hunters, anglers, and trappers are advised to consult the text of the Commission’s official proclamation before hunting, fishing, or trapping. All proclamations are available on-line at <https://idfg.idaho.gov/rules>, with print versions available at Idaho Department of Fish and Game offices and license vendors.

DESCRIPTIVE SUMMARY AND PUBLIC MEETING SCHEDULE: The Commission meeting schedule and meeting agendas are available on-line at <https://idfg.idaho.gov/about/commission/schedule>, with opportunities for public comment generally scheduled at its January, March, May, July, and November meetings.

Information for Commission proclamations for calendar year 2022 was initially published in the Administrative Bulletin, January 5, 2022, Bulletin [Volume 22-1, pages 23-24](#).

At a June 14, 2022, meeting the Commission took the following proclamation action:

1. Adopted a proclamation for the 2022 Summer Chinook Salmon Seasons, establishing seasons and limits for taking of Chinook Salmon in the South Fork Salmon, Upper Salmon, and Lochsa Rivers.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning proclamations, contact Owen Moroney at (208) 334-3715.

**IDAPA 15.06 – OFFICE OF THE GOVERNOR
IDAHO MILITARY DIVISION**

15.06.01 – RULES GOVERNING THE IDAHO PUBLIC SAFETY COMMUNICATIONS COMMISSION

DOCKET NO. 15-0601-2201 (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 31-4801 and 31-4815, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

Thursday, July 7, 2022, at 1:00 p.m. MT
Lucky Peak Room 109 945 E. Pine Ave. Meridian, Idaho 83642

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:

Under [Executive Order 2020-01, Zero-Based Regulation](#), the Idaho Public Safety Communications Commission (IPSCC) 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 use plain language for better understanding.

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 as a result of this rulemaking: Not applicable.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, a Notice of Intent to Promulgate Rules - Negotiated Rulemaking was not published in the Idaho Administrative Bulletin. However, rule changes and formulation of the proposed rule were discussed with stakeholders in an open, noticed meeting held by the IPSCC.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lt Col Lauren Tschampl at (208) 422-5399.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before 27 July 2022.

DATED this 20 May 2022.

Michael J. Garshak
The Adjutant General
Idaho Military Division
4040 W. Guard, Building 600
Boise, Idaho 83705
208-422-5242

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 15-0601-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)

15.06.01 – RULES GOVERNING THE IDAHO PUBLIC SAFETY COMMUNICATIONS COMMISSION

000. LEGAL AUTHORITY.

Section 31-4816(18), Idaho Code. ()

001. SCOPE.

These rules govern the Commission's mediation and grant processes. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Applicant. A Consolidated Emergency Communication Center submitting a grant application. ()

02. Commission. The Idaho Public Safety Communications Commission as established within the Military Division by Section 31-4815(1), Idaho Code. ()

03. Consolidated Emergency Communication Center. A governmental or multi-governmental organization authorized to collect emergency communication fees in accordance with Title 31, Chapter 48, Idaho Code. ()

04. Grant Cycle. The period between July 1 through the following June 30 for grant application distribution, submission, award notice and disbursement in accordance with dates established in Section 021 of these rules. ()

05. Mediation. The process required by Section 31-4817, Idaho Code, as a condition precedent to local government agencies initiating any legal action. ()

06. Taxing District. A fire protection district created pursuant to Section 31-1402, Idaho Code, an ambulance service created pursuant to Section 31-3901, Idaho Code, or an ambulance service district created pursuant to Section 31-3908, Idaho Code. ()

011. (RESERVED)

SUBCHAPTER A – RULES GOVERNING MEDIATION

012. REQUEST FOR MEDIATION.

The parties must submit a written request for mediation to the Commission demonstrating that all parties are requesting the mediation. Mediation process is delineated in Commission Policy letter. ()

013. SCHEDULED GROUP MEDIATION.

Within fifteen (15) days from the date of receipt of a request for mediation, the Commission will schedule a date for a mediation at which all parties and a quorum of the Commission can be present, and notify the parties in writing of the date of the group mediation. ()

014. REQUIREMENT OF SUBMISSION OF DOCUMENTS AND EXHIBITS.

The Commission may require the parties to produce documents at or before the date set for the group mediation. Such documents may include, but are not limited to, individual statements of position from each party. The Commission will notify the parties in writing of any documents that may need to be produced and the date of submission. ()

015. INDIVIDUAL POSITION STATEMENTS.

If the Commission requires individual statements of position from each party, the statements of position should begin with a one (1) page statement of the dispute. ()

01. Stipulation of Facts. The parties are encouraged to stipulate to as many facts as possible and clearly identify what facts are being stipulated. ()

02. Supporting Documents. The parties should present their entitlement position with specific references to appropriate supporting documents, to be included with the statement of position. ()

016. GROUP MEDIATION.

The Commission chairman, or in his absence the vice-chairman or other commissioner designated by the chairman, will preside over the mediation. ()

017. SUPPLEMENTAL DOCUMENTATION.

The Commission may require the parties to provide supplemental documentation and may establish a date by which such documentation is due. ()

018. COMMISSION RECOMMENDATION.

The Commission may make such recommendation orally or in writing. ()

019. TERMINATION OF MEDIATION.

The mediation is terminated as follows: ()

01. Settlement. By the signing of a settlement agreement between the parties covering any or all of the issues between them; and/or ()

02. Failure to Agree. By the written declaration of all parties and the chairman, on behalf of the Commission, that the parties could not come to an agreement in the mediation covering any or all of the issues between them. ()

020. -- 099. (RESERVED)

SUBCHAPTER B – COMMISSION GRANTS

100. GRANT ADMINISTRATION.

01. Grant Administration. The moneys that may be available through the ECGF are from the emergency communications fees placed in the Fund pursuant to Section 31-4819, Idaho Code. Administration of the Grants is detailed in Commission Policy Letter. ()

101. GRANT CYCLE.

- 01. Application Availability.** The Commission will make an application and guidance available no later than July 1 of each year. ()
- 02. Application Period.** The Applicant has until July 31 to complete and submit the application to the Commission. ()
- 03. Application Evaluation Period.** Prior to September 15, the Commission and, if applicable, a grant subcommittee, will evaluate the applications received. ()
- 04. Award Notification.** Prior to October 31, the Commission will issue notification to every Applicant regarding the disposition of its grant request. ()
- 05. Grant Disbursement.** Grant disbursement will occur prior to April 30. ()
- 06. Deadline for Return of Funds.** All unused grant funds not expended for costs associated with Applicant's award must be returned by the Applicant no later than May 31. ()

102. APPLICATION.

A completed application must be submitted by the Applicant on or before the conclusion of the application period to be considered during the Grant Cycle. ()

- 01. Application Frequency.** Only one (1) application per Consolidated Emergency Communication Center may be filed in any Grant Cycle, on the form required by the Commission. ()
- 02. Incomplete Application.** An application missing required information may be excluded from consideration for an award. ()
- 03. Applicant's Request for Amendment.** An Applicant may amend its application after the application period has ended by sending both a written request and the proposed application amendment to the IPSCC grant subcommittee. The Commission may grant such amendments at its discretion. ()

103. AWARD ELIGIBILITY REQUIREMENTS.

- 01. Equipment.** Only equipment identified as allowable in the application guidance may be purchased with grant funds. ()
- 02. Award Consideration Criteria.** To be considered for an award, an Applicant must meet all of the following requirements: ()
- a.** Be a Consolidated Emergency Communication Center collecting emergency communications fees in accordance with Title 31, Chapter 48, Idaho Code, delivering or seeking to deliver Consolidated Emergency Communication services; ()
 - b.** Comply and warrant to comply with applicable law, including but not limited to Section 31-4804(5), Idaho Code; ()
 - c.** Agree to follow all applicable bid laws in the acquisition of any equipment paid for with grant funds; and ()
 - d.** Agree to use any grant funds in strict compliance with the grant terms and agree to provide written documentation or proof of expenses to the Commission as required by the grant terms. ()

104. CRITERIA FOR EQUIPMENT.

The following weighted criteria will be used to evaluate applications for equipment, with maximum weight available for each criterion as indicated. Greater value will be assigned to conditions indicating greater need for each criterion:

()

01. Applicant Equipment Age. The age of similar equipment currently in use by the Applicant; value = fifteen (15). The application demonstrating older equipment will be assigned greater value. The application demonstrating replacement of older equipment with NG911/I3 compliant equipment will be assigned a greater value. ()

02. Applicant Equipment Availability. Similar equipment currently in use by the Applicant; value = fifteen (15). The application demonstrating lack of similar equipment will be assigned greater value; the application demonstrating no access to similar equipment will be assigned the maximum value. ()

03. Anticipated Use. An estimate of the frequency of use for the equipment; value = fifteen (15). The application demonstrating a higher ratio of dispatch per capita will be assigned greater value. ()

04. Duration of Use. An estimate of the length of time the equipment would be used, expressed as a mean time; value = fifteen (15). The application demonstrating a greater duration of use will be assigned greater value. ()

05. Fiscal Resource Base. The proportion of operating budget supported by tax revenue; value = ten (10). The application demonstrating less revenue from taxes expressed as a percent of total revenue for the most recent year will be assigned greater value. ()

06. City, County and Taxing District Endorsement. The proportion of Idaho cities, counties and Taxing Districts within which the Applicant's primary service area occurs that endorse the application; value = five (5). The application demonstrating a larger percent of endorsements will be assigned greater value. ()

07. Population. The number of people residing in the Consolidated Emergency Communications Center's service area; value = five (5). The application demonstrating a greater number of people will be assigned greater value. ()

08. Square Mileage. The area served by the Consolidated Emergency Communications Center; value = fifteen (15). The application demonstrating a greater square mileage will be assigned greater value. ()

09. Number of Law Enforcement, Fire and Emergency Medical Service Agencies Dispatched. Value = ten (10). The application demonstrating a higher number of law enforcement, fire and emergency medical service agencies will be assigned greater value. ()

10. Narrative. The need for and lack of availability of funds from other sources as documented by the Applicant; value = twenty (20). The application demonstrating a greater need for and lack of available funds will be assigned greater value. The application seeking to share resources and equipment with other 911 service areas (e.g., host remote) will be assigned a greater value. ()

105. FRAUDULENT INFORMATION ON GRANT APPLICATION. Providing false information on any application or document submitted under these rules is grounds for declaring the Applicant ineligible. Any and all funds determined to have been acquired on the basis of fraudulent information must be returned to the Commission. ()

106. -- 999. (RESERVED)

**IDAPA 15.10 – OFFICE OF THE GOVERNOR
IDAHO STATE LIQUOR DIVISION**

15.10.01 – RULES OF THE IDAHO STATE LIQUOR DIVISION

DOCKET NO. 15-1001-2201 (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 67-5220(1) and 67-5220(2), Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

<p>Tuesday, July 26, 2022 1:00 p.m. to 2:00 p.m. (MT)</p>
<p><i>In-person participation is available at:</i> ISLD Main Office, Jasper Room 1349 E. Beechcraft Ct. Boise, ID 83713</p> <p><i>Phone or virtual participation via Webex is available at:</i> Join Zoom Meeting Meeting ID: 819 5901 1435 Meeting Passcode: 470880</p>

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:

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.

This pending fee rule adopts and publishes the following rule chapter previously submitted to and reviewed by the Idaho Legislature under IDAPA 15.10, rules of the Idaho State Liquor Division:

IDAPA 15.10

- 15.10.01, Rules of the Idaho State Liquor Division

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:

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.

FISCAL IMPACT: The following is a specific 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. 22-4, pgs. 26-27.

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 July 27th, 2022.

DATED this 3rd day of June 2022.

Tony Eldeen
Rules Review Officer/Business Analyst
1349 E. Beechcraft Ct.
Boise, ID, 83716
208-947-9456

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 15-1001-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)

15.10.01 – RULES OF THE IDAHO STATE LIQUOR DIVISION

000. LEGAL AUTHORITY.

Section 23-206(b), Idaho Code. ()

001. TITLE AND SCOPE.

These rules govern operational aspects of the Division and support the Idaho Liquor Act, Title 23, Idaho Code. ()

002. DEFINITIONS.

The following terms apply: ()

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. Close Relative. A person related by blood or marriage within the second degree of kinship. ()

03. Delisting. The process of discontinuing any product offered for sale resulting in the product's removal from the Division's Product Line. ()

04. Director. Chief executive officer of the Division. ()

05. Division. Idaho State Liquor Division. ()

06. 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. ()

07. 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, and sells Liquor to retail customers. Distillery Distributing Stations are manufacturers of distilled spirits under Section 23-509A, Idaho Code. They may also be termed Contract Stores. ()

08. 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. ()

09. Licensee. Person authorized to sell beer or Wine by the drink or by the bottle, Liquor by the drink, or any combination thereof. ()

10. Listing (Listed). Liquor that is carried or approved to be carried in the Division's Product Line. ()

11. Political Office. A public office for which partisan politics is a basis for nomination, election, or appointment. ()

12. Product Line. Items offered for sale by the Division. ()

13. 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. ()

14. Retail Store. Any State Store or Distributing Station. ()

15. Samples. Liquor furnished by the liquor industry to Supplier Representatives for the purpose of promoting the product. ()

16. 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. ()

17. Special Distributor. A private business owner authorized to operate a Distributing Station. A Special Distributor is not a state employee. ()

18. 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. ()

19. State Store. A Retail Store that sells Liquor. It is operated by state employees under the direct supervision of the Division. ()

20. Supplier. Any manufacturer, rectifier, importer, wholesaler or Supplier of Liquor, Wine, or related products offered for sale by the Division. ()

21. 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. ()

22. Warehouse. The main Division distribution center and satellite distribution points. ()

23. Wine. Alcoholic beverages defined in Section 23-1303, Idaho Code. ()

24. 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. Per Sections 23-301 and 23-302, Idaho Code, the Division will select appropriate Retail Store site to serve the community. ()

02. Retail Site Selection Criteria. The following criteria will be used in selecting a location for a new Retail Store. ()

a. Public acceptability per Sections 23-301 and 23-302, Idaho Code. ()

b. Location suitability of premises. ()

c. Lease amount will not be the sole determining factor. Final selection will be determined at the discretion of the Director. ()

d. Compliance with local zoning. ()

03. Customer Refunds and Exchanges. Customer refunds and exchanges will be allowed only with approval from the Director or his authorized agent. ()

04. Audits. Designated personnel will perform periodic inspections of all Retail Stores. Such inspections may be on an unannounced basis and include physical inventory counts. ()

05. 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. ()

011. DISTRIBUTING STATIONS.

- 01. Term of Agreement.** A specified period as determined at the discretion of the Director. ()
- 02. Transfer of Agreement.** An Agreement is a personal privilege and is not considered property nor is it assignable or transferable. ()
- 03. Agreement Evaluations.** Periodic evaluations Agreements, will be conducted to ensure uniform and 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 new Distributing Station. ()
- 04. 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. ()
- 05. Applicant Selection.** The selection 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: ()
- 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 pled guilty to, a felony or a crime of moral turpitude (an element of which is dishonesty or fraud) under the laws of any jurisdiction will not be allowed to operate a Distributing Station. ()
 - d.** An applicant may not be a Close Relative of, or 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. ()
 - 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.** 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. ()
- 06. General Operational Obligations.** Special Distributors will: ()
- a.** Furnish an adequate premises that is kept clean and sanitary at all times. ()
 - b.** Not hold a partisan state elected political office. He cannot be a Close Relative of, or be in a business partnership with a person in a partisan state elected Political Office. ()
 - c.** Not present his views as being representative of the views of the Division and not attempt to politically influence customers in any manner. ()
 - d.** Only sell Liquor received from the Division. ()
 - e.** Only sell Liquor at prices set by the Division in accordance with Section 23-207(g), Idaho Code. ()
 - f.** Not deliver Liquor off premise without explicit authorization of the Director. ()
- 07. Days and Hours of Operation.** ()

- a. The Distributor will not exceed the maximum legal selling hours as set by the Director. ()
- 08. Fiduciary Responsibility.** All unremitted monies collected in trust for the Division are assigned to the Division in accordance with Section 23-401, Idaho Code. ()
- 09. Liquor Shortage.** The Distributor must pay the retail value of any Shortage immediately after receipt of the request for payment from the Division showing its calculation of the Shortage. ()
- 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. ()
- 10. Compensation.** The compensation paid by the Division to the Special Distributor represents full payment for all services provided by the Distributor. Such compensation will be uniformly applied statewide in accordance with Section 23-305, Idaho Code. ()
- 11. Voluntary Agreement Termination.** ()
- a. The Distributor will allow reasonable time for the Division to conduct a final inventory audit and to remove all Liquor. ()
- 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. ()
- 12. Agreement Termination Procedure.** ()
- a. The Division will notify the distributor by email, certified mail or personal delivery, specifying the reasons. ()
- 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. The Distributor may request a hearing on the proposed termination by notifying the Division in writing within seven (7) days of receiving the termination notice. ()
- d. Upon termination of this agreement, the Division will: ()
- i. Remove all property owned by them; ()
- ii. Cease compensation as of the termination date. ()
- 012. DISTILLERY DISTRIBUTING STATIONS.**
- 01. Sample Tasting.** May be conducted in accordance with Section 23-509A, Idaho Code. ()
- 02. Retail Sales.** 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. ()
- 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. This right will not be arbitrarily applied. ()

021. SUPPLIERS.

01. Obligations. Suppliers will conform to the requirements of the Tax and Trade Bureau of the U.S. Department of Treasury. ()

02. 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. ()

03. Title to Liquor, Wines and Related Products. Title to Product Line items passes from the Supplier to the Division when the product is accepted, unless Product Line items are delivered directly to Bailment status. ()

a. The Division reserves the right to conduct quality tests or inspect products. ()

b. The Division reserves the right to reject any Product Line item that does not conform to requirements. ()

c. In the event the Division rejects any delivery, ownership remains with the Supplier. It is the Supplier's responsibility to remove or relocate any refused products. ()

04. Product Returns. Products Line Items may be returned to Suppliers by the Division in accordance with the Tax and Trade Bureau of the U.S. Department of Treasury regulations. ()

05. New Listings. New Listings will be added at the discretion of the Director pursuant to Sections 23-203 and 23-207, Idaho Code. ()

06. Delisting. Delistings are at the discretion of the Director pursuant to Sections 23-203 and 23-207, Idaho Code. ()

07. 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. ()

08. Supplier Representative Permits. Supplier Representatives will obtain a permit from the Division to conduct business at any State Store or Distributing Station. ()

a. Permits will not be issued to any retail licensee or a distributor of beer or Wine. ()

b. Supplier Representatives may represent more than one (1) Supplier without additional permit fees. ()

09. Samples. Samples are limited to twenty (20) Wine Gallons per month and the sizes of Samples are that which are permitted by federal regulation or statute. ()

10. Promotional Samples. Promotional Samples are limited to fifty (50) ml size bottles unless specified otherwise by the Director. ()

11. 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. ()

12. Liquor Displays. The Division regulates all Retail Store Liquor displays. ()

13. 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 on State Store premises. ()

032. -- 999. (RESERVED)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.01.03 – EMERGENCY MEDICAL SERVICES (EMS) – AGENCY LICENSING REQUIREMENTS

DOCKET NO. 16-0103-2201

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with 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 56-1003 and 56-1023, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 20, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 adds rule language to IDAPA 16.01.03 that is being relocated from IDAPA 16.01.06, a rule chapter being repealed under a separate rulemaking, Docket No. 16-0106-2201. The Department determined that several small sections in IDAPA 16.01.06 needed to remain in rule, so suitable places were found for them to reside in IDAPA 16.01.03.

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 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(2), Idaho Code, negotiated rulemaking was not conducted because no new rules are being added to this chapter. This rulemaking simply preserves several sections of rule deemed necessary from IDAPA 16.01.06 by moving them into this chapter.

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

The EMS Data Collection Standards Manual, Edition 2023-1, is being incorporated by reference in this docket. It provides the standard for data collection by licensed EMS agencies. This document was previously incorporated into IDAPA 16.01.06 which is being repealed; however, since this document is necessary for the administration of the Idaho EMS program, it being incorporated into this chapter of rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jathan Nalls at (208) 334-4007.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2022.

DATED this 8th day of June, 2022.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720

Boise, ID 83720-0036
phone: (208) 334-5500
fax: (208) 334-6558
e-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0103-2201
(Only Those Sections With Amendments Are Shown.)

002. INCORPORATION BY REFERENCE.

The Board and the Department of Health and Welfare have incorporated by reference the following documents: ()

01. **Minimum Equipment Standards for Licensed EMS Services.** ~~The Board of Health and Welfare has adopted the~~ “Minimum Equipment Standards for Licensed EMS Services,” edition 2016, version 1.0, as its is the standard for minimum equipment requirements for licensed EMS Agencies ~~and incorporates it by reference.~~ Copies of these standards may be obtained from the Department, see <http://www.idahoems.org>. (3-17-22)()

02. **Time Sensitive Emergency System Standards Manual.** ~~The Board of Health and Welfare has adopted the~~ “Time Sensitive Emergency System Standards Manual,” Edition 2020-1, as its is the standard for certifying EMS Agencies as TSE Designated EMS Agencies. Copies of these standards may be obtained from the Department, see <https://tse.idaho.gov/>. (3-17-22)()

03. **EMS Data Collection Standards Manual.** EMS Data Collection Standards Manual, Edition 2023-1 is the standard for data collection by licensed EMS agencies. Copies of the manual may be obtained from the Department at <http://www.idahoems.org/> or from the Bureau of Emergency Medical Services and Preparedness located at 2224 East Old Penitentiary Road, Boise, ID 83712-8249. ()

(BREAK IN CONTINUITY OF SECTIONS)

535. ~~EMS AGENCY~~—RECORDS, DATA COLLECTION, AND SUBMISSION REQUIREMENTS.

Each licensed EMS agency must ~~comply with the~~ collect and submit EMS response records, ~~data collection, and submission requirements under IDAPA 16.01.06, “Emergency Medical Services (EMS) – Data Collection and Submission Requirements.”~~ to the EMS Bureau as follows: (3-17-22)()

01. **Records to be Maintained.** Maintain a record that includes a Patient Care Report completed for each EMS Response. ()

02. **Records to be Submitted.** Ensure that an accurate and complete electronic Patient Care Report (ePCR) is submitted to the EMS Bureau using approved and validated software in a format determined by the Department. ()

03. **Time Frame for Submitting Records.** Submit each month’s data to the Department by the 15th of the following month in a format determined by the Department. ()

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.01.06 – EMERGENCY MEDICAL SERVICES (EMS) – DATA COLLECTION AND SUBMISSION REQUIREMENTS

DOCKET NO. 16-0106-2201 (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 56-1003 and 56-1023, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 20, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 has determined this chapter of rules is no longer needed; it is being repealed in its entirety. However, several Sections of rule deemed necessary are being moving into another EMS chapter, IDAPA 16.01.03, “Emergency Medical Services (EMS) -- Agency Licensing Requirements” under companion Docket No. 16-0103-2201 publishing simultaneously in this Bulletin.

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 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(2), Idaho Code, negotiated rulemaking was not conducted because this chapter is being repealed in its entirety.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 Jathan Nalls at (208) 334-4007.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2022.

DATED this 3rd day of June, 2022.

Tamara Prisock
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
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IDAPA 16.01.06 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.02.08 – VITAL STATISTICS RULES

DOCKET NO. 16-0208-2201

NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2022.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 39-242, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 20, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for 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:

S1268 passed by the 2022 Legislature provides for a no-fee application for an identification card for people experiencing homelessness. One of the pieces of documentation they may need to establish their identity is a birth certificate. This rulemaking waives the fee for the birth certificate in this specific set of circumstances in order to remove the fee as a barrier to applying for the identification card.

S1320 passed during the 2022 Legislature shifts the presumption of the law regarding adult adoptee access to birth records from a presumption of closure to one of openness. The amended statute allows adoptees, who are adopted on or after July 1, 2022, to access their original birth records once they are eighteen (18) years of age. References to the amended statute are being added to the vital statistics rules in order to maintain consistency with this statutory change.

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

This new language is being added to align with S1268 (2022) and S1320 (2022). This Temporary rule protects public health, safety, or welfare, and is required to comply with deadlines in amendments to governing law or federal programs.

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

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

The fiscal impact for the changes related to S1268 (2022) would be revenue not generated by these requests. Currently, the Department estimates it receives less than 100 such requests per year from persons who are experiencing homelessness. If requests were to increase to 500 per year, it would cost the Department \$8,000 in lost revenue. There is no anticipated cost to rule changes due to S1320 (2022).

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2)(b), Idaho Code, negotiated rulemaking was not conducted because this rulemaking is being made to align with legislation passed by the 2022 legislature.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact James Aydelotte, (208) 334-4969.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2022.

DATED this 3rd day of June, 2022.

Tamara Prisock
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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 16-0208-2201
(Only Those Sections With Amendments Are Shown.)**

251. FEES FOR COPIES, SEARCHES, AND OTHER SERVICES.

01. Certified Copies. The fee for the issuance of a certified copy of a death certificate is sixteen dollars (\$16) per copy. This fee incorporates the additional one dollar (\$1) coroner training and education fund fee in accordance with Section 39-252(2), Idaho Code. The fee for the issuance of a certified copy of any other vital record is sixteen dollars (\$16) per copy. (3-15-22)

02. Searches. The fee for a search of the files for a record of any vital event when no record is found, no copy is made, or a special document search is requested, is sixteen dollars (\$16). (3-15-22)

03. Verifications. Except for Idaho state agencies and public health districts, the fee for manual or written data verification from a certificate is ten dollars (\$10). (3-15-22)

04. Statistical, Research, or Public Health Services. The State Registrar assesses the fee for statistical, research or public health services. The costs are calculated based upon the costs of retrieving the data and the costs of compiling, organizing, and printing the data. Cost may be reduced on a prorated basis to reflect the number of expected requests for the same information or service. (3-15-22)

05. Fees for Other Services. (3-15-22)

a. The fee for filing a report, certificate, or decree of adoption is twenty dollars (\$20). (3-15-22)

b. The fee for establishing a delayed certificate of any vital event is twenty-five dollars (\$25). (3-15-22)

c. For any vital event, the fee for establishing a new certificate due to a court order, a replacement certificate, or an amended certificate is twenty dollars (\$20), except as specified under Subsection 251.05.f.ii. of this rule. (3-15-22)

d. A service fee may be established by the local registration area, in addition to the certified copy fee

for each certified copy of a vital record. (3-15-22)

e. The fee for a copy of a certificate of any vital event provided upon written request to local, states other than Idaho, or federal government agencies in accordance with Section 39-270(b), Idaho Code, is sixteen dollars (\$16). (3-15-22)

f. Fees for correction of a certificate of any vital event. (3-15-22)

i. The fee for a replacement certified copy of a certificate of any vital event when the incorrect certified copy is returned for exchange within sixty (60) days of a correction of an error is five dollars (\$5) per certified copy. (3-15-22)

ii. There is no charge for a correction of an error(s) on a certificate of any vital event when the required documentation is received within the first year after the date of the event. (3-15-22)

iii. The fee for correction of an error(s) on a certificate of any vital event, when the required documentation is received one (1) year or more after the date of the event, is twenty dollars (\$20) per submitted correction request. (3-15-22)

g. Fees for priority processing or special handling. (3-15-22)

i. A service fee of ten dollars (\$10) per certificate or document will be added for priority processing or special handling of a request for a certified copy or copies of a certificate of any vital event, a request for a disinterment permit, a request to file a registry form, or a request regarding another vital event related form or document, other than those identified in Subsection 251.05.g.ii. of this rule. This fee will be in addition to the current fee or fees for each certified copy, search, or filing requested, or any combination thereof. This fee is forfeited and a new service fee must be paid for priority processing or special handling in the event that the requester takes longer than ninety (90) days to respond to a request for additional information, or documentation, or both. (3-15-22)

ii. A service fee of twenty-five dollars (\$25) per certificate will be added for priority processing to establish a new or amended certificate of any vital event due to a report, certificate or decree of adoption, delayed certificate filing, a court order, a paternity affidavit or rescission, a subsequent marriage affidavit or a correction of a certificate. This fee is in addition to the current fee or fees for the legal amendment processing or request for a certified copy or copies, or both. This fee is forfeited and a new legal amendment service fee must be paid for priority processing or special handling in the event that the requester takes longer than ninety (90) days to respond to a request for additional information or documentation or both. (3-15-22)

06. Waiver of Fee Requirement. (7-1-22)T

a. Fees may be waived for Idaho state agency and public health district administrative use requests. Statistical information prepared for public health planning purposes may be published and distributed without charge whenever the Director determines that the publication and distribution is in the public interest. ~~(3-15-22)~~(7-1-22)T

b. The fee for a birth certificate may be waived for an individual applying for the Idaho Department of Transportation's no-fee identification available to an individual who is experiencing homelessness. The applicant must have direct and tangible interest, provide a completed vital statistics certificate request form with required identification, and provide a photocopy of the completed verification of homelessness form established and required by the Idaho Department of Transportation. One (1) free birth certificate may be issued for a registrant under this waiver. Subsequent copies will be subject to normal fees. (7-1-22)T

(BREAK IN CONTINUITY OF SECTIONS)

402. REGISTRATION SYSTEM FOR ADULT ADOPTEES.

01. Search for "the Other Birth Parent." The State Registrar will not participate in the search for

“the other birth parent.” The adoption service units of the Department may participate in such searches when requested to do so by a birth parent or the adult adoptee. Costs of the search will be provided by the birth parent or adult adoptee seeking the match. Such service costs will be set by the adoption service unit and are based upon the actual cost of the search and cost of notification of the registrant(s). (3-15-22)

02. Completion of Match. When dated evidence of a completed search is presented to the State Registrar and “the other birth parent” has not been found, then and only then will a match be completed as cited in Section 39-259A(e) and (f), Idaho Code. (3-15-22)

a. When one (1) of the birth parents cannot be found according to Section 39-259A(b)(3), Idaho Code, no information about the missing birth parent will be released to either registrant, except as provided for in Section 39-258(9)(b), Idaho Code. ~~(3-15-22)~~(7-1-22)T

b. When one (1) birth parent is deceased, proof of death must be established by a certified copy of the death certificate or a verification of the fact of death from the Vital Statistics official of the state where death occurred. Such proof is the responsibility of the registered birth parent. (3-15-22)

03. Siblings of Adult Adoptee. When it appears that there is a match between siblings, the State Registrar may confirm the match from the sealed adoption record on file in the Vital Statistics Office and make appropriate notification to the siblings. However, if the birth parent(s) has not also voluntarily registered, no identifying information about the birth parent(s) will be provided to the adult adoptee or the sibling, except as provided for in Section 39-258(9)(b), Idaho Code, or where proof of death of the birth parent(s) is found. ~~(3-15-22)~~(7-1-22)T

04. Notification. When it appears to the State Registrar that a match has occurred, the State Registrar will notify the registrants by certified mail of the opportunity to withdraw from the register prior to proceeding with full notification of the registrants. Such withdrawal must be made by written notarized request and be received by the State Registrar within thirty (30) days of the date of registrant’s receipt of notification from the State Registrar. Such withdrawal is exempt from the usual withdrawal fee. (3-15-22)

05. Registration Time. Birth parents or relatives of qualified birth parents may register at any time after an adoption has taken place, regardless of the adoptee’s age. Adoptees may register after they have reached their eighteenth birthday. (3-15-22)

06. Fees. An initial filing fee of ten dollars (\$10) is paid by or on behalf of each registrant and must be submitted with the registration form. An update fee of ten dollars (\$10) is charged whenever a registrant requests in writing a revision, update, or withdrawal of a previous registration. (3-15-22)

07. Release of Information. When it appears there is a match between registered adult siblings and no birth parent information has been registered, before release of identifying information to any registered adult sibling, the State Registrar will require proof from the registrant(s) of the identity and the relationship of the registrant to other registrants. At least two (2) documents providing such proof must be viewed and recorded by the State Registrar. (3-15-22)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.09 – MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-2201

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with 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), 56-264, 56-255, and 56-1610, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 20, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 proposing language that addresses stakeholder concerns brought up during the 2022 Legislature. This rulemaking replaces 16.03.09.772.01.c. with updated and corrected language regarding the requirements for fitting prosthetic and orthotic devices.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2)(b), Idaho Code, negotiated rulemaking was not conducted because this rulemaking is being made to comply with the actions of the Department's legislative committees and the agreement on content made with stakeholders.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Charles Beal, 208-364-1887.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2022.

DATED this 3rd day of June, 2022.

Tamara Prisock
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450 W. State Street - 10th Floor
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0309-2201
(Only Those Sections With Amendments Are Shown.)

772. PROSTHETIC AND ORTHOTIC SERVICES: COVERAGE AND LIMITATIONS.

01. Program Requirements. The following program requirements will be applicable for all prosthetic and orthotic devices or services purchased by the Department: (3-17-22)

a. A temporary lower limb prosthesis will be purchased when documented by the attending physician or non-physician practitioner that it is in the best interest of the participant's rehabilitation to have a temporary lower limb prosthesis prior to a permanent limb prosthesis. A new permanent limb prosthesis will only be requested after the residual limb size is considered stable; (3-17-22)

b. A request for a replacement prosthesis or orthotic device must be justified to be the least costly alternative as opposed to repairing or modifying the current prosthesis or orthotic device; (3-17-22)

c. All prosthetic and orthotic devices that require fitting must be provided by a Podiatrist, or an individual who is certified or registered by the American Board for Certification in Orthotics, Prosthetics & Pedorthics (ABC) or the Board of Certification/Accreditation (BOC); ()

ed. All prosthetic and orthotic devices that require fitting must be provided by a Podiatrist, or an individual who is certified or registered by the American Board for Certification in Orthotics, Prosthetics & Pedorthics (ABC) or the Board of Certification/Accreditation (BOC). (3-17-22)T

de. All equipment that is purchased must be new at the time of purchase. Modification to existing prosthetic or orthotic equipment, or both, will be covered by the Department; (3-17-22)

ef. Prosthetic limbs purchased by the Department must be guaranteed to fit properly for three (3) months from the date of service; therefore, any modifications, adjustments, or replacements within the three (3) months are the responsibility of the provider that supplied the item at no additional cost to the Department or the participant; and (3-17-22)

fg. Not more than ninety (90) days may elapse between the time of the order and the preauthorization request is presented to the Department for consideration. (3-17-22)

02. Program Limitations. The following limitations apply to all prosthetic and orthotic services and equipment: (3-17-22)

a. No replacement will be allowed for prosthetic or orthotic devices within sixty (60) months of the date of purchase except in cases where there is clear documentation that there has been major physical change to the residual limb, and ordered by the attending physician or non-physician practitioner; (3-17-22)

b. Refitting, repairs, or additional parts must be limited to once per calendar year for all prosthetics or orthotics, or both, unless it has been documented that a major medical change has occurred to the limb, and ordered by the attending physician; (3-17-22)

c. All refitting, repairs or alterations require preauthorization based on medical justification by the participant's attending physician; (3-17-22)

d. Prosthetic and orthotic devices provided for cosmetic or convenience purposes are not covered by the Department. (3-17-22)

e. Electronically powered or enhanced prosthetic devices are not covered; (3-17-22)

f. The Department will only authorize corrective shoes or modification to an existing shoe owned by the participant when they are attached to an orthosis or prosthesis or when specially constructed to provide for a totally or partially missing foot; (3-17-22)

g. Shoes and accessories such as mismatch shoes, comfort shoes following surgery, shoes to support an overweight individual, or shoes used as bandage following foot surgery, arch supports, foot pads, metatarsal head appliances or foot supports are not covered; and (3-17-22)

h. Corsets are not a benefit nor are canvas braces with plastic or metal bones. However, special braces enabling a participant to ambulate will be covered when the attending physician documents that the only other method of treatment for this condition would be application of a cast. (3-17-22)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.24 – THE MEDICALLY INDIGENT PROGRAM

DOCKET NO. 16-0324-2201 (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 56-202 and 56-203, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 20, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 chapter of rule is no longer in effect due to the passage of H0735 by the 2022 legislature and is now being repealed in its entirety.

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

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

This rulemaking has no fiscal impact to the state general fund, or any other funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because it is not feasible as this rulemaking is being done solely to comply with H0735 (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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kristin Mathews at (208) 334-5553.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2022.

DATED this 3rd day of June, 2022.

Tamara Prisock
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 e-mail

IDAPA 16.03.24 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.25 – IDAHO MEDICAID PROMOTING INTEROPERABILITY (PI) PROGRAM

DOCKET NO. 16-0325-2201 (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 56-202, 56-203, and 56-1054, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 20, 2022.

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

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

These rules have existed to: (a) establish the Idaho Medicaid Promoting Interoperability (PI) Program covered under 42 CFR Part 495; (b) provide the Medicaid PI Program criteria for participation of qualified eligible professionals and hospitals that adopt, implement, or upgrade to become meaningful users of certified electronic health record (EHR) systems in accordance with the American Recovery and Reinvestment Act of 2009 (ARRA), Section 4201; and (c) provide for the audit of providers receiving incentive payments. The Department uses this chapter to administer the federal PI Program that pays incentive payments to eligible providers and eligible hospitals that adopt certified EHR technology in accordance with the federal requirements.

The relevant federal funding for provider payments under this program closes at the end of FFY 2022, and federal funding for related audits and appeals closes at the end of FFY 2023. The state anticipates these audits and appeals will be completed by the end of SFY2022. After that, the entire rule chapter will not be needed.

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 is not anticipated to have any fiscal impact on the State Fund, General Fund, or any other known funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the relevant federal funding will no longer be available. The state anticipates these audits and appeals will be completed by the end of SFY2022. After that, the entire rule chapter will not be needed.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 Aaron Howard, 208-287-1141.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2022.

DATED this 3rd day of June, 2022.

Tamara Prisock
DHW – Administrative Rules Unit
450 W. State Street – 10th Floor
P.O. Box 83720

Boise, ID 83720-0036
phone: (208) 334-5500
fax: (208) 334-6558
e-mail: dhwrules@dhw.idaho.gov

IDAPA 16.03.25 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 17 – INDUSTRIAL COMMISSION

17.01.01 – ADMINISTRATIVE RULES UNDER THE WORKER'S COMPENSATION LAW

DOCKET NO. 17-0101-2201

NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2022.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 72-301, 72-301A, 72-304, 72-327, 72-432, 72-508, 72-528, 72-602, 72-803, and 72-806, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 20, 2022.

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

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

The current I.C. 72-404 requires the Commission to review all settlements in order to be satisfied that settlements are in the best interest of the parties. The current IDAPA 17.01.01.802.b.vii. requires attorneys to identify medical bills which are unpaid at the time of settlement and describe the treatment to be given to such bills from the proceeds of settlement. Resolution of unpaid bills is in the best interest of the claimant. HB 590 repeals the current I.C. 72-404 and replaces it with a new version of the statute which removes Commission responsibility to approve settlements in most cases. Accordingly, the Commission no longer has an interest in requiring claimants to specify how unpaid medical bills will be treated at the time of settlement. Removing this section of IDAPA is consistent with the new provisions of I.C. 72-404.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(a) and (b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: This temporary rule will confer a benefit to all parties to settlements by conforming the rule to the provisions of the new statute.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There is no fee imposed or increased 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: This rulemaking is not anticipated to have any fiscal impact on the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this temporary rule is eliminating redundant language and to align with implementing HB590.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(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 not incorporated documents in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Kamerron Slay, 208-334-6017 or kamerron.slay@iic.idaho.gov.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2022.

DATED this May 25, 2022.

George Gutierrez
Director
Industrial Commission
11321 W. Chinden Blvd.
Boise, Idaho 83714
(208) 334-6000

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 17-0101-2201
(Only Those Sections With Amendments Are Shown.)**

802. RULE GOVERNING APPROVAL OF ATTORNEYS FEES.

- 01. Purpose.** The Industrial Commission promulgates this rule to govern the approval of attorney fees. (3-23-22)
- 02. Charges Presumed Reasonable:** (3-23-22)
- a.** In a case in which no hearing on the merits has been held, twenty-five percent (25%) of Available Funds shall be presumed reasonable; or (3-23-22)
- b.** In a case in which a hearing has been held and briefs submitted (or waived) under Judicial Rules of Practice and Procedure (JRP), Rules X and XI, thirty percent (30%) of Available Funds shall be presumed reasonable; or (3-23-22)
- c.** In any case in which compensation is paid for total permanent disability, fifteen percent (15%) of such disability compensation after ten (10) years from date such total permanent disability payments commenced. (3-23-22)
- 03. Statement of Charging Lien.** (3-23-22)
- a.** All requests for approval of fees shall be deemed requests for approval of a Charging Lien. (3-23-22)
- b.** An attorney representing a Claimant in a Worker's Compensation matter shall in any proposed LSS, or upon request of the Commission, file with the Commission, and serve the Claimant with a copy of the Fee Agreement, and an affidavit or memorandum containing: (3-23-22)
- i.** The date upon which the attorney became involved in the matter; (3-23-22)
- ii.** Any issues which were undisputed at the time the attorney became involved; (3-23-22)
- iii.** The total dollar value of all compensation paid or admitted as owed by employer immediately prior to the attorney's involvement; (3-23-22)
- iv.** Disputed issues that arose subsequent to the date the attorney was hired; (3-23-22)
- v.** Counsel's itemization of compensation that constitutes Available Funds; (3-23-22)

vi. Counsel's itemization of costs and calculation of fees; and (3-23-22)

~~vii. Counsel's itemization of medical bills for which Claim was made in the underlying action, but which remain unpaid by employer/surety at the time of LSS, along with counsel's explanation of the treatment to be given such bills/claims following approval of the LSS. (3-23-22)~~

viii. The statement of the attorney identifying with reasonable detail his or her fulfillment of each element of the Charging Lien. (3-23-22)

c. Upon receipt and a determination of compliance with this Rule by the Commission by reference to its staff, the Commission may issue an Order Approving Fees without a hearing. (3-23-22)

04. Procedure if Fees Are Determined Not to Be Reasonable. (3-23-22)

a. Upon receipt of the affidavit or memorandum, the Commission will designate staff members to determine reasonableness of the fee. The Commission staff will notify counsel in writing of the staff's informal determination, which shall state the reasons for the determination that the requested fee is not reasonable. Omission of any information required by Paragraph 802.02.b may constitute grounds for an informal determination that the fee requested is not reasonable. (3-23-22)

b. If counsel disagrees with the Commission staff's informal determination, counsel may file, within fourteen (14) days of the date of the determination, a Request for Hearing for the purpose of presenting evidence and argument on the matter. Upon receipt of the Request for Hearing, the Commission shall schedule a hearing on the matter. A Request for Hearing shall be treated as a motion under Rule III(e), JRP. (3-23-22)

c. The Commission shall order an employer to release any Available Funds in excess of those subject to the requested Charging Lien and may order payment of fees subject to the Charging Lien which have been determined to be reasonable. (3-23-22)

d. The proponent of a fee which is greater than the percentage of recovery stated in Subsection 802.02 shall have the burden of establishing by clear and convincing evidence entitlement to the greater fee. The attorney shall always bear the burden of proving by a preponderance of the evidence his or her assertion of a Charging Lien and reasonableness of his or her fee. (3-23-22)

05. Disclosure Statement. Upon retention, the attorney shall provide to Claimant a copy of a disclosure statement. No fee may be taken from a Claimant by an attorney on a contingency fee basis unless the Claimant acknowledges receipt of the disclosure by signing it. Upon request by the Commission, an attorney shall provide a copy of the signed disclosure statement to the Commission. The terms of the disclosure may be contained in the Fee Agreement, so long as it contains the following text: (3-23-22)

a. In worker's compensation matters, attorney's fees normally do not exceed twenty-five percent (25%) of the benefits your attorney obtains for you in a case in which no hearing on the merits has been completed. In a case in which a hearing on the merits has been completed, attorney's fees normally do not exceed thirty percent (30%) of the benefits your attorney obtains for you. (3-23-22)

b. Depending upon the circumstances of your case, you and your attorney may agree to a higher or lower percentage which would be subject to Commission approval. Further, if you and your attorney have a dispute regarding attorney fees, either of you may petition the Industrial Commission, PO Box 83720, Boise, ID 83720-0041, to resolve the dispute. (3-23-22)

IDAPA 18 – DEPARTMENT OF INSURANCE
18.02.02 – AUTOMOBILE INSURANCE POLICIES
DOCKET NO. 18-0202-2201 (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 41-211 and 41-2502(3), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing concerning this rulemaking will be held as follows:

Tuesday, July 26, 2022 2:00 p.m. to 3:30 p.m. (MT)
<i>In-person participation is available at:</i> Department of Insurance 700 W State St, 3rd Floor Conference Room A Boise, Idaho 83702
<i>Phone or virtual participation via Webex is available at:</i> Join WebEx Meeting Meeting Number (Access Code): 2451 825 4219 Meeting Password: fN4m3AqFSr3
<i>Join by phone at:</i> 1-720-650-7664 (USA Toll Free)

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

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

The purpose of this rule provides implementation and uniform interpretation of Section 41-2502, 41-2506, 41-2507, 41-2508, and 41-2509, relating to insurance cancellation, non-renewal, and under/uninsured motorists. This rulemaking clarifies language, removes duplicative language, and moves information to the Department's website. It also improves transparency to consumers as to their underinsured motorist coverage.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year 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 April 6, 2022 Idaho Administrative Bulletin, [Vol. 22-04, pages 37-38](#), under Docket No. 18-ZBRR-2201.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Weston Trexler, (208) 334-4214, weston.trexler@doi.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2022.

DATED this June 3, 2022.

Dean L. Cameron, Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID, 83720-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0202-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)

18.02.02 – AUTOMOBILE INSURANCE POLICIES

000. LEGAL AUTHORITY.

Title 41, Chapter 25, Idaho Code. ()

001. SCOPE.

Assists in implementing and interpreting Sections 41-2502, and 41-2506 through 41-2509, Idaho Code. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Act. “The Act” means Sections 41-2506 through 41-2512, Idaho Code. ()

02. Conviction. For purposes of Section 41-2507, Idaho Code, the term “conviction” means a final conviction by any court having competent jurisdiction over violations of laws regulating the operation of motor vehicles. An overtime parking violation is not considered a conviction. ()

03. Underinsured Motorist (UIM) Coverage Types. “Offset” or “Difference in Limits” UIM coverage has limits that decrease by any amounts recovered from another party’s insurance. “Excess” UIM coverage has limits that are added to what is paid by another party’s insurance. ()

011. MISREPRESENTATIONS IN THE APPLICATION.

After properly notifying the insured, an insurer may cancel or refuse to renew a policy if the insurer has evidence the named insured or their legal representative made fraudulent or material misrepresentations, omissions, concealment of facts or incorrect statements in obtaining the policy and if the insurer in good faith would not have issued the policy or covered a particular hazard if the true facts had been made known to the insurer. This is not to be construed

to allow the insurer to void or rescind coverage to prevent a recovery in the event of a loss otherwise insured by the policy. ()

012. TERMINATION TIMING.

Unless otherwise agreed by the insured, insurer, and the lienholder, if any, the time and date of cancellation of a policy for nonpayment of premium will be no earlier than ten (10) days after the date such notice was mailed or delivered at the last known address of the named insured. The date of mailing is the first day, and the tenth day ends at midnight. Any existing policy will terminate on the effective date of another policy procured by the insured with respect to any automobile designated in both policies and containing duplicate insurance coverage. ()

013. NOTICE OF PREMIUM DUE AS INSURER'S WILLINGNESS TO RENEW.

An insurer's mailing of the renewal premium notice constitutes the insurer's willingness to renew. If the insured fails to pay the renewal premium when due, the policy will terminate per its terms. The insurer need not further notify the insured of the insurer's intent not to renew for nonpayment. ()

014. ACCEPTABLE FORMS FOR CERTAIN NOTICES.

The insurer will prepare forms of notice to use and submit to the Director for approval. Examples of acceptable language are available on the Department's website. ()

015. UNINSURED AND UIM COVERAGE.

a. The form on the Department's website is the standard statement per Section 41-2502(3), Idaho Code. Carriers are to provide the form with all new policies and renewals. Carriers may make non-substantive changes to this form, for example, inserting company letterhead. Carriers need to file their standard statement form with the Director prior to use ()

b. The carrier's Declarations Page for "offset" UIM coverage is to indicate that the coverage decreases by any payments from another party's coverage. ()

c. To avoid illusory coverage, insurers may offer "offset" UIM coverage at the state financial responsibility limits defined in Section 49-117(20), Idaho Code, only if coverage is provided at no (\$0.00) premium. ()

016. -- 999. (RESERVED)

IDAPA 18 – DEPARTMENT OF INSURANCE
18.02.03 – CERTIFICATE OF LIABILITY INSURANCE FOR MOTOR VEHICLES
DOCKET NO. 18-0203-2201 (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 41-211, 49-1129, 49-1231, and 49-1608A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing concerning this rulemaking will be held as follows:

Tuesday, July 26, 2022 2:00 p.m. to 3:30 p.m. (MT)
<i>In-person participation is available at:</i> Department of Insurance 700 W State St, 3rd Floor Conference Room A Boise, Idaho 83702
<i>Phone or virtual participation via Webex is available at:</i> Join WebEx Meeting Meeting Number (Access Code): 2451 825 4219 Meeting Password: fN4m3AqFSr3
<i>Join by phone at: 1-720-650-7664 (USA Toll Free)</i>

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

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

The purpose of this rule identifies requirements of Sections 49-1129, 49-1331, and 49-1608A, Idaho Code, relating to the certificate of liability insurance for motor vehicles. This rulemaking clarifies language and removes duplicative language.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year 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 April 6, 2022 Idaho Administrative Bulletin, Vol. 22-04, pages 37-38, under Docket No. 18-ZBRR-2201.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Weston Trexler, (208) 334-4214, weston.trexler@doi.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2022.

DATED this June 3, 2022.

Dean L. Cameron, Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID, 83720-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0203-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)

18.02.03 – CERTIFICATE OF LIABILITY INSURANCE FOR MOTOR VEHICLES

000. LEGAL AUTHORITY.

Title 49, Sections 49-1229, 49-1231, and 49-1608A, Idaho Code. ()

001. SCOPE.

To identify the form of a certificate of liability insurance for motor vehicles per Sections 49-1229, 49-1231 and 49-1608A, Idaho Code. ()

002. -- 010. (RESERVED)

011. CONTRACT OF INSURANCE -- CERTIFICATE OF LIABILITY INSURANCE.

A certificate of liability insurance can be the original liability insurance contract, or a copy thereof, or a written binder, showing active motor vehicle liability insurance in at least the applicable amounts prescribed by Sections 49-117(20), 49-1212, 49-1229, and 49-1608A, Idaho Code, and also any other coverage prescribed by Title 41, Idaho Code. ()

012. MINIMUM SPECIFICATIONS FOR A CERTIFICATE OF LIABILITY INSURANCE IN LIEU OF THE CONTRACT OF INSURANCE.

A document constitutes a certificate of liability insurance if it has these characteristics: ()

01. Individual-Owned Motor Vehicles. ()

a. Identifies the insurer or surety company authorized to do business in Idaho. ()

b. States the name and address of the owner of the insured motor vehicle. ()

c. Describes the motor vehicle including an identification number or the words “all owned vehicles” ()

if more than one vehicle is insured. ()

d. Shows the date coverage begins. ()

e. Shows either that coverage ends after a fixed date or period, or when cancelled. ()

f. May show of the insurance policy or document number. ()

02. Dealer and Manufacturer Vehicles. ()

a. Identifies the insurer or surety company authorized to do business in Idaho. ()

b. States the name and address of the dealership or owner(s) of the insured motor vehicle. ()

c. Shows the date coverage begins. ()

d. Shows either that coverage ends after a fixed date or period, or when cancelled. ()

e. May show the insurance policy or document number. ()

013. EXAMPLES OF A DOCUMENT FORMAT.

The Department's website includes examples of documents that would satisfy these specifications for a certificate of liability insurance. ()

014. -- 999. (RESERVED)

IDAPA 18 – DEPARTMENT OF INSURANCE

18.07.01 – RULES FOR ACQUIRING CONTROL, INSURANCE HOLDING COMPANY SYSTEMS AND MUTUAL INSURANCE HOLDING COMPANIES

DOCKET NO. 18-0701-2201 (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 41-211 and 41-3817, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing concerning this rulemaking will be held as follows:

<p>Tuesday, July 26, 2022 2:00 p.m. to 3:30 p.m. (MT)</p>
<p><i>In-person participation is available at:</i> Department of Insurance 700 W State St, 3rd Floor Conference Room A Boise, Idaho 83702</p> <p><i>Phone or virtual participation via Webex is available at:</i> Join WebEx Meeting Meeting Number (Access Code): 2451 825 4219 Meeting Password: fN4m3AqFSr3</p> <p><i>Join by phone at: 1-720-650-7664</i></p>

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

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

The purpose of this rule sets forth rules and procedural requirements necessary to administer the Idaho Acquisitions of Control and Insurance Holding Company Systems Regulatory Act, including provisions relating to Section 41-3824 on mutual holding companies. This rulemaking clarifies language and removes duplicative language.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year 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 April 6, 2022 Idaho Administrative Bulletin, Vol. 22-04, pages 37-38, under Docket No. 18-ZBRR-2201.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Weston Trexler, (208) 334-4214, weston.trexler@doi.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2022.

DATED this June 3, 2022.

Dean L. Cameron, Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID, 83720-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0701-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)

18.07.01 – RULES FOR ACQUIRING CONTROL, INSURANCE HOLDING COMPANY SYSTEMS AND MUTUAL INSURANCE HOLDING COMPANIES

000. LEGAL AUTHORITY.

Title 41, Chapters 2 and 38, Sections 41-211 and 41-3817, Idaho Code. ()

001. SCOPE.

These rules administer the Idaho Acquisitions of Control and Insurance Holding Company Systems Regulatory Act including its MHC provisions. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

These definitions supplement those in Chapter 38, Title 41, Idaho Code: ()

01. Affiliated Person. ()

a. Any person directly or indirectly owning, controlling, or holding with power to vote, five percent (5%) or more of another person's outstanding voting securities; or ()

b. Any person, five percent (5%) or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by another person; or ()

c. Any person directly or indirectly controlling, controlled by, or under common control with, another person; or ()

d. Any officer, director, partner, copartner, or employee of another person. ()

02. Domestic Mutual Insurance Company. A mutual insurer as defined in Section 41-302, Idaho Code, that is incorporated under Idaho law. ()

03. Executive Officer. Chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by those officers under whatever title. ()

04. Interested Person. Interested person means: ()

a. An affiliated person of another person or company; or ()

b. A member of the immediate family of any natural person who is an affiliated person of another company; or ()

c. Any person, partner or employee of any person who, at any time in a company's last two completed fiscal years, has acted as the company's lawyer; or ()

d. Any natural person whom the Director, by order, finds to be an interested person because the person had, at any time during a company's last two completed fiscal years, a material business or professional relationship with that company or its principal executive officer. ()

05. Intermediate Holding Company. A subsidiary of a MHC or part of a MHC-controlled holding company system. ()

06. Limited Application. A domestic mutual insurance company's application to reorganize as a MHC that will hold, at all times, all of the stock of its insurance subsidiaries. ()

07. Member of the Immediate Family. Any parent, or child, and their spouses, siblings, including step and adoptive relationships. ()

08. MHC. A mutual insurance holding company under Section 41-3824, Idaho Code. ()

09. Plan of Reorganization. A plan to reorganize a domestic mutual insurance company by forming a MHC. ()

10. Standard Application. A domestic mutual insurance company's application to reorganize as a MHC that may sell interests in its subsidiaries to third parties. ()

11. Stock. Any security showing an equity interest in the issuing entity. ()

12. Stock Offering. Any proposed sale, exchange, transfer or change of ownership of stock or of securities convertible into, or exchangeable or exercisable for, stock. "Stock offering" does not mean: ()

a. An offering of preferred stock without ordinary voting rights that is not convertible or exchangeable into common stock; or ()

b. A stock transfer between entities in a MHC system, including the MHC, intermediate holding company, and any insurance company subsidiaries. ()

13. Ultimate Controlling Person. A person not controlled by another person. ()

011. FORMS -- GENERAL REQUIREMENTS.

01. Forms As Guides. Forms A, B, C, D, E, and F included on the Department's website are guides for persons filing statements prescribed by Title 41, Chapter 38, Idaho Code, and not intended as fillable blank forms. Statements need to contain the numbers and captions for all items. ()

02. Filings. Each statement, including all exhibits, papers, and documents are to be electronically filed with the Director, and a hard copy personally delivered or mailed. Sign at least one (1) copy as stated on the form. If a signature is affixed pursuant to a power of attorney or similar authority, file a copy of the power of attorney or other authority with the statement. ()

03. Format. Prepare statements in English, using United States currency, and be easily readable and suitable for review and reproduction. Debits in credit categories and credits in debit categories should be clearly distinguishable on photocopies. ()

04. Hearing. If an applicant requests a consolidated hearing under Section 41-3806(3), Idaho Code, then besides filing Form A with the Director, the applicant will electronically file a copy of Form A with the National Association of Insurance Commissioners. ()

012. FORMS -- INCORPORATION BY REFERENCE, SUMMARIES AND OMISSIONS.

01. Incorporation by Reference. Information prescribed by any item on a Form may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or other document may be incorporated by reference in answer or partial answer to any item if the document or paper is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits. Documents need not be attached as exhibits if filed with the Director within the previous three (3) years. References to information in exhibits or documents already on file need to clearly identify that information and indicate it is incorporated by reference. Information cannot be incorporated by reference if doing so would make the statement incomplete, unclear or confusing. ()

02. Summaries or Outlines. When any Form requires a summary or outline, briefly explain the document's pertinent provisions. The summary or outline may incorporate by reference parts of any exhibit or document filed with the Director within the three (3) prior years. If documents filed as exhibits are substantially identical except as to parties, dates of execution, or other details, one (1) document should be filed with a schedule identifying the omitted documents and any material details in which the omitted documents differ from the filed documents. ()

013. FORMS -- INFORMATION UNKNOWN OR UNAVAILABLE AND EXTENSION OF TIME TO FURNISH.

For items that cannot be furnished at the time prescribed, the filer will: identify the information, document or report in question; state why its impractical to file it when prescribed; and request an extension to file it on a specified date. The extension request is deemed granted unless the Director issues an order denying the request within twenty-eight (28) days of receipt. ()

014. FORMS -- ADDITIONAL INFORMATION AND EXHIBITS.

In addition to expressly prescribed information, the Director may request additional information necessary for clarification. The filer may file exhibits besides those expressly necessary by the statement, clearly indicating the subject matters to which they refer. At the top of the cover page for changes to content in necessary Forms state "Change No. [insert number] to" and date of the change. ()

015. SUBSIDIARIES OF DOMESTIC INSURERS.

The authority to invest in subsidiaries under Section 41-3803, Idaho Code, is in addition to authority to invest in subsidiaries from any other provision of Title 41, Idaho Code. ()

016. ACQUISITION OF CONTROL -- STATEMENT FILING.

A person filing under Section 41-3804, Idaho Code, will furnish the prescribed information on Forms A and E. ()

017. AMENDING FORM A.

The applicant will promptly advise the Director of changes in Form A information arising after it was filed but before the Director's disposition of the application. ()

018. ACQUIRING SECTION 41-3804(1)(D) INSURERS.

01. Domestic Insurer’s Name. If a “domestic insurer” under Section 41-3804(1)(d), Idaho Code, is being acquired, then include in the application’s cover page the domestic insurer’s name in this format: “ABC Insurance Company, a subsidiary of XYZ Holding Company.” ()

02. References to Insurer. Where a Section 41-3804(1)(d) insurer is acquired, Form A’s references to “the insurer” mean both the domestic subsidiary insurer and the acquired person. ()

019. PRE-ACQUISITION NOTIFICATION.

01. Pre-Acquisition Notification. If a domestic insurer, including any controlling person, proposes a merger or acquisition per Section 41-3808(1)(a), Idaho Code, they will file Form E. If a licensed non-domiciliary insurer proposes a merger or acquisition per Section 41-3808, Idaho Code, they will file Form E unless exempted by Section 41-3808(2), Idaho Code. ()

02. Experts. The director may request an expert opinion regarding the competitive impact of the proposed acquisition. ()

020. ANNUAL REGISTRATION OF INSURERS -- STATEMENT FILING.

An insurer filing under Section 41-3809, Idaho Code, will complete Form B. ()

021. SUMMARY OF REGISTRATION -- STATEMENT FILING.

An insurer filing an annual registration under section 41-3809, Idaho Code, will also complete Form C. ()

022. AMENDING FORM B.

01. Amending Form B. An insurer will file any amendments to Form B within fifteen (15) days after the end of any month in which there is a material change to the information in the annual registration. ()

02. Form B Format. Amendments are filed on Form B including only the amended items. The top of the cover page for each amendment will state “Amendment No. [insert number] to Form B for [insert year]” and the date of the change, not the date of the original filings. ()

023. ALTERNATIVE AND CONSOLIDATED REGISTRATIONS.

01. Filing on Behalf of Affiliated Insurers. An authorized insurer may file a registration statement for an affiliated insurer or insurers. The registration statement may include information about any insurer in the holding system, even if the insurer is not authorized to do business in Idaho. In lieu of Form B, an authorized insurer may file a copy of the registration statement or similar report on file with its state of domicile if: ()

a. The filing contains substantially similar information prescribed on Form B; and ()

b. The filer is the principal insurance company in the insurance holding company system. ()

02. Statement That Filing Insurer Is the Principal Insurer. An insurer filing in lieu of Form B for an affiliated insurer will state facts substantiating the filing insurer’s claim that it is the principal insurer in the insurance holding system. ()

03. Unauthorized Insurer. With the Director’s prior approval, an unauthorized insurer may follow any procedures under Subsection 023.01. ()

04. Consolidated Registration Statements. An insurer may follow Section 41-3809(8), or 41-3809(9), Idaho Code, without the Director’s prior approval. The Director may request individual filings if necessary for clarity, ease of administration, or the public good. ()

024. DISCLAIMERS AND TERMINATION OF REGISTRATION.

01. Information Requisite. A disclaimer of affiliation or a request for termination of registration, on the basis that a person does not, or will not, upon the taking of some proposed action, control another person (the “subject”), will state: ()

a. The number of the subject’s authorized, issued and outstanding voting securities; ()

b. For the person whose control is denied and all the person’s affiliates, the number and percentage of shares of the subject’s voting securities that are held of record or known to be beneficially owned, and the number of shares for which there is a direct or indirect right to acquire; ()

c. All material relationships and bases for affiliation between the subject and the person whose control is denied and all their affiliates; ()

d. Why such person should not be considered to control the subject. ()

02. Request Deemed Granted. A request to terminate registration is deemed granted unless the Director notifies the filer otherwise within thirty (30) days after the request is received. ()

025. TRANSACTIONS SUBJECT TO PRIOR NOTICE - NOTICE FILING.

01. Form D. When an insurer notifies the Department of a proposed transaction under Section 41-3810, Idaho Code, the insurer will verify the information in Subsection 025.02 on Form D. ()

02. Agreements. Terms for cost sharing services and management services will at a minimum: ()

a. Identify the person providing services and the nature of such services; ()

b. Set forth the methods to allocate costs; ()

c. Prescribe timely settlement, at least on a quarterly basis, and compliance with the requirements in the Accounting Practices and Procedures Manual; ()

d. Bar advancement of funds by the insurer to the affiliate except to pay for services specified in the agreement; ()

e. State that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance; ()

f. Define books and records of the insurer to include all books and records developed or maintained under or related to the agreement; ()

g. Specify that all books and records of the insurer are and remain the property of the insurer and are subject to control of the insurer; ()

h. State that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer and are subject to the control of the insurer; ()

i. Include standards for termination of the agreement with and without cause; ()

j. Include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services; ()

k. Specify that, if the insurer is placed in receivership or seized by the Director under Title 41, Chapter 33, Idaho Code: ()

- i. All of the rights of the insurer under the agreement extend to the Director; and ()
- ii. All books and records will immediately be made available to the Director, and will be turned over to the Director immediately upon the Director's request; ()
- l. Specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership pursuant to Title 41, Chapter 33, Idaho Code; and ()
- m. Specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the Director under Title 41, Chapter 33, Idaho Code, and will make them available to the Director, for so long as the affiliate continues to receive timely payment for services rendered. ()

026. ENTERPRISE RISK REPORT.

The ultimate controlling person of an insurer will file an enterprise risk report per Section 41-3809(12), Idaho Code, on Form F. ()

027. EXTRAORDINARY DIVIDENDS AND OTHER DISTRIBUTIONS.

01. Request for Approval. Requests to approve extraordinary dividends or other extraordinary distribution to shareholders will include the following: ()

- a. The amount of the proposed dividend; ()
- b. The date established for payment; ()
- c. Whether the dividend is in cash or other property. If property, a description thereof, its cost, its fair market value, and an explanation of the valuation basis; ()
- d. Calculations showing the proposed dividend is extraordinary, which includes: ()
 - i. The amounts, dates, and form of payment of all distributions (including regular dividends but excluding distributions of the insurer's own securities) paid within twelve (12) consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought; ()
 - ii. Surplus as regards policyholders (total capital and surplus) as of the preceding December 31st; ()
 - iii. If the insurer is a life insurer, the net gain from operations for the twelve (12) months ending the preceding December 31st; and ()
 - iv. If the insurer is not a life insurer, the net income less net realized capital gains for the twelve (12) months ending the preceding December 31st. ()
- e. A balance sheet and income statement for the period since the last annual statement filed with the Director and the end of the month before the month in which the request for dividend approval is submitted; and ()
- f. The proposed distribution's effect on the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs. ()

02. Other Distributions. Subject to Section 41-3812, Idaho Code, registered insurers report to the Director all dividends and other shareholder distributions within fifteen (15) business days after the declaration thereof, including the information from Paragraph 027.01.d. ()

028. ADEQUACY OF SURPLUS.

Besides the factors in Section 41-3811, Idaho Code, the Director may consider other factors bearing on the insurer's

financial condition. No one (1) factor is controlling. Comparing other insurers' surplus, the Director will consider the extent to which each factor varies among companies. When determining the quality and liquidity of an insurer's investments in subsidiaries the Director will include a consideration of the individual subsidiary and may discount or disallow its valuation as individual investments warrant. ()

029. -- 050. (RESERVED)

051. MHC APPLICATION - CONTENT - PROCESS.

01. Designating Application as Limited or Standard. Applications are designated as limited or standard. Filing a limited application does not preclude later filing a standard application. ()

02. Application Information. Applications are filed in duplicate and will include: ()

a. Designation as limited or standard; ()

b. A Plan of Reorganization; ()

c. A plan for policyholder approval in accordance with the applicant's articles of incorporation and bylaws, with at least twenty (20) day notice to the policyholders; ()

d. A copy of the MHC's proposed articles of incorporation and bylaws specifying all membership rights; ()

e. The names, addresses and occupations of all corporate officers and members of the MHC's board of directors; ()

f. Information sufficient to demonstrate that reorganization will not diminish the applicant's financial condition; ()

g. A copy of the proposed articles of incorporation and bylaws for any insurance company subsidiary or intermediate holding company subsidiary; ()

h. Form A; ()

i. An application index; and ()

j. Any other information requested by the Director. ()

052. HEARING NOTICE.

01. Scheduling. A hearing will be held after the Director has received and reviewed the application. ()

02. Evidence Presented at Hearing. The applicant will provide evidence that the application is complete, complies with Idaho law, and the requirements for reorganization have been fulfilled. ()

03. Notice of Hearing. The Department will notify known interested parties about the hearing at least twenty (20) days before it occurs. ()

053. PLAN OF REORGANIZATION.

01. Plan of Reorganization. The plan of reorganization or "Plan" needs to preserve the applicant's property, be fair and equitable to policyholders and protect their interests, and not diminish the applicant's financial condition. ()

02. Limited Application. A limited application Plan will include: ()

- a. Establishing a MHC with at least one (1) stock insurance company subsidiary or one (1) intermediary stock holding company with a stock insurance company subsidiary, the share of which is held exclusively by the mutual insurance holding company; ()
 - b. Protection of existing policyholders' interests; ()
 - c. Providing existing and future policyholder membership in the MHC; ()
 - d. The number of policyholder members of the board of directors of the MHC; ()
 - e. Demonstrating that, if there are proceedings under Title 41, Chapter 33, Idaho Code, involving a stock insurance company subsidiary of the MHC, the assets of the MHC will be available to satisfy the policyholder obligations of the stock insurance company; ()
 - f. How any accumulation or prospective accumulation of earnings by the MHC in excess of that determined by the board of directors to be necessary will inure to the exclusive benefit of the MHC's member policyholders; ()
 - g. The nature and content of the annual report and financial statement sent to each member; and ()
 - h. Other matters the applicant deems appropriate. ()
- 03. Standard Application.** A standard application Plan includes: ()
- a. Establishing a MHC with at least one (1) stock insurance company subsidiary or one (1) wholly-owned intermediate stock holding company with a stock insurance company subsidiary, the shares of which are held exclusively by the wholly- owned intermediate holding company; ()
 - b. Protecting existing policyholders' interests; ()
 - c. Providing existing and future policyholder membership in the MHC; ()
 - d. The number of policyholder members on the MHC's board of directors; ()
 - e. Demonstrating that, if there are proceedings under Title 41, Chapter 33, Idaho Code, involving a stock insurance company subsidiary of the MHC, the assets of the MHC will be available to satisfy the policyholder obligations of the stock insurance company; ()
 - f. How any accumulation or prospective accumulation of earnings by the MHC excess of that determined by the MHC's board of directors to be necessary will inure to the exclusive benefit of the MHC's member policyholders; ()
 - g. The nature and content of the annual report and financial statement sent to each member; and ()
 - h. The plan for a stock offering per this rule; and ()
 - i. Other matters the applicant deems appropriate. ()

054. DUTIES OF THE DIRECTOR.

- 01. Jurisdiction.** The Director retains jurisdiction over the MHC and any intermediate holding company subsidiaries with stock insurance company subsidiaries. ()
- 02. Approval or Denial of Application.** The Director will, by order, approve, conditionally approve,

or deny an application. ()

a. **Modifications.** The Director may prescribe modifications to the proposed Plan. Prescribed modifications are accepted by filing amendments to the proposed Plan with the Director within thirty (30) days after the Director's order is issued. The Application will be denied if the prescribed amendments are not filed. ()

b. **Expiration.** An approval or conditional approval of a Plan expires if the reorganization is not completed within one hundred eighty (180) days unless extended by the Director for good cause. ()

c. **Revoking approval.** The Director may revoke a Plan's approval or conditional approval if the Director finds the applicant has not complied with the Plan. The Director may compel the applicant to complete a Plan unless the applicant has wholly abandoned the Plan consistent with the applicant's governance provisions. The Director retains jurisdiction over the applicant until the Plan is completed. ()

d. **Completion notice.** Upon completing the Plan, the applicant files a notice of completion with the Director. ()

055. REGULATION - COMPLIANCE.

01. Wavier of Compliance. No regulatory standards are waived during the pendency of a Plan application. ()

02. Merger or Acquisition. MHC mergers and acquisitions are subject to Director approval. If a MHC is to acquire more than fifty percent (50%) of a stock insurance company, then the applicant files a plan describing the insurer's policyholders' membership interests in the MHC. ()

03. Annual Financial Statement. A MHC will annually file a financial statement by June 1 including: ()

a. An income statement; ()

b. A balance sheet; ()

c. A cash flow statement; ()

d. The status of any closed block formed because of the Plan; ()

e. An asset investment plan; and ()

f. A statement disclosing any intention to pledge, borrow against, alienate, hypothecate, or otherwise encumber MHC assets. ()

04. Subsidiary Investment Obligations. At least fifty percent (50%) of the MHC's generally accepted accounting practices (GAAP) basis net worth will be invested in insurance company subsidiaries. ()

05. Distributions to Policyholders. Policy credits, dividends or other distributions to a MHC's policyholder members will be fair and equitable and are subject to Director approval and the public hearing process in Chapter 38, Title 41, Idaho Code. ()

056. REORGANIZATION OF MUTUAL INSURER WITH MUTUAL INSURANCE HOLDING COMPANY.

Domestic mutual insurance companies may merge their policyholders' interests into a MHC by filing a compliant joint application with the MHC. This also applies to foreign mutual insurance companies or a foreign health service corporation, which, if a domestic corporation, would be organized under Title 41, Chapter 28, Idaho Code. ()

057. MERGERS OF MUTUAL INSURANCE HOLDING COMPANIES. Two (2) or more MHCs may merge by filing a compliant merger plan. ()

058. STOCK OFFERINGS.

01. Prior Approval. A stock offering by a MHC, or by any of its direct or indirect insurance company or intermediate holding company subsidiaries, is subject to the Director's prior approval through this section's application and hearing process. ()

02. Application for Stock Offering Contents. ()

a. A description of the stock the applicant would offer, and of all shareholder rights; ()

b. The total number of shares authorized to be issued, the estimated number requested to offer, and the intended date or range of dates for the offer; ()

c. A justification for a uniform planned offering price, or of the method by which the offering price will be determined; ()

d. The name or names of any underwriter, syndicate member or placement agent involved and the known names of each entity, person, or group of persons to whom the stock offering is to be made who will control at least five percent (5%) of the total outstanding class of shares, and the manner in which the offer is to be tendered. If the entity or person is a corporation or business organization, the name of each member of its board of directors or equivalent management will be provided with the name. Copies of Securities and Exchange Commission filings disclosing intended stock acquisitions will be included; ()

e. A description of stock subscription rights afforded to MHC members in conjunction with the stock offering; ()

f. A detailed description of all expenses to be incurred in the stock offering; ()

g. How funds raised by the stock offering will be used; and ()

h. Any other information the Director requests. ()

03. Prescribed Provisions. The stock offering plan will state: ()

a. Officers, directors, and insiders of the MHC and its direct or indirect subsidiaries and affiliates are restricted from purchasing or owning shares of the stock offering, or issuance of stock options to or for the benefit of such officers, directors and insiders, for at least six (6) months following the first public offering date and regularly trading of the stock. Officers, directors and insiders are not barred from exercising subscription rights accorded to members of the MHC, except that, pursuant to those rights, the officers, directors, and insiders of the MHC and its direct or indirect subsidiaries and affiliates cannot purchase or own, in the aggregate, more than five percent (5%) of the stock offering for at least six (6) months following the first date of the public offering and regular trading of the stock; ()

b. A majority of the members of the MHC's board of directors cannot be an interested person of the MHC or of an affiliated person of the MHC. The Director may waive this requirement for good cause; ()

c. The MHC will adopt articles of incorporation barring any waiver of dividends from stock subsidiaries except under conditions specified in the articles and after approval of the waiver by the MHC's board of directors and the Director; ()

d. After the initial stock offering by a direct or indirect insurance company or intermediate insurance company subsidiary of a MHC, the boards of directors of each such insurance company or intermediate holding company will include at least three (3) directors who are not interested persons of the MHC; and ()

e. The board of directors of the corporation offering stock need to establish, a pricing committee consisting exclusively of directors who are interested persons. The committee's responsibility is to evaluate and

approve the price of any stock offering. ()

04. More Than One Class of Stock. An insurance company or intermediate insurance holding company subsidiary of a MHC may issue more than one (1) class of stock. At all times a majority of the voting stock will be held by the MHC or its subsidiary and, no class of common stock may have greater dividend or other rights than the class held by the MHC or its subsidiary. ()

05. Experts. The Director may hire experts to help review the application, at the applicant's expense. ()

06. Public Hearing. A public hearing may be held on any stock offering application. A stock offering including an initial offering of stock is expressly subject to a public hearing. The applicant will provide a Director-approved hearing notice to MHC members at least twenty (20) days before the hearing. ()

07. Approval. The Director may approve the stock offering plan if: ()

a. The method for establishing the stock offering price is consistent with generally accepted market or industry practices for establishing stock offering prices; and ()

b. The offering will not unfairly impact the interests of MHC members. ()

08. Concurrent Filing with SEC. Filing a registration statement with the Securities and Exchange Commission before, or concurrently with, notice to the MHC members is permitted. ()

09. Subsequent Offerings of Publicly Traded Stock. ()

a. Notwithstanding Section 013, stock offerings, besides an initial stock offering, through which stock offered is regularly traded on the New York Stock Exchange, the American Stock Exchange, or another Director-approved exchange, or designated on the national association of securities dealers automated quotations - national market system (NASDAQ), is subject to this procedure: If a MHC or direct or indirect insurance company or intermediate insurance company subsidiary thereof intends to make a stock offering governed by this section, the entity will notify the Director, at least thirty (30) days before the offering, regarding: ()

i. The total number of shares intended to be offered; ()

ii. The intended date of sale; ()

iii. Evidence the stock is regularly traded on one of the public exchanges noted above; and ()

iv. A record of the stock's trading pace and volume during the prior fifty-two (52) weeks. ()

b. The Director may object to the offering within thirty (30) days after receiving the notice. Upon an objection, the procedures in Subsection 059.02 will be followed to determine approval. ()

10. Approval Expiration. A stock-offering approval under Subsections 059.06, 059.07, or 059.08 expires ninety (90) days after the approval date, except as provided by the Director's order. ()

11. Representation of Director's Approval. A prospectus, information, sales material or sales presentation by the applicant, or a representative, agent or affiliate of the applicant, will not represent that the Director's approval constitutes an endorsement of the price, price range, or any other information relating to the stock. ()

059. BANNED MHC - PRACTICES.

01. Borrowing Funds. Borrowing funds from the MHC, or its subsidiaries and affiliates, to finance the purchase of any part of a stock offering. ()

02. Paying Commissions. Paying commissions, “special fees” or other special payments or extraordinary compensation to officers, directors, or interested persons and affiliates, for arranging, promoting, aiding or assisting in reorganization or for arranging promoting, aiding assisting or participating in the structuring and placement of a stock offering. ()

03. Avoiding This Chapter. Transferring legal or beneficial ownership of stock to another person in avoidance of this chapter. ()

060. REGULATING HOLDING COMPANY SYSTEM.

All material transactions between subsidiaries and affiliates of the MHC need to be approved by a majority of the directors of the MHC as fair and reasonable, on terms and conditions not less favorable than those available from unaffiliated third parties. ()

061. REPORTING STOCK OWNERSHIP AND TRANSACTIONS.

01. Acquiring Ownership Interest. Any director or officer of an MHC or its direct or indirect subsidiaries or affiliates, who directly or indirectly acquires the beneficial ownership of any security issued by any member of the MHC system will, within fifteen (15) days following the transaction, file a statement of the transaction in a format prescribed by the Director. ()

02. Filing SEC Forms. A MHC and its direct or indirect subsidiaries and affiliates, will file with the Director copies of Form 3, Form 4 and Schedule 13D, or any equivalent filings, made under the Securities and Exchange Act of 1934, as amended, within fifteen (15) days of receipt thereof. ()

062. -- 999. (RESERVED)

IDAPA 18 – DEPARTMENT OF INSURANCE

18.07.02 – RESERVE LIABILITIES AND MINIMUM VALUATIONS FOR ANNUITIES AND PURE ENDOWMENT CONTRACTS

DOCKET NO. 18-0702-2201 (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 41-211 and 41-612, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing concerning this rulemaking will be held as follows:

Tuesday, July 26, 2022 2:00 p.m. to 3:30 p.m. (MT)
<i>In-person participation is available at:</i> Department of Insurance 700 W State St, 3rd Floor Conference Room A Boise, Idaho 83702
<i>Phone or virtual participation via Webex is available at:</i> Join WebEx Meeting Meeting Number (Access Code): 2451 825 4219 Meeting Password: fN4m3AqFSr3
<i>Join by phone at: 1-720-650-7664</i>

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

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

The purpose of this rule recognizes mortality table for use in determining minimum standard valuations for annuity and pure endowment contracts. This rulemaking clarifies language, removes duplicative language, and moves information to the Department website.

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: 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 April 6, 2022 Idaho Administrative Bulletin, Vol. 22-04, pages 37-38, under Docket No. 18-ZBRR-2201.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Weston Trexler, (208) 334-4214, weston.trexler@doi.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2022.

DATED this June 3, 2022.

Dean L. Cameron, Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID, 83720-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0702-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)

18.07.02 – RESERVE LIABILITIES AND MINIMUM VALUATIONS FOR ANNUITIES
AND PURE ENDOWMENT CONTRACTS

000. LEGAL AUTHORITY.

Title 41, Chapters 2 and 6, Sections 41-211 and 41-612, Idaho Code. ()

001. SCOPE.

To determine minimum standard valuation for annuity and pure endowment contracts. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. 1983 Table ‘a’. The mortality table developed by the Society of Actuaries (SOA) Committee for Individual Annuity Valuation in 1981 and in June 1982 by the National Association of Insurance Commissioners (NAIC). ()

02. 1983 GAM Table. The mortality table developed by the SOA Committee on Annuities and adopted as a recognized mortality table for annuities in December 1983 by the NAIC. ()

03. 1994 GAR Table. The mortality table developed by the (SOA) Group Annuity Valuation Table Task Force and shown on pages 866-867 of Volume 47 of the Transactions of Society of Actuaries 1995. ()

04. 2012 Individual Annuity Mortality Period Life (2012 IAM Period) Table. The Period Table loaded mortality rates for calendar year 2012. This table contains rates, q_x^{2012} , developed by the (SOA) Committee on Life Insurance Research. ()

05. 2012 Individual Annuity Reserving (2012 IAR) Table. The generational mortality table

developed by the (SOA) Committee on Life Insurance Research and containing rates, q_x^{2012+n} derived from a combination of the 2012 IAM Period Table and Scale G2, using the method Section 014. ()

06. Annuity 2000 Mortality Table. The mortality table developed by the (SOA) Committee on Life Insurance Research. ()

07. Generational Mortality Table. A mortality table with mortality rates that decrease for a given age from one year to the next based on a combination of a Period Table and a projection scale containing mortality-improvement rates. ()

08. Period Table. A table of mortality rates applying to a given calendar year (the Period). ()

09. Projection Scale G2 (Scale G2). A table of annual rates, $G2_x$, of mortality improvement by age for projecting future mortality rates beyond calendar year 2012. This table was developed by the (SOA) Committee on Life Insurance Research. ()

011. INDIVIDUAL ANNUITY OR PURE ENDOWMENT CONTRACTS.

01. Individual Annuity Mortality Table. Except as stated in Subsections 011.02, the 1983 Table 'a' is approved as an individual annuity mortality table for valuation, and, a company may use it to determine the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after July 1, 1982. ()

02. Minimum Standard of Valuation. Except as stated in Subsection 011.03, either the 1983 Table 'a' or the Annuity 2000 Mortality Table is used to determine the minimum standard of valuation for an individual annuity or pure endowment contract issued on or after January 1, 1987. ()

03. The Annuity 2000 Mortality Table. Except as stated in Subsection 011.04, the Annuity 2000 Mortality Table is used to determine the minimum standard of valuation for an individual annuity or pure endowment contract issued on or after March 29, 2012. ()

04. The 2012 IAR Mortality Table. Except as stated in Subsection 011.05, the 2012 IAR Mortality Table is used to determine the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 2015. ()

05. The 1983 Table 'a.' The 1983 Table 'a' without projection is used to determine the minimum standard of valuation for an individual annuity or pure endowment contract issued on or after March 29, 2012, solely when the contract is based on life contingencies and issued to fund periodic benefits arising from: ()

- a.** Settlements of claims pertaining to court settlements or out of court settlements from tort actions; ()
- b.** Settlements involving similar actions like workers' compensation claims; or ()
- c.** Settlements of long-term disability claims where a temporary or life annuity is used in lieu of continuing disability payments. ()

012. GROUP ANNUITY OR PURE ENDOWMENT CONTRACTS.

01. Group Annuity Mortality Tables. Except as stated in Subsections 012.02, the 1983 GAM Table, the 1983 Table 'a' and the 1994 GAR Table are approved as group annuity mortality tables for valuation and, at the option of the company, any one (1) of these tables may be used for purposes of valuation for any annuity or pure endowment purchased on or after July 1, 1982, under a group annuity or pure endowment contract. ()

02. Minimum Standard of Valuation. Except as stated in Subsection 012.03, either the 1983 GAM Table or the 1994 GAR Table is used to determine the minimum standard of valuation for an annuity or pure endowment purchased on or after January 1, 1987, under a group annuity or pure endowment contract. ()

03 **1994 GAR Table.** The 1994 GAR Table is used to determine the minimum standard of valuation for an annuity or pure endowment purchased on or after March 29, 2012, under a group annuity or pure endowment contract. ()

013. -- 999. **(RESERVED)**

IDAPA 18 – DEPARTMENT OF INSURANCE
18.07.03 – VALUATION OF LIFE INSURANCE POLICIES INCLUDING
THE USE OF SELECT MORTALITY FACTORS
DOCKET NO. 18-0703-2201 (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 41-211 and 41-612, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing concerning this rulemaking will be held as follows:

Tuesday, July 26, 2022 2:00 p.m. to 3:30 p.m. (MT)
<i>In-person participation is available at:</i> Department of Insurance 700 W State St, 3rd Floor Conference Room A Boise, Idaho 83702
<i>Phone or virtual participation via Webex is available at:</i> Join WebEx Meeting Meeting Number (Access Code): 2451 825 4219 Meeting Password: fN4m3AqFSr3
<i>Join by phone at: 1-720-650-7664</i>

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

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

The purpose of this rule is to provide: tables of select mortality factors and rules for their use; and minimum standard rules for valuations of plans with nonlevel premiums or benefits and for valuation of plans with secondary guarantees. This rulemaking clarifies language and removes duplicative language.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year 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 April 6, 2022 Idaho Administrative Bulletin, [Vol. 22-04, pages 37-38](#), under Docket No. 18-ZBRR-2201.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Insurance companies must calculate the value of the benefits they sell under specific conditions, in order to regulate their solvency. The incorporation of the tables is necessary to set those solvency standards and for Idaho to retain its accreditation.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Weston Trexler, (208) 334-4214, weston.trexler@doi.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2022.

DATED this June 3, 2022.

Dean L. Cameron, Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID, 83720-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0703-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)

18.07.03 – VALUATION OF LIFE INSURANCE POLICIES INCLUDING
THE USE OF SELECT MORTALITY FACTORS

000. LEGAL AUTHORITY.

Title 41, Chapters 2 and 6, Sections 41-211 and 612, Idaho Code. ()

001. SCOPE.

01. Scope. Provides Tables of select mortality factors and minimum standards for plan valuations with: ()

a. Nonlevel premiums or benefits; or ()

b. Secondary guarantees. ()

02. Method. The method for calculating basic reserves defined herein will constitute the commissioners' reserve valuation method for applicable policies. ()

03. Applicability. This chapter applies to all life insurance policies, with or without nonforfeiture values, issued on or after March 30, 2001, subject to these exceptions and conditions. ()

a. Exceptions. This chapter does not apply to: ()

i. An individual life insurance policy issued on or after March 30, 2001, if the policy is issued under, and because of, the exercise of a reentry provision in the original life insurance policy of the same or greater face amount, issued before March 30, 2001, that guarantees the new policy's premium rates. This chapter also does not apply to later policies issued because of the exercise of such a provision, or a derivation of the provision, in the new policy. ()

- ii. A universal life policy that meets all the following requirements: ()
 - (1) Secondary guarantee period, if any, is five (5) years or less; ()
 - (2) Specified premium for the secondary guarantee period is at least the net level reserve premium for the secondary guarantee period based on the CSO valuation tables, as defined, and the applicable valuation interest rate; and ()
 - (3) The initial surrender charge is at least one hundred percent (100%) of the first year annualized specified premium for the secondary guarantee period. ()
- iii. A variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts. ()
- iv. A variable universal life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts. ()
- v. A group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums needed to continue coverage in force for a period beyond one (1) year. ()
- b. Conditions:** ()
 - i. The minimum valuation standard for policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits (other than universal life policies), or both, will be calculated per Section 012. ()
 - ii. The minimum valuation standard for flexible premium and fixed premium universal life insurance policies, which contain provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period, will be calculated per Section 013. ()

002. INCORPORATION BY REFERENCE.

The tables of select mortality factors are incorporated by reference the Appendix to NAIC Model 830, published October 2009 and available on the Department's website, and are the bases to which the respective percentage of Paragraphs 011.01.b., 011.02.b., and 011.02.c. are applied. ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

- 01. Basic Reserves.** Reserves calculated per Section 41-612(5), Idaho Code. ()
- 02. Contract Segmentation Method.** Method of dividing the period from issue to mandatory expiration of a policy into successive segments, where each segment's length is the period from the end of the prior segment (from policy inception, for the first segment) to the end of the latest policy year as determined below. All calculations are made using the 1980 CSO Valuation Tables, and, if elected, the optional minimum mortality standard for deficiency reserves set forth in Subsection 011.02. ()
- 03. Deficiency Reserves.** Excess, if greater than zero (0), of ()
 - a.** Minimum reserves calculated per Section 41-612(10), Idaho Code, over ()
 - b.** Basic reserves. ()
- 04. Guaranteed Gross Premiums.** Life insurance policy premiums that are guaranteed and determined at issue. ()
- 05. Maximum Valuation Interest Rates.** Interest rates defined in Section 41-612(4b), Idaho Code

(Computation of Minimum Standard by Calendar Year of Issue), used to determine the minimum standard for valuating life insurance policies. ()

06. 1980 CSO Valuation Tables. Commissioners' 1980 Standard Ordinary Mortality Table (1980 CSO Table) without "ten year select factors," and variations of the 1980 CSO Table approved by the NAIC, such as the smoker and nonsmoker versions approved in December 1983. ()

07. Scheduled Gross Premium. Smallest illustrated gross premium at issue for other than universal life insurance policies. For universal life insurance policies, scheduled gross premium means the smallest specified premium described in Paragraph 013.01.c., if any, or else the minimum premium described in Paragraph 013.01.d. ()

08. Segmented Reserves. ()

a. Reserves calculated using segments produced by the contract segmentation method, equal to the present value of all future guaranteed benefits less the present value of all future net premiums to the policy's mandatory expiration, where the net premiums in each segment are a uniform percentage of the respective guaranteed gross premiums within the segment. The uniform percentage for each segment is such that, at the start of the segment, the present value of the net premiums within the segment equals: ()

i. The present value of the death benefits within the segment, plus ()

ii. The present value of any unusual, guaranteed cash value (see Subsection 012.04) occurring at the end of the segment, less ()

iii. Any unusual guaranteed cash value occurring at the start of the segment, plus ()

iv. For the first segment only, the excess of the Item one (1) over Item two (2), as follows: ()

(1) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for in the first segment after the first policy year, divided by the present value, at the date of issue, of an annuity of one (1) per year payable on the first and each subsequent anniversary within the first segment on which a premium falls due. But the net level annual premium will not exceed the net level annual premium on the nineteen (19) year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one (1) year higher than the age at issue of the policy. ()

(2) A net one (1) year term premium for the benefits provided for in the first policy year. ()

b. Each segment's length is determined by the "contract segmentation method." ()

c. The interest rates in a policy's present value calculations cannot exceed the maximum valuation interest rate, determined with a guarantee duration equal to the sum of the lengths of the policy's segments. ()

d. For both basic reserves and deficiency reserves computed by the contract segmentation method, present values will include future benefits and net premiums in the current segment and in all subsequent segments. ()

09. Tabular Cost of Insurance. The net single premium at the start of a policy year for one (1) year term insurance in the amount of the guaranteed death benefit in that policy year. ()

10. Ten Year Select Factors. The factors adopted with the 1980 amendments to the NAIC Standard Valuation Law. ()

11. Unitary Reserves. ()

a. The present value of all future guaranteed benefits less the present value of all future modified net premiums, where: ()

i. Guaranteed benefits and modified net premiums are considered to the mandatory expiration of the policy; and ()

ii. Modified net premiums are a uniform percentage of the respective guaranteed gross premiums, where the uniform percentage is such that, at issue, the present value of the net premiums equals the present value of all death benefits and pure endowments, plus the excess of Item one (1) over Item two (2), as follows: ()

(1) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one (1) per year payable on the first and each subsequent anniversary of the policy on which a premium falls due. But the net level annual premium will not exceed the net level annual premium on the nineteen (19) year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one (1) year higher than the age at issue of the policy. ()

(2) A net one (1) year term premium for the benefits provided for in the first policy year. ()

b. The interest rates used in the present value calculations for any policy will not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the length from issue to the mandatory expiration of the policy. ()

12. Universal Life Insurance Policy. Any individual life insurance policy for which separately identified interest credits (other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts) and mortality or expense charges are made to the policy. ()

011. GENERAL CALCULATION REQUIREMENTS FOR BASIC RESERVES AND PREMIUM DEFICIENCY RESERVES.

01. Basic Reserves. At the company's election for any one (1) or more specified plans of life insurance, the minimum mortality standard for basic reserves may be calculated using the 1980 CSO valuation tables with select mortality factors. If select mortality factors are elected, they may be: ()

a. The "ten year select factors"; ()

b. The select mortality factors in the tables referenced in Section 002. ()

02. Deficiency Reserves. Deficiency reserves, if any, are calculated for each policy as the excess, if greater than zero (0), of the quantity A over the basic reserve. The quantity A is obtained by recalculating the basic reserve for the policy using guaranteed gross premiums instead of net premiums when the guaranteed gross premiums are less than the corresponding net premiums. At the company's election, for any one or more specified plans of insurance, the quantity A and the corresponding net premiums used to determine quantity A may be based on the 1980 CSO valuation tables with select mortality factors. If select mortality factors are elected, they may be one (1) of: ()

a. The "ten year select factors"; ()

b. The select mortality factors in the tables as referenced in Section 002; ()

c. For durations in the first segment, X percent of the select mortality factors in the tables as referenced in Section 002, subject to: ()

i. X may vary by policy year, policy form, underwriting classification, issue age, or any other policy factor expected to affect mortality experience; ()

ii. X is such that, when using the valuation interest rate used for basic reserves, Item one (1) at least equals Item two (2); ()

(1) The actuarial present value of future death benefits, calculated using the mortality rates resulting from the application of X; ()

(2) The actuarial present value of future death benefits calculated using anticipated mortality experience without recognition of mortality improvement beyond the valuation date; ()

iii. X is such that the mortality rates resulting from the application of X are at least as great as the anticipated mortality experience, without recognition of mortality improvement beyond the valuation date, in each of the first five (5) years after the valuation date; ()

iv. The appointed actuary will increase X at any valuation date where it is necessary to continue to meet all the requirements of Paragraph 011.02.c.; ()

v. The appointed actuary may decrease X at any valuation date if X continues to meet all requirements of Paragraph 011.02.c.; and ()

vi. The appointed actuary will specifically consider the adverse effect on expected mortality and lapsation of any anticipated or actual increase in gross premiums. ()

vii. If X is less than one hundred percent (100%) at any duration for any policy, the following requirements are to be met: ()

(1) The appointed actuary will annually prepare an actuarial opinion and memorandum for the company in conformance with the requirements of IDAPA 18.07.09, Section 022; ()

(2) The appointed actuary will disclose, in the Regulatory Asset Adequacy Issues Summary, the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one (1) or more interim periods; and ()

(3) The appointed actuary will annually opine, for all policies subject to this chapter, on whether the mortality rates resulting from applying X meet the requirements of Paragraph 011.02.c. This opinion will be supported by an actuarial report, subject to appropriate Actuarial Standards of Practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries. The X factors will reflect anticipated future mortality, without recognition of mortality improvement beyond the valuation date, taking into account relevant emerging experience. ()

03. Applicability. Subsection 011.03 applies to both basic reserves and deficiency reserves. Any set of select mortality factors may be used only for the first segment. But if the first segment is less than ten (10) years, the appropriate “ten year select factors” may be used thereafter through the tenth policy year from the date of issue. ()

04. Gross Premiums. In determining basic reserves or deficiency reserves, guaranteed gross premiums without policy fees may be used where the calculation involves the guaranteed gross premium but only if the policy fee is a level dollar amount after the first policy year. In determining deficiency reserves, policy fees may be included in guaranteed gross premiums, even if excluded from the actual calculation of basic reserves. ()

05. Changes in Guarantees. Reserves for policies that have changes to guaranteed gross premiums, guaranteed benefits, guaranteed charges, or guaranteed credits that are unilaterally made by the insurer after issue and that are effective for more than one (1) year after the date of the change will be the greatest of the following: ()

a. Reserves calculated ignoring the guarantee; ()

b. Reserves assuming the guarantee was made at issue; and ()

c. Reserves assuming that the policy was issued on the date of the guarantee. ()

06. Reserve Adequacy. The Director may require that the company document the extent of the

adequacy of reserves for specified blocks, including but not limited to policies issued prior to the effective date of this chapter. This documentation may include a demonstration of the extent to which aggregation with other non-specified blocks of business is relied on in forming the appointed actuary opinion pursuant to and consistent with the requirements of the Actuarial and Memorandum Rule, IDAPA 18.07.09, Section 022. ()

012. CALCULATING MINIMUM VALUATION STANDARD FOR POLICIES WITH GUARANTEED NONLEVEL GROSS PREMIUMS OR GUARANTEED NONLEVEL BENEFITS (BESIDES UNIVERSAL LIFE POLICIES).

01. Basic Reserves. Basic reserves are calculated as the greater of the segmented reserves and the unitary reserves. Both the segmented reserves and the unitary reserves for any policy will use the same valuation mortality table and selection factors. An insurer may make either of these adjustments when calculating segmented reserves and net premiums: ()

a. Treat the unitary reserve, if greater than zero (0), applicable at the end of each segment as a pure endowment and subtract the unitary reserve, if greater than zero (0), applicable at the start of each segment from the present value of guaranteed life insurance and endowment benefits for each segment; or ()

b. Treat the guaranteed cash surrender value, if greater than zero (0), applicable at the end of each segment as a pure endowment; and subtract the guaranteed cash surrender value, if greater than zero (0), applicable at the start of each segment from the present value of guaranteed life insurance and endowment benefits for each segment. ()

02. Deficiency Reserves. ()

a. The deficiency reserve at any duration will be calculated: ()

i. On a unitary basis if the corresponding basic reserve determined by Subsection 012.01 is unitary; ()

ii. On a segmented basis if the corresponding basic reserve determined by Subsection 012.01 is segmented; or ()

iii. On the segmented basis if the corresponding basic reserve determined by Subsection 012.01 is equal to both the segmented reserve and the unitary reserve. ()

b. Subsection 012.02 applies to any policy for which the guaranteed gross premium at any duration is less than the corresponding modified net premium calculated by the method used in determining the basic reserves, but using the minimum valuation standards of mortality (specified in Subsection 011.02 and rate of interest). ()

c. Deficiency reserves, if any, are calculated for each policy as the excess if more than zero (0), for the current and all remaining periods, of the quantity A over the basic reserve, where A is obtained as indicated in Subsection 011.02. ()

d. For deficiency reserves determined on a segmented basis, the quantity A is determined using segment lengths equal to those determined for segmented basic reserves. ()

03. Minimum Value. Basic reserves will at least equal the tabular cost of insurance for the balance of the policy year, if mean reserves are used. Basic reserves will at least equal the tabular cost of insurance for the balance of the current modal period or to the paid-to-date, if later, but not beyond the next policy anniversary, if mid-terminal reserves are used. The tabular cost of insurance will use the same valuation mortality table and interest rates as that used to calculate the segmented reserves. But if select mortality factors are used, they will be the “ten year select factors”. Total reserves (including basic reserves, deficiency reserves and any reserves held for supplemental benefits that would expire at contract termination) never may be less than the amount that the policyowner would receive (including the cash surrender value of the supplemental benefits, if any, referred to above), exclusive of any deduction for policy loans, when the policy terminates. ()

04. Unusual Pattern of Guaranteed Cash Surrender Values. ()

a. For any policy with an unusual pattern of guaranteed cash surrender values, the reserves held before the first unusual guaranteed cash surrender value will at least equal the reserves calculated by treating the first unusual guaranteed cash surrender value as a pure endowment and treating the policy as an n year policy providing term insurance plus a pure endowment equal to the unusual cash surrender value, where n is the number of years from the date of issue to the date the unusual cash surrender value is scheduled. ()

b. The reserves held after any unusual guaranteed cash surrender value will at least equal the reserves calculated by treating the policy as an n year policy providing term insurance plus a pure endowment equal to the next unusual guaranteed cash surrender value, and treating any unusual guaranteed cash surrender value at the end of the prior segment as a net single premium, where: ()

i. n is the number of years from the date of the last unusual guaranteed cash surrender value before the valuation date to the earlier of: ()

(1) The date of the next unusual guaranteed cash surrender value, if any, that is scheduled after the valuation date; or ()

(2) The mandatory expiration date of the policy; and ()

ii. The net premium for a given year during the n year period equals the product of the net to gross ratio and the respective gross premium; and ()

iii. The net to gross ratio equals Item One (1) divided by Item Two (2) as follows: ()

(1) The present value, at the start of the n year period, of death benefits payable during the n year period plus the present value, at the start of the n year period, of the next unusual guaranteed cash surrender value, if any, minus the amount of the last unusual guaranteed cash surrender value, if any, scheduled at the start of the n year period. ()

(2) The present value, at the start of the n year period, of the scheduled gross premiums payable during the n year period. ()

c. For Subsection 012.04, a policy has an unusual pattern of guaranteed cash surrender values if any future guaranteed cash surrender value exceeds the prior year's guaranteed cash surrender value by more than the sum of: ()

i. One hundred ten percent (110%) of the scheduled gross premium for that year; ()

ii. One hundred ten percent (110%) of one (1) year's accrued interest on the sum of the prior year's guaranteed cash surrender value and the scheduled gross premium using the nonforfeiture interest rate used for calculating policy guaranteed cash surrender values; and ()

iii. Five percent (5%) of the first policy year surrender charge, if any. ()

05. Optional Exemption for Yearly Renewable Term (YRT) Reinsurance. A company may opt to use this approach for reserves on YRT reinsurance: ()

a. Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year; ()

b. Basic reserves will at least equal the tabular cost of insurance for the appropriate period, as defined in Subsection 012.03; ()

c. Deficiency reserves. ()

i. For each policy year, calculate the excess, if greater than zero (0), of the valuation net premium over the respective maximum guaranteed gross premium. ()

ii. Deficiency reserves will at least equal the sum of the present values, at the date of valuation, of the excesses determined in accordance with Subparagraph 012.05.c.i.; ()

d. For Subsection 012.05, the calculations use the maximum valuation interest rate and the 1980 CSO mortality tables with or without “ten year select factors”; ()

e. A reinsurance agreement is YRT reinsurance under Subsection 012.05 if only the mortality risk is reinsured; and ()

f. If the assuming company chooses this optional exemption, the ceding company’s reinsurance reserve credit will be limited to the amount of reserve the assuming company holds for the affected policies. ()

06. Optional Exemption for Attained-Age-Based Yearly Renewable Term Life Insurance Policies.
A company may opt to use this approach for reserves for attained-age-based YRT life insurance policies: ()

a. Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year. ()

b. Basic reserves will at least equal to the tabular cost of insurance for the appropriate period, as defined in Subsection 012.03. ()

c. Deficiency reserves: ()

i. For each policy year, calculate the excess, if greater than zero (0), of the valuation net premium over the respective maximum guaranteed gross premium. ()

ii. Deficiency reserves at least equal to the sum of the present values, at the date of valuation, of the excesses determined in accordance with Subparagraph 012.06.c.i. ()

d. For Subsection 012.06, the calculations use the maximum valuation interest rate and the 1980 CSO valuation tables with or without “ten year select factors.” ()

e. A policy is an attained-age-based YRT life insurance policy, under Subsection 012.06, if: ()

i. The premium rates (on both the initial current premium scale and the guaranteed maximum premium scale) are based on the attained age of the insured such that the rate for any given policy at a given attained age of the insured is independent of the year the policy was issued; and ()

ii. The premium rates (on both the initial current premium scale and the guaranteed maximum premium scale) are the same as the premium rates for policies covering all insureds of the same sex, risk class, plan of insurance and attained age. ()

f. For policies that become attained-age-based YRT policies after an initial coverage period, the approach of Subsection 012.06 may be used after the initial period if: ()

i. The initial period is constant for all insureds of the same sex, risk class and plan of insurance; or ()

ii. The initial period runs to a common attained age for all insureds of the same sex, risk class, and plan of insurance; and ()

iii. After the initial period, the policy meets the conditions of Paragraph 012.06.e.; and ()

g. If this election is made, this approach will be applied to determine reserves for all attained-age-

based YRT life insurance policies issued on or after this chapter's effective date. ()

07. Exemption from Unitary Reserves for Certain n-Year Renewable Term Life Insurance Policies. Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met: ()

a. The policy consists of a series of n -year periods, including the first period and all renewal periods, where n is the same for each period, except that for the final renewal period, n may be truncated or extended to reach the expiry age, provided that this final renewal period is less than ten (10) years and less than twice the size of the earlier n -year periods, and for each period, the premium rates on both the initial current premium scale and the guaranteed maximum premium scale are level; ()

b. The guaranteed gross premiums in all n -year periods are not less than the corresponding net premiums based on the 1980 CSO Table with or without the "ten year select factors;" and ()

c. There are no cash surrender values in any policy year. ()

08. Exemption From Unitary Reserves for Certain Juvenile Policies. Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if these conditions are met, based on the initial current premium scale at issue: ()

a. At issue, the insured is age twenty-four (24) or younger; ()

b. Until the insured reaches the end of the juvenile period, which will occur at or before age twenty-five (25), the gross premiums and death benefits are level, and there are no cash surrender values; and ()

c. After the end of the juvenile period, gross premiums are level for the remainder of the premium paying period, and death benefits are level for the remainder of the life of the policy. ()

013. CALCULATING MINIMUM VALUATION STANDARD FOR FLEXIBLE PREMIUM AND FIXED PREMIUM UNIVERSAL LIFE INSURANCE POLICIES THAT CONTAIN PROVISIONS RESULTING IN THE ABILITY OF A POLICY OWNER TO KEEP A POLICY IN FORCE OVER A SECONDARY GUARANTEE PERIOD.

01. General. ()

a. Policies with a secondary guarantee include: ()

i. A policy with a guarantee that the policy will remain in force at the original schedule of benefits, subject only to paying specified premiums; ()

ii. A policy in which the minimum premium at any duration is less than the corresponding one (1) year valuation premium, calculated using the maximum valuation interest rate and the 1980 CSO valuation tables with or without "ten year select factors;" or ()

iii. A policy with any combination of Subparagraphs 013.01.a.i. and 013.01.a.ii. ()

b. A secondary guarantee period is the period for which the policy is guaranteed to remain in force subject only to a secondary guarantee. When a policy contains more than one secondary guarantee, the minimum reserve will be the greatest of the respective minimum reserves at that valuation date of each unexpired secondary guarantee, ignoring all other secondary guarantees. Secondary guarantees that the insurer unilaterally changes after issue will be considered to have been made at issue. Reserves described in Subsections 013.02 and 013.03 below will be recalculated from issue to reflect these changes. ()

c. Specified premiums mean the premiums specified in the policy, the payment of which guarantees that the policy will remain in force at the original schedule of benefits, but which otherwise would be insufficient to keep the policy in force in the absence of the guarantee if maximum mortality and expense charges and minimum

interest credits were made and any applicable surrender charges were assessed. ()

d. For Section 013, the minimum premium for any policy year is the premium that, when paid into a policy with a zero (0) account value at the start of the policy year, produces a zero (0) account value at the end of the policy year. The minimum premium calculation will use the policy cost factors (including mortality charges, loads and expense charges) and the interest crediting rate, which are all guaranteed at issue. ()

e. The one (1) year valuation premium means the net one (1) year premium based on the original schedule of benefits for a given policy year. The one (1) year valuation premiums for all policy years are calculated at issue. The select mortality factors defined in Paragraphs 011.02.b., 011.02.c., and 011.02.d. cannot be used to calculate the one (1) year valuation premiums. ()

f. The one (1) year valuation premium should reflect the frequency of fund processing, and the distribution of deaths assumption employed in the calculation of the monthly mortality charges to the fund. ()

02. Basic Reserves for Secondary Guarantees. Basic reserves for secondary guarantees will be the segmented reserves for the secondary guarantee period. In calculating the segments and the segmented reserves, the gross premiums will be set equal to the specified premiums, if any, or otherwise to the minimum premiums, that keep the policy in force and the segments will be determined according to the “contract segmentation method.” ()

03. Deficiency Reserves for Secondary Guarantees. Any deficiency reserves for secondary guarantees will be calculated for the secondary guarantee period as described in Subsection 012.02 with gross premiums set equal to the specified premiums, if any, or otherwise to the minimum premiums that keep the policy in force. ()

04. Minimum Reserves. The minimum reserves during the secondary guarantee period are the greater of: ()

a. The basic reserves for the secondary guarantee plus the deficiency reserve, if any, for the secondary guarantees; or ()

b. The minimum reserves prescribed by other rules or rules governing universal life plans. ()

014. -- 999. (RESERVED)

IDAPA 18 – DEPARTMENT OF INSURANCE
18.07.08 – PROPERTY AND CASUALTY ACTUARIAL OPINION RULE
DOCKET NO. 18-0708-2201 (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 41-211, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing concerning this rulemaking will be held as follows:

Tuesday, July 26, 2022 2:00 p.m. to 3:30 p.m. (MT)
<i>In-person participation is available at:</i> Department of Insurance 700 W State St, 3rd Floor Conference Room A Boise, Idaho 83702
<i>Phone or virtual participation via Webex is available at:</i> Join WebEx Meeting Meeting Number (Access Code): 2451 825 4219 Meeting Password: fN4m3AqFSr3
<i>Join by phone at: 1-720-650-7664</i>

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

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

The purpose of this rule provides the Director with additional means to monitor insurer's loss reserves in accordance with Section 41-610, Idaho code. This rulemaking clarifies language and removes duplicative language.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year 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 April 6, 2022 Idaho Administrative Bulletin, [Vol. 22-04, pages 37-38](#), under Docket No. 18-ZBRR-2201.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Weston Trexler, (208) 334-4214, weston.trexler@doi.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2022.

DATED this June 3, 2022.

Dean L. Cameron, Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID, 83720-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0708-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)

18.07.08 – PROPERTY AND CASUALTY ACTUARIAL OPINION RULE

000. LEGAL AUTHORITY.

Title 41, Chapter 2, Idaho Code. ()

001. SCOPE.

This rule applies to annual statements filed by property and casualty companies doing business in Idaho, and provides the Director the means to monitor an insurer's loss reserves per Section 41-610, Idaho Code. ()

002. -- 020. (RESERVED)

021. ACTUARIAL OPINION OF RESERVES AND SUPPORTING DOCUMENTATION.

01. Statement of Actuarial Opinion, Opinion Summary and Actuarial Report and Work Papers. ()

a. A property and casualty insurance company doing business in Idaho, unless exempted by the domiciliary commissioner, will annually file an Appointed Actuary's "Statement of Actuarial Opinion," per NAIC Property and Casualty Annual Statement Instructions. ()

b. Every property and casualty insurance company domiciled in Idaho filing a Statement of Actuarial Opinion will, it must also file an Actuarial Opinion Summary, written by the company's Appointed Actuary, per the NAIC Property and Casualty Annual Statement Instructions. ()

c. A company licensed, but not domiciled, in Idaho will file the Actuarial Opinion Summary upon request. ()

d. An Actuarial Report and work papers as prescribed by the NAIC Property and Casualty Annual Statement Instructions will support each Actuarial Opinion. ()

e. If the company fails to file a supporting Actuarial Report or work papers at the Director's request, or the Director determines the Actuarial Report or work papers do not comply with the NAIC Property and Casualty

Annual Statement Instructions or are otherwise unacceptable, the Director may hire a qualified actuary, at company expense, to review the Actuarial Opinion, and prepare the supporting Actuarial Report or work papers. ()

022. CONFIDENTIALITY.

01. The Statement of Actuarial Opinion. Will be filed with the Annual Statement per NAIC Property and Casualty Annual Statement Instructions and be a public record. ()

02. Actuarial Report. ()

a. The Actuarial Report, work papers or Actuarial Opinion Summary in support of the Actuarial Opinion, and any other records the company provides to the Director in connection thereto, are exempt from public disclosure under Section 74-107(5), Idaho Code. ()

b. This provision does not limit the Director's authority to release these records to the Actuarial Board for Counseling and Discipline (ABCD) so long as they are needed for professional disciplinary proceedings and the ABCD establishes procedures satisfactory to the Director regarding disclosing the records; nor the Director's authority to use the records to further the Director's regulatory or legal actions. ()

03. Waiver. Disclosing records to the Director waives no privilege or claim of confidentiality in the records. ()

023. -- 999. (RESERVED)

IDAPA 18 – DEPARTMENT OF INSURANCE
18.07.09 – LIFE AND HEALTH ACTUARIAL OPINION AND MEMORANDUM RULE
DOCKET NO. 18-0709-2201 (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 41-211, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing concerning this rulemaking will be held as follows:

Tuesday, July 26, 2022 2:00 p.m. to 3:30 p.m. (MT)
<i>In-person participation is available at:</i> Department of Insurance 700 W State St, 3rd Floor Conference Room A Boise, Idaho 83702
<i>Phone or virtual participation via Webex is available at:</i> Join WebEx Meeting Meeting Number (Access Code): 2451 825 4219 Meeting Password: fN4m3AqFSr3
<i>Join by phone at: 1-720-650-7664</i>

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

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

The purpose of this rule allows the appointed actuary to use professional judgement and opinion in asset analysis and supporting communication. Also, the rule provides the Director with authority to specify methods and assumptions of actuarial analysis in order to render adequacy of reserves and related items. This rulemaking clarifies language and removes duplicative language.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year 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 April 6, 2022 Idaho Administrative Bulletin, Vol. 22-04, pages 37-38, under Docket No. 18-ZBRR-2201.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Weston Trexler, (208) 334-4214, weston.trexler@doi.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2022.

DATED this June 3, 2022.

Dean L. Cameron, Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID, 83720-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0709-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)

18.07.09 – LIFE AND HEALTH ACTUARIAL OPINION AND MEMORANDUM RULE

000. LEGAL AUTHORITY.

Title 41, Chapter 2, Idaho Code. ()

001. SCOPE.

01. Application of Rule. This rule applies to all life insurance companies and fraternal benefit societies doing business in Idaho and to all life insurance companies and fraternal benefit societies that are authorized to reinsure life insurance, annuities or accident and health insurance business in Idaho. This regulation will be applied to allow the appointed actuary to use their professional judgment in performing the asset analysis and developing the actuarial opinion and supporting memoranda, consistent with actuarial standards of practice. But the Director may specify methods of actuarial analysis and actuarial assumptions that the Director deems necessary for an acceptable opinion to be rendered on the adequacy of reserves and related items. ()

02. Application to All Annual Statements. This rule applies to all annual statements filed with the Director. A statement of opinion on the adequacy of reserves and related actuarial items based on an asset adequacy analysis per Section 022, and a supporting memorandum per Section 023, will be needed each year. ()

03. Purpose. This rule prescribes: ()

a. Guidelines and standards for statements of actuarial opinion which are to be submitted per Section 41-612(12), Idaho Code, and for supporting memoranda; ()

b. Rules for appointing an appointed actuary; and ()

c. Guidelines on the meaning of adequacy of reserves. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Actuarial Opinion. An Appointed Actuary’s opinion on reserve adequacy and related actuarial items based on an asset adequacy test per Section 022 and presently accepted actuarial standards. ()

02. Actuarial Standards Board. The board established by the American Academy of Actuaries to develop standards of actuarial practice. ()

03. Asset Adequacy Analysis. An analysis that meets the standards and requirements in Subsection 021.04. ()

04. Company. A life insurance company, fraternal benefit society or reinsurer subject to this rule. ()

011. -- 020. (RESERVED)

021. GENERAL REQUIREMENTS.

01. Submitting Statement of Actuarial Opinion. ()

a. For each year, starting with the year in which this rule takes effect, the annual statement’s first page will include or attach the statement of an appointed actuary, entitled “Statement of Actuarial Opinion,” setting forth an opinion on reserves and related actuarial items held in support of policies and contracts, per Section 022. ()

b. Upon written request by the company, the Director may grant an extension to submit the statement of actuarial opinion. ()

02. Qualified Actuary. An individual who: ()

a. Is a member in good standing of the American Academy of Actuaries; and ()

b. Is qualified to sign statements of actuarial opinion for life and health insurance company annual statements per the American Academy of Actuaries qualification standards; and ()

c. Is familiar with the valuation requirements applicable to life and health insurance companies; and ()

d. Has not been found by the Director (or if so found has later been reinstated as a qualified actuary), after appropriate notice and hearing, to have; ()

i. Violated any provision of, or any obligation imposed by any law in the course of their dealings as a qualified actuary; or ()

ii. Been found guilty of fraudulent or dishonest practices; or ()

iii. Demonstrated incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary; or ()

iv. Filed with the Director during the past five (5) years, pursuant to this rule, an actuarial opinion or memorandum that the Director rejected because it violated this rule, including standards set by the Actuarial Standards Board; or ()

v. Resigned, or been removed as an actuary, within the past five (5) years because of acts or omissions indicated in any adverse report on examination or as a result not adhering to generally accepted actuarial standards; and ()

e. Has not failed to notify the Director of any action taken by any Director of any other state similar to ()

that under Paragraph 021.02.d. ()

03. Appointed Actuary. A qualified actuary who is appointed or retained to prepare the Statement of Actuarial Opinion prescribed by this rule; either directly by or by the authority of the board of directors through an executive officer of the company. The company will timely notify the Director in writing of the name, title (and, in the case of a consulting actuary, the name of the firm) and manner of appointment or retention of each person appointed or retained by the company as an appointed actuary. The notice will state that the person meets the requirements of Subsection 021.02. The company will timely notify the Director if the actuary ceases to be appointed or retained as an appointed actuary or to meet the requirements of Subsection 021.02. If any person appointed or retained as an appointed actuary replaces a previously appointed actuary, the notice will so state and give the reasons for replacement. ()

04. Standards for Asset Adequacy Analysis. The asset adequacy analysis prescribed by this rule: ()

a. Will conform to the standards of practice promulgated by the Actuarial Standards Board and to any additional standards under this rule, which standards are to form the basis of the statement of actuarial opinion per Section 021; and ()

b. Will be based on methods of analysis as are deemed appropriate for such purposes by the Actuarial Standards Board. ()

05. Liabilities to Be Covered. ()

a. Under authority of Section 41-612(12), Idaho Code, the statement of actuarial opinion will apply to all in force business on the statement date regardless of when or where issued, e.g., Aggregate Reserve for Life Contracts, Aggregate Reserve for Accident and Health Contracts, reserves for Deposit Type Contracts, and Claims for Life and Health Contracts as reported in Exhibits of the annual statement, and equivalent items in the separate account statement or statements of the annual statement. ()

b. If the appointed actuary determines from asset adequacy analysis that the company should hold a reserve in addition to the company's aggregate reserve and calculated as described in Section 41-612(12), Idaho Code, the company will establish such additional reserve. ()

c. Additional reserves established under this Subsection and deemed unnecessary in later years may be released. Released amounts need to be disclosed in the actuarial opinion for the applicable year. The Director will not deem the release of such reserves to reflect a lower standard of valuation. ()

022. STATEMENT OF ACTUARIAL OPINION BASED ON AN ASSET ADEQUACY ANALYSIS.

01. General Description. The statement of actuarial opinion submitted under this section will consist of; ()

a. A paragraph identifying the appointed actuary and qualifications; ()

b. A scope paragraph identifying the subjects on which an opinion is to be expressed and describing the scope of the appointed actuary's work, including a tabulation delineating the reserves and related actuarial items that have been analyzed for asset adequacy and the analysis method, and identifying the reserves and related actuarial items covered by the opinion that have not been so analyzed; ()

c. A reliance paragraph describing those areas, if any, where the appointed actuary has deferred to other experts in developing data, procedures or assumptions, (e.g., anticipated cash flows from currently owned assets, including variation in cash flows according to economic scenarios. Supported by a statement of each such expert in the form prescribed by Subsection 022.05; and ()

d. An opinion paragraph expressing the appointed actuary's opinion on the adequacy of the supporting assets to mature the liabilities. ()

- e. One (1) or more additional paragraphs will be needed in these cases; ()
- i. If the appointed actuary considers it necessary to state a qualification of his opinion; ()
- ii. If the appointed actuary needs to disclose an inconsistency between the analysis method or basis of asset allocation used on the prior opinion date and those used for this opinion; ()
- iii. If the appointed actuary needs to disclose whether additional reserves of the prior opinion date are released as of this opinion date, and the extent of the release; or ()
- iv. If the appointed actuary chooses to add a paragraph briefly describing the assumptions forming the basis for the actuarial opinion. ()

02. Recommended Language. The Department has adopted recommended language, available on the Department’s website, which in typical circumstances should be in the statement of actuarial opinion. The language may be modified to meet the circumstances of a particular case, but the appointed actuary should use language that clearly expresses their professional judgment. The opinion will, in any event, retain all pertinent aspects of the language provided. ()

03. Assumptions for New Issues. Changing an actuarial assumption for new issues, claims, or other liabilities that used for prior new issues, claims, or other liabilities is not a change in actuarial assumptions within the meaning of this Section. ()

04. Adverse Opinions. If the appointed actuary cannot form an opinion, then they will refuse to issue a statement of actuarial opinion. If the appointed actuary’s opinion is adverse or qualified, then they will issue an adverse or qualified actuarial opinion expressing the reason(s) for such opinion. This statement should follow the scope paragraph and precede the opinion paragraph. ()

05. Reliance on Data Furnished by Other Persons. If the appointed actuary relies on the certification of others on matters concerning the accuracy or completeness of any data underlying the actuarial opinion, or the appropriateness of any other information used by the appointed actuary in forming the actuarial opinion, then the actuarial opinion should identify the persons the actuary relies upon and precisely identify the items subject to reliance. The persons on whom the appointed actuary relies will also certify precisely what items the person provided information on and the extent to which those items are accurate, complete, or reasonable. The certification will include the person’s signature, title, company, address and telephone number and the date on which it is signed. ()

023. ALTERNATE OPTION.

01. Standard Valuation Law. The Standard Valuation Law broadly authorizes the Director to accept a foreign insurer’s valuation that meets the requirements for an Idaho-domiciled company. As an alternative to meeting the minimum aggregate amounts for Idaho, the Director may make one (1) or more of these approaches available to the opining actuary: ()

a. A statement that the reserves “meet the requirements of the insurance laws and regulations of the State of [state of domicile] and the formal written standards and conditions of this state for filing an opinion based on the law of the state of domicile.” If the Director chooses to allow this alternative, a formal written list of standards and conditions will be made available. If a company chooses to use this alternative, the standards and conditions in effect on July 1 of a calendar year will apply to statements for that calendar year, and they will remain in effect until they are revised or revoked. If no list is available, this alternative is not available. ()

b. A statement that the reserves “meet the requirements of the insurance laws and regulations of the State of [state of domicile] and I have verified that the company’s request to file an opinion based on the law of the state of domicile has been approved and that any conditions prescribed by the Director for approval of that request have been met.” If the Director chooses to allow this alternative, a formal written statement of such allowance will be issued no later than March 31 of the year it is first effective. It will remain valid until rescinded or modified by the

Director. The rescission or modifications will be issued no later than March 31 of the year they are first effective. After that statement has issued, if a company chooses to use this alternative, the company will file a request to do so, along with justification for its use, no later than April 30 of the year of the opinion to be filed. The request is deemed approved on October 1 of that year if the Director has not denied it. ()

c. A statement that the reserves “meet the requirements of the insurance laws and regulations of the State of [state of domicile] and I have submitted the prescribed comparison as specified by this state.” ()

i. If the Director chooses to allow this alternative, a formal written list of products (to be added to the table in Item (ii) below) for which the prescribed comparison will be provided will be published. If a company chooses to use this alternative, the list in effect on July 1 of a calendar year will apply to statements for that calendar year, and it will remain in effect until revised or revoked. If no list is available, this alternative is not available. ()

ii. If a company desires to use this alternative, the appointed actuary will provide a comparison of the gross nationwide reserves held to the gross nationwide reserves that would be held under NAIC codification standards. Gross nationwide reserves are the total reserves calculated for the total company in force business directly sold and assumed, indifferent to the state in which the risk resides, without reduction for reinsurance ceded. The information provided will be at least:

(1) Product Type	(2) Death Benefit or Account Value	(3) Reserves Held	(4) Codification Reserves	(5) Codification Standard

()

iii. The information listed will include all products identified by either the state of filing or any other states subscribing to this alternative. ()

iv. If there is no codification standard for the type of product or risk in force, or if the codification standard does not directly address the type of product or risk in force, the appointed actuary will detail the specific method and assumptions used to determine the reserves held. ()

v. The comparison provided by the company is to be kept confidential to the same extent and under the same conditions as the actuarial memorandum. ()

d. Notwithstanding the above, the Director may reject an opinion based on the laws and regulations of the state of domicile and require an opinion based on Idaho law. If a company does not provide the opinion within sixty (60) days of the request or such other time period set by the Director after consulting with the company, the Director may hire an independent actuary at the company’s expense to prepare and file the opinion. ()

024. DESCRIPTION OF ACTUARIAL MEMORANDUM INCLUDING AN ASSET ADEQUACY ANALYSIS AND REGULATORY ASSET ADEQUACY ISSUES SUMMARY.

01. General. ()

a. Per Section 41-612(12), Idaho Code, the appointed actuary will prepare a memorandum to the company describing the analysis done to support their opinion on the reserves. The memorandum will be made available for the Director’s examination upon request, but it will be returned to the company after the examination and cannot be considered a record of the insurance Department or subject to automatic filing with the Director. ()

b. In preparing the memorandum, the appointed actuary may rely on, and include as a part of their own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of

Subsection 021.02, with respect to the areas covered in such memoranda, and so state in their memorandum. ()

c. If the Director requests a memorandum that does not exist, or if the Director finds the memorandum's analysis violates the standards of the Actuarial Standards Board or the standards and requirements of this rule, the Director may designate a qualified actuary to review the opinion and prepare supporting memorandum. The company will pay, subject to the Director's direction and control, the reasonable and necessary expense of the independent review. ()

d. The reviewing actuary will have the same status as an examiner for purposes of obtaining data from the company, and the Director will retain the reviewing actuary's work papers and documentation. But any information provided by the company to the reviewing actuary and included in the work papers will be considered as examination workpapers and will be kept confidential to the same extent as prescribed by Section 41-227, Idaho Code. The reviewing actuary cannot be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer under this rule for the current year or any of the preceding three (3) years. ()

e. Per Section 41-612(12), Idaho Code, the appointed actuary will prepare a regulatory asset adequacy issues summary, the contents of which are specified in Subsection 024.03. This summary will be submitted by March 15 of the year after the year for which a statement of actuarial opinion based on asset adequacy is mandatory. The summary is confidential and exempt from public disclosure under Sections 41-612(12) and 74-107(5), Idaho Code. ()

f. Per Section 41-612(12)(d)(iv), the Director will accept a foreign or alien company's regulatory asset adequacy issues summary, on file with the insurance supervisory official of another state, if the Director determines the summary reasonably meets the requirements for a company domiciled in Idaho. Thus, foreign or alien insurers that had to file the regulatory asset adequacy issues summary in their home state are exempt from filing in Idaho, except upon Director request, if the other state has substantially similar reporting requirements and the summary is timely filed with the other state's commissioner. ()

02. Details of the Memorandum Section Documenting Asset Adequacy Analysis (Section 022).
When an actuarial opinion under Section 022 is provided, the memorandum will show the analysis has been done per the asset-adequacy standards in Subsection 021.04 and any additional standards under this rule. It will specify; ()

- a.** For reserves; ()
 - i.** Product descriptions including market description, underwriting and other aspects of a risk profile and the specific risks the appointed actuary deems significant; ()
 - ii.** Source of liability in force; ()
 - iii.** Reserve method and basis; ()
 - iv.** Investment reserves; ()
 - v.** Reinsurance arrangements; and ()
 - vi.** Identification of any explicit or implied guarantees made by the general account in support of benefits provided through a separate account or under a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis. ()

- b.** Documentation of assumptions to test reserves, such that an actuary reviewing the actuarial memorandum could form a conclusion as to their reasonableness, for: ()
 - i.** Lapse rates (both base and excess); ()

- ii. Interest crediting rate strategy; ()
- iii. Mortality; ()
- iv. Policyholder dividend strategy; ()
- v. Competitor or market interest rate; ()
- vi. Annuitization rates; ()
- vii. Commissions and expenses; and ()
- viii. Morbidity. ()
- c. For assets: ()
 - i. Portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets; ()
 - ii. Investment and disinvestment assumptions; ()
 - iii. Asset data source; ()
 - iv. Asset valuation bases. ()
- d. Documentation of assumptions, such that an actuary reviewing the actuarial memorandum could form a conclusion as to their reasonableness, for: ()
 - i. Default costs; ()
 - ii. Bond call function; ()
 - iii. Mortgage prepayment function; ()
 - iv. Determining market value for assets sold due to disinvestment strategy; and ()
 - v. Determining yield on assets acquired through the investment strategy. ()
- e. For the analysis basis: ()
 - i. Methodology; ()
 - ii. Rationale for inclusion/exclusion of different blocks of business and how pertinent risks were analyzed; ()
 - iii. Rationale for degree of rigor in analyzing different blocks of business (include in the rationale the level of “materiality” that was used in determining how rigorously to analyze different blocks of business); ()
 - iv. Criteria for determining asset adequacy (include in the criteria the precise basis for determining if assets are adequate to cover reserves under “moderately adverse conditions” or other conditions as specified in relevant actuarial standards of practice); ()
 - v. Whether the impact of federal income taxes was considered and the method of treating reinsurance in the asset adequacy analysis. ()
- f. Summary of material changes in methods, procedures, or assumptions from prior year’s asset adequacy analysis; ()

- g.** Summary of Results; ()
- h.** Conclusion(s). ()
- i.** The regulatory asset adequacy issues summary will include: ()

 - i. Descriptions of the tested scenarios (including whether they are stochastic or deterministic) and the sensitivity testing done relative to those scenarios. If negative-ending surplus results under certain tests in the aggregate, the actuary should describe those tests and the amount of additional reserve as of the valuation date which, if held, would eliminate the negative aggregate surplus values. Ending surplus values will be determined by extending the projection period until the in force and associated assets and liabilities at the end of the projection period are immaterial, or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force; ()
 - ii. The extent to which the appointed actuary uses assumptions in the asset adequacy analysis that materially differ from assumptions in the previous asset adequacy analysis; ()
 - iii. The amount of reserves and the identity of the product lines that were subjected to asset adequacy analysis in the prior opinion but that were not analyzed for the current opinion; ()
 - iv. Comments on any interim results that significantly concern the appointed actuary. For example, the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods; ()
 - v. The actuary’s methods for recognizing how reinsurance impacts the company’s cash flows, including both assets and liabilities, under each tested scenario; and ()
 - vi. Whether the actuary is satisfied that the asset adequacy analysis appropriately considered all options explicit or embedded in any asset or liability (including those affecting cash flows embedded in fixed income securities) and equity-like features in any investments. ()
- j.** The regulatory asset adequacy issues summary will name the company for which the regulatory asset adequacy issues summary is being supplied and be signed and dated by the appointed actuary rendering the actuarial opinion. ()

04. Conformity to Standards of Practice. The memorandum will state:
“Actuarial methods, considerations and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum.” ()

05. Use of Assets Supporting the Interest Maintenance Reserve and the Asset Valuation Reserve. An appropriate allocation of assets in the amount of the Interest Maintenance Reserve (IMR), whether positive or negative, needs to be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the Asset Valuation Reserve (AVR); these AVR assets cannot be applied for other risks with respect to reserve adequacy. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support. The Table of Reserves and Liabilities of the opinion and in the memorandum will disclose the amount of the assets used for the AVR. The memorandum will also disclose the method for selecting particular assets or allocated portions of assets. ()

06. Documentation. The appointed actuary will retain, for at least seven (7) years, sufficient documentation from which to determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained. ()

025. -- 999. (RESERVED)

IDAPA 18 – DEPARTMENT OF INSURANCE
18.08.02 – FIRE PROTECTION SPRINKLER CONTRACTORS
DOCKET NO. 18-0802-2201F (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 41-211, 41-254 and Chapter 9, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing concerning this rulemaking will be held as follows:

Tuesday, July 26, 2022 2:00 p.m. to 3:30 p.m. (MT)
<i>In-person participation is available at:</i> Department of Insurance 700 W State Street, 3rd Floor Conference Room A Boise, ID 83702
<i>Phone or virtual participation via Webex is available at:</i> Join WebEx Meeting Meeting Number (Access Code): 2451 825 4219 Meeting Password: fN4m3AqFSr3
<i>Join by phone at: 1-720-650-7664</i>

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

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

The purpose of this rule specifies requirements of fire sprinkler systems by qualified personnel. This includes all facets of fire sprinklers and bonding of personnel and organizations. This rulemaking clarifies language and removes duplicative or unnecessary language.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. This fee or charge is being imposed pursuant to Section 41-401, Idaho Code. The fees within this rulemaking apply to the State Fire Marshal's actions on applications and licenses (014).

FISCAL IMPACT: The following is a specific 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 April 6, 2022 Idaho Administrative Bulletin, [Vol. 22-04, pages 37-38](#), under Docket No. 18-ZBRR-2201.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Weston Trexler, (208) 334-4214, weston.trexler@doi.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2022.

DATED this June 3, 2022.

Dean L. Cameron, Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID, 83720-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 18-0802-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)**

18.08.02 – FIRE PROTECTION SPRINKLER CONTRACTORS

000. LEGAL AUTHORITY.

Title 41, Chapter 2, Section 41-254(2), (3) and Chapter 9. ()

001. SCOPE.

This rule ensures that only qualified persons and organizations install and maintain fire sprinkler systems and their appurtenances. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Fire Protection Sprinkler System (FPS System). An integrated system of underground and overhead piping designed to meet fire protection engineering standards. This system includes a water supply, such as a gravity tank, fire pump, reservoir or pressure tank or connection by underground piping to a water supply. The part of the system above ground is a network of specially sized, or hydraulically designed, piping installed in a building, structure or area, generally overhead, and to which sprinklers are connected in a systematic pattern. The system includes a control valve and a device to activate an alarm when the system operates. The system usually is activated by heat from a fire and discharges water over the fire area. ()

02. Fire Protection Sprinkler Contractor (FPS Contractor). Persons who contract to install, repair, modify, or maintain FPS Systems. ()

03. Fitters. Persons who install and maintain FPS Systems while supervised by an FPS Contractor.

()

04. Responsible Maintenance Employee. Anyone employed by an owner of premises with an FPS System, who regularly inspects and maintains the FPS System per the maintenance checklist provided by the State Fire Marshal. ()

011. QUALIFICATIONS FOR FPS CONTRACTOR LICENSE.

Applicants for an FPS Contractor license will meet these minimum qualifications: ()

01. Owner, Officer or Manager. The applicant is a sole proprietor or an owner, officer or manager of their company. ()

02. Examination, Education or Experience. The applicant needs to: ()

a. Pass an examination prescribed by the State Fire Marshal and provide proof the applicant has supervised or installed at least four (4) fire sprinkler systems of more than two hundred (200) heads each; or ()

b. Provide proof of successful attainment of Level III Certification in fire protection, Automatic Sprinkler System Design from the National Institute for Certification in Engineering Technologies or equivalent. ()

012. LICENSE REQUISITE.

No one may act or advertise as an FPS Contractor without a license. ()

013. LICENSE, DISPLAY, RENEWALS, DUPLICATES, APPLICATIONS.

01. Time Period. Licenses are valid for up to one (1) year and expire on the 31st day of December of each year, regardless of the month issued. Unrestricted licenses may be renewed with proper fee. ()

02. Bids Will Bear License Number. Written bids, proposals and offers, and shop and field installation drawings will bear the FPS Contractor's license number. ()

03. Forms and Fees. License applications will be on forms prescribed by the State Fire Marshal and accompanied by the prescribed fee. ()

014. ACTION ON APPLICATIONS AND LICENSE FEES.

01. Investigation of Applicants. Within one hundred and twenty (120) days after the applicant files a complete application and pays prescribed fees, the State Fire Marshall will investigate the applicant as the State Fire Marshal deems appropriate. ()

02. Fees. License fees for FPS Contractors are: ()

a. Examination Fee -- Twenty-five dollars (\$25). ()

b. License Fee -- Four hundred dollars (\$400). ()

c. Annual License Renewal Fee -- One hundred dollars (\$100). ()

d. Duplicate License Fee -- Ten dollars (\$10). ()

e. Branch Office Fee -- One hundred dollars (\$100). ()

f. Examination fees, when paid, are not subject to refund. ()

03. Branch Office License. Branch offices of a licensed firm doing business in Idaho need to obtain a branch office license. Each license needs to provide a shop or a vehicle as a place of business properly equipped and

subject to the authority's inspection. A separate license is needed for each business location. An advertisement for installing or maintaining an FPS System is prima facie evidence that the premises, building, room, shop, store, or establishment in or upon which it appears or to which it refers, is a separate business location. ()

015. FINANCIAL RESPONSIBILITY.

01. Bonding. ()

a. Each FPS Contractor and applicant for an FPS Contractor's license will put up at least a two thousand dollars (\$2,000) bond in favor of the state of Idaho by a surety company authorized to do business in Idaho. ()

b. The bond exists until the State Fire Marshal releases it or the surety cancels it. Without prejudicing liability previously incurred, the surety may cancel the bond with thirty (30) days advance notice to the contractor and State Fire Marshal. ()

02. Insurance. Before the FPS Contractor license issues, the applicant will obtain a full-term comprehensive general liability insurance policy from an insurance company authorized to do business in Idaho. The policy will have aggregate limits of at least two hundred fifty thousand dollars (\$250,000) and include provisions as requested by the SFM. ()

016. REVOCATION, SUSPENSION, AND NON-RENEWAL OF LICENSE.

01. Causes for Revocation, Suspension, or Refusal to Renew License. The State Fire Marshal may suspend, revoke, or refuse to renew an FPS Contractor's license for reasons including: ()

a. Fraud, bad faith, misrepresentation, or bribery, either in securing a license or in conducting business under a license. ()

b. Making a false statement as to a material matter in any license application. ()

c. Not performing their contract with the property owner. ()

d. Manipulating assets or accounts covering the subject matter of this rule, or by fraud or bad faith. ()

e. Not securing or maintaining workers' compensation insurance unless authorized to act as a self-insurer. ()

f. Knowingly contracting with an unregistered contractor for work or activity that requires an FPS Contractor's license. ()

g. The licensee has been convicted of a felony. ()

h. Violating any provision of this rule. ()

02. Length of Suspension. No license will be suspended for more than two (2) years. ()

03. Eligibility to Reapply After Revocation. A person whose license was revoked will not apply for a new license for two (2) years from the revocation date. ()

017. HEARINGS.

Whenever it is proposed to refuse to grant a license, revoke a license, or to refuse to renew a license, the State Fire Marshal will notify the applicant or licensee and provide them a hearing, if requested. ()

018. APPROVED EQUIPMENT AND MATERIALS.

No component or devices of an automatic fire sprinkler system may be sold, leased, or installed in Idaho unless

approved, labeled, or listed by Underwriters Laboratories, Inc., Underwriters Laboratories of Canada, Factory Mutual Laboratories, or other testing laboratories approved by the State Fire Marshal. ()

01. Sprinklers. Only new standard commercial or other listed sprinklers may be used when installing a sprinkler system. ()

02. Minimum Requirements. Automatic fire sprinkler systems in Idaho will meet the minimum NFPA standards. The local fire department or State Fire Marshall needs to approve partial installations intended to comply with life safety codes. ()

019. SERVICE EVIDENCE.

01. Submitting Plans. Where automatic fire sprinkler systems are installed, the installer completes the FPS Contractor's material and test certificates NFPA 13 1-10.1. All systems will be supervised by an FPS Contractor or a R.M.E., who will properly test and inspect them at prescribed intervals and have general charge of all alterations and additions to the systems under their supervision. ()

02. Conforming to Standards. A service tag conforming to the requirements of this chapter will be attached to all systems. ()

020. DESIGN REQUIREMENTS.

01. Submission of Plans. Detailed plans in accordance with applicable NFPA standards are submitted by a licensed contractor for approval to the local fire department and to the State Fire Marshal. ()

02. Conformance to Standards. The specifications will state that the installation will conform to the applicable standards listed in this rule and be approved by the local fire department and the State Fire Marshal. ()

03. Tests. The specifications need to include the specific tests needed to meet the standards for approval of the local fire department and the State Fire Marshal. ()

04. Scale. Plans need to be drawn to an indicated scale or be suitably dimensioned, and made so they can be easily reproduced. ()

05. Detail. Plans need to contain sufficient detail to evaluate the effectiveness of the system. ()

06. Prior Approval of Plans. Plans need to be submitted to the State Fire Marshal and the local fire department and approved, before work starts. Work may start before final plans are submitted based on conceptual drawings if approved by the local fire department and the State Fire Marshal. A plan's review fee of two dollars (\$2) per sprinkler head up to one thousand (1000) heads per fire protection sprinkler system (maximum two thousand dollars (\$2,000)) or one hundred dollars (\$100) per fire protection sprinkler system if less than fifty (50) sprinkler heads. The applicable fee needs to accompany the plans sent to the State Fire Marshal. Two (2) sprinkler heads on an arm-over will be considered as one (1) sprinkler head for fee purposes. ()

07. Corrected Plans. Where field conditions necessitate any substantial change from the approved plan, the corrected plan showing the system as installed needs to be submitted to the local fire department and the State Fire Marshal for approval. ()

08. Exemption. A City or County may request an exemption from the requirements of this Section that plans be submitted to the State Fire Marshal for review and approval. An exemption request will be made in writing signed by the Fire Chief, designated representative, or elected local official and set forth the reasons for the request. An exemption will not apply to plans or inspections relating to structures owned, leased or controlled by the state or a state agency. ()

021. SERVICE TAG.

01. Form. Automatic fire sprinkler service tags need to be in a form prescribed by the State Fire Marshal and a new tag installed each time work is performed on the system. ()

02. Control Valve Not Electrically Supervised. If the control valve is not electrically supervised, the service tag will serve as a seal for the valve. ()

03. Electrically Supervised Control Valve. If the control valve is electrically supervised, the service tag will be attached so the valve may be closed for testing of the supervision without removing the tag. ()

022. FITTERS.
All fitters may be licensed under this rule as follows: ()

01. Examination. Show proof by affidavit signed by a licensed FPS Contractor that he has worked as a fitter for at least one thousand (1,000) hours per year for three (3) consecutive years and then take and pass a written examination given by the State Fire Marshal, and pay the appropriate fee. ()

02. Fees. No examination will be taken or license issued pursuant to this rule until the appropriate fees, as listed above, are paid. Examination fees, when paid, are earned and are not subject to refund. The State Fire Marshal collects in advance fees as follows: ()

a. Examination Fee -- Twenty-five dollars (\$25). ()

b. Original License Fee -- Fifty dollars (\$50). ()

c. Annual License Renewal Fee -- Twenty-five dollars (\$25). ()

d. Duplicate License Fee -- Ten dollars (\$10). ()

03. Period of Time. No fitters license is valid for more than one (1) year and expires on the 31st of December of each year regardless of the month issued, at which point it may be renewed. ()

023. -- 999. (RESERVED)

IDAPA 24 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES

DOCKET NO. 24-ZBRR-2201

(SECOND) NOTICE OF INTENT TO PROMULGATE RULES – ZERO-BASED REGULATION 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 67-2604, Idaho Code and the following additional sections of Idaho Code: Sections 36-2107, 39-4107, 39-4112, 39-4113, 39-4302, 39-4003, 54-204, 54-1005, 54-1006, 54-1404, 54-1509, 54-2305, 54-2605, 54-2606, 54-2607, 54-2910, 54-4705, 54- 5004, 54-5005, 54-5006, 54-5403, and 54-5504, Idaho Code.

MEETING SCHEDULE: Public meetings on the negotiated rulemaking will be held as follows. Additional meetings may be scheduled and will be posted on the DOPL website.

MEETINGS SET FOR PUBLIC PARTICIPATION IN PERSON, TELEPHONE, AND WEB CONFERENCING

24.39.10 – Rules of the Idaho Electrical Board	
Monday, July 11, 2022	Tuesday, August 2, 2022
DOPL Board Conference Room Chinden Campus – Building #4 11341 W Chinden Blvd Boise ID 83714 <i>Scheduled time is 9:00 a.m. (MT) for all meetings</i>	

24.10.01 – Rules of the State Board of Optometry	
Monday, July 11, 2022	Wednesday, August 10, 2022
DOPL Board Conference Room Chinden Campus – Building #4 11341 W Chinden Blvd Boise ID 83714 <i>Scheduled time is 1:00 p.m. (MT) for all meetings</i>	

24.12.01 – Rules of the Idaho State Board of Psychologist Examiners	
Monday, July 11, 2022	Wednesday, August 10, 2022
DOPL Board Conference Room Chinden Campus – Building #4 11341 W Chinden Blvd Boise ID 83714 <i>Scheduled time is 2:00 p.m. (MT) for all meetings</i>	

24.23.01 – Rules of the Speech, Hearing and Communication Services Licensure Board

Monday, July 11, 2022

Wednesday, August 10, 2022

**DOPL Board Conference Room
Chinden Campus – Building #4
11341 W Chinden Blvd Boise ID 83714
*Scheduled time is 3:00 p.m. (MT) for all meetings***

24.34.01 – Rules of the Idaho Board of Nursing

Monday, July 11, 2022

Wednesday, August 10, 2022

**DOPL Board Conference Room
Chinden Campus – Building #4
11341 W Chinden Blvd Boise ID 83714
*Scheduled time is 4:00 p.m. (MT) for all meetings***

24.30.01 – Idaho Accountancy Rules

**Wednesday, July 13, 2022
DOPL Board Conference Room
Chinden Campus – Building #4
11341 W Chinden Blvd Boise ID 83714
*Scheduled time is 9:00 a.m. (MT) for the meeting***

24.35.01 – Rules of the Outfitters and Guides Licensing Board

Wednesday, July 13, 2022

Tuesday, August 2, 2022

**DOPL Board Conference Room
Chinden Campus – Building #4
11341 W Chinden Blvd Boise ID 83714
*Scheduled time is 9:00 a.m. (MT) for the meeting***

24.39.30 – Rules of Building Safety (Building Code Rules)

Wednesday, July 27, 2022
Building Codes Collaborative
DOPL Board Conference Room
Chinden Campus – Building #4
11341 W Chinden Blvd Boise ID 83714
Scheduled time is 9:00 a.m. to 12:00 p.m. (MT) for the meeting

Wednesday, July 27, 2022
Energy Code Collaborative
DOPL Board Conference Room
Chinden Campus – Building #4
11341 W Chinden Blvd Boise ID 83714
Scheduled time is 1:00 p.m. (MT) for the meeting

Rulemaking meetings will be held in person and via web conferencing in order to provide a rulemaking platform that enables broad participation by stakeholders from across the state, and minimize travel for stakeholders.

METHOD OF PARTICIPATION: Those interested in participating in the negotiated rulemaking process are encouraged to attend the scheduled meeting via telephone and web conferencing. Individuals interested in participating by telephone and web conferencing should contact tim.frost@dopl.idaho.gov. For those who cannot participate by attending the meeting, information for submitting written comments is provided below.

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 and made available on the agency website.

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

These rules are being presented for authorization as part of the DOPL plan to review each rule every 5 years. There are no specific rulemaking changes planned by the DOPL at this time except for evaluation and amendment consistent with the Governor's [Executive Order 2020-01: Zero-Based Regulation](#). It is anticipated that rulemaking stakeholders will propose and advocate for rulemaking changes as part of the negotiated rulemaking process. The DOPL intends to carefully consider all changes presented by the public and may propose certain changes so long as they are consistent with the rules' statutory authority and the Governor's Executive Order. The DOPL will review the documents that are currently incorporated by reference in this rule and update that list as applicable.

Incorporated by reference documents presented for review will be part of informal negotiated rulemaking and stakeholders will provide input on that process.

The following IDAPA rule chapters are germane to this rulemaking:

- 24.10.01, *Rules of the State Board of Optometry*;
- 24.12.01, *Rules of the Idaho State Board of Psychologist Examiners*;
- 24.23.01, *Rules of the Speech, Hearing and Communication Services Licensure Board*;
- 24.30.01, *Idaho Accountancy Rules*;
- 24.34.01, *Rules of the Idaho Board of Nursing*;
- 24.35.01, *Rules of the Outfitters and Guides Licensing Board*;
- 24.39.10, *Rules of the Idaho Electrical Board*; and
- 24.39.30, *Rules of Building Safety (Building Code Rules)*.

ASSISTANCE ON TECHNICAL QUESTIONS, OBTAINING DRAFT COPIES: For assistance on technical questions concerning this negotiated rulemaking, contact Tim Frost, Deputy Administrator at (208) 577-2491. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the DOPL web site at the following web address: <https://dopl.idaho.gov/>.

SUBMISSION OF WRITTEN COMMENTS: 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 August 1, 2022.

DATED this 16th day of June, 2022.

Tim Frost
Deputy Administrator
11351 W. Chinden Blvd., Bldg. #6
Boise, ID 83714
Phone: (208) 577-2491
Email: tim.frost@dopl.idaho.gov

IDAPA 24.35 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES

24.35.01 – RULES OF THE OUTFITTERS AND GUIDES LICENSING BOARD

DOCKET NO. 24-3501-2200

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule being adopted through this omnibus rulemaking as listed in the descriptive summary of this notice is July 1, 2022.

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 Section 67-2604, Idaho Code.

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

This temporary rulemaking adopts and republishes the following rule chapter previously submitted to and reviewed by the Idaho Legislature under IDAPA 24, rules of the Division of Occupational and Professional Licenses / Outfitters and Guides Licensing Board:

IDAPA 24.35

- 24.35.01, *Rules of the Outfitters and Guides Licensing Board.*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 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:

This temporary rule is necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. The temporary rule chapter implements the duly enacted laws of the state of Idaho, provides citizens with the detailed rules and standards for complying with those laws, and assists in the orderly execution and enforcement of those laws. The expiration of the rule without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by this rule.

FEE SUMMARY: This rulemaking does not impose a fee or charge.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Tim Frost at (208) 577-2491.

DATED this 1st day of July, 2022.

Tim Frost
Deputy Administrator
11351 W. Chinden Blvd., Bldg. #6
Boise, ID 83714
Phone: (208) 577-2491
Email: tim.frost@dopl.idaho.gov

**THE FOLLOWING IS THE TEMPORARY RULE TEXT FOR OMNIBUS DOCKET NO. 24-3501-2200
(New Chapter)**

24.35.01 – RULES OF THE OUTFITTERS AND GUIDES LICENSING BOARD

000. LEGAL AUTHORITY.

These rules have been promulgated in accordance with the Idaho Administrative Procedures Act and pursuant to authority granted in the Outfitters and Guides Act. (7-1-22)T

001. TITLE AND SCOPE.

These rules are titled IDAPA 24.35.01, “Rules of the Outfitters and Guides Licensing Board.” The purpose is to implement, administer, and enforce the Act to establish uniform standards for licensing outfitted and guided activities to protect the public and protect, enhance, and facilitate management of Idaho's fish, wildlife, and recreational resources. (7-1-22)T

002. DEFINITIONS.

The definitions set forth in Section 36-2102, Idaho Code, are applicable to these rules. In addition, the following terms have the meanings set forth below: (7-1-22)T

01. Act. Title 36, Chapter 21, Idaho Code, commonly known as the Outfitters and Guides Act, as amended. (7-1-22)T

02. Authorized Person. An investigator or enforcement agent in the employ of the Board, a conservation officer of the IFGC, or any local, state, or federal law enforcement officer. (7-1-22)T

03. Booking Agent. Any individual, firm, business, partnership, or corporation that makes arrangements for the use of the services of a licensed outfitter and receives compensation therefore. A booking agent does not supply personnel or facilities and services to outfitter clientele. (7-1-22)T

04. Classified River. For the purpose of these rules, specific sections of some whitewater river or streams which are considered more hazardous than others have been designated “classified.” Classified rivers are denoted by an asterisk (*) in the list of rivers contained in Subsection 059.01. (7-1-22)T

05. Compensation or Consideration. The receipt or taking of goods, services, or cash in exchange for outfitted or guided activities. A bona fide charging of out-of-pocket travel expenses by members of a recreational party is not deemed compensation. However, such out-of-pocket expenses may not include depreciation, amortization, wages, or other recompense. (7-1-22)T

06. Designated Agent. A licensed individual who is employed as an agent by any person, firm, partnership, corporation, or other organization or combination thereof that is licensed as an outfitter and who, together with the licensed outfitter, is responsible and accountable for the conduct of the licensed outfitter's operations. (7-1-22)T

07. Enforcement Agent. An individual employed by the Board having the power of peace officers to enforce the provisions of the Act and these Rules. (7-1-22)T

08. Facilities and Services. The provision of personnel, lodging (tent, home, lodge, or hotel/motel), transportation (other than by commercial carrier), guiding, preparation and serving of food and equipment, or any other accommodation for the benefit of clientele in the conduct of outdoor recreational activities as designed in Section 36-2102(b), Idaho Code. (7-1-22)T

09. First Aid Card. A valid card or other evidence demonstrating that the individual has successfully completed an applicable American Red Cross course or equivalent course that is acceptable to the Board. (7-1-22)T

10. Fishing. Fishing activities on those waters and for those species described in the rules of the IFGC, IDAPA 13.01.11, “Rules Governing Fish,” general fishing seasons and any anadromous fishing rules; for purposes of the Act, fishing is defined as follows: (7-1-22)T

a. Anadromous fishing means fishing for salmon or steelhead trout. (7-1-22)T

b. Float boat fishing means the use of floatboats without motors for the conduct of fishing as a major activity on those waters open to commercial activities as set forth in Section 059. (7-1-22)T

c. Fly fishing means a licensed activity restricted to the use of fly fishing equipment and procedures, as defined by IFGC rules. (7-1-22)T

d. Incidental fishing means fishing conducted as a minor activity. (7-1-22)T

e. Power boat fishing means the use of power boats in conduct of fishing as a major activity on those Idaho waters open to commercial outfitting activities as set forth in Section 059. (7-1-22)T

f. Walk and wade fishing means fishing conducted along or in a river, stream, lake or reservoir, and may include the use of personalized flotation equipment, but does not include the use of watercraft. (7-1-22)T

11. Float Boats. Watercraft (inflatable watercraft, dories, drift boats, canoes, catarafts, kayaks, sport yaks, or other small watercraft) propelled by, and moving with the stream flow, maneuvered by oars, paddles, sweeps, pike poles or by motors for downstream steering only. Downstream steering does not include holding or upstream travel of a watercraft with a motor. Excluded as float boats are personal flotation devices, innertubes, air mattresses, or similar devices. (7-1-22)T

12. Hazardous Excursions. Outfitted or guided activities conducted outside municipal limits in a desert or mountainous environment that may constitute a potential danger to the health, safety, or welfare of participants involved. These activities include, but are not limited to: day or overnight trailrides, backpacking, technical mountaineering/rock climbing, cross-country skiing, backcountry alpine skiing, llama and goat packing, snowmobiling, survival courses, guiding courses, rescue courses, fishing courses, motored and non-motored cycling, wagon rides, sleigh rides, and dog sled rides. (7-1-22)T

13. Hunting. The pursuit of any game animal or bird and all related activities including packing of client camp equipment, supplies, game meat and clients to and from a hunting camp. (7-1-22)T

14. IFGC. The Idaho Department of Fish and Game or the Idaho Fish and Game Commission. (7-1-22)T

15. Minor Amendment. All outfitter license amendment requests that can be processed by the Board without requiring outside research or recommendation of a land managing agency or other agency before the Board takes final action on said amendment request. (7-1-22)T

16. Major Activity. A licensed activity, the nature of which requires a significant commitment of time and effort by an outfitter in its execution and is intended to provide a significant amount of income to an outfitter. (7-1-22)T

17. Major Amendment. All outfitter license amendment requests requiring Board research or recommendation of a land management agency or other agency before the Board takes final action on the amendment request. (7-1-22)T

18. Minor or Incidental Activity. A licensed activity the nature of which is carried out in conjunction with a major activity, but is not the primary purpose of the excursion. (7-1-22)T

19. **New Opportunity.** A proposed commercial outfitted activity to be conducted in an area where no similar commercial outfitted activity has been conducted in the past. (7-1-22)T
20. **Operating Area.** The area assigned by the Board to an outfitter for the conduct of outfitting activities. (7-1-22)T
21. **Operating Plan.** A detailed schedule or plan of operation which an outfitter proposes to follow in the utilization of licensed privileges, areas, or activities. (See Subsection 018.03). (7-1-22)T
22. **Out-of-Pocket Costs.** The direct costs attributable to a recreational activity. Such direct costs do not include: (7-1-22)T
- a. Compensation for either sponsors or participants; (7-1-22)T
 - b. Amortization or depreciation of debt or equipment; or (7-1-22)T
 - c. Costs of non-expendable supplies. (7-1-22)T
23. **Power Boats.** All motorized watercraft used on Idaho waters open to commercial outfitting activities. Excluded as power boats are hovercraft, jetskis or similar devices, and float boats using motors for downstream steering. (7-1-22)T
24. **Third Party Agreement.** The allowing of the conduct of an outfitted or guided activity by the outfitter licensed to conduct those activities by any persons not directly employed by said outfitter. (See Section 023). (7-1-22)T
25. **Trainee.** A person not less than sixteen (16) years of age pursuing the necessary experience or skill qualifications for a guide license. A trainee may not provide any direct guiding services for clients, but may assist while under direct supervision. (7-1-22)T
26. **Training Log.** A form approved by the Board and completed in detail and attested to by the outfitter documenting the training completed by a person pursuing training or licensure as a guide pursuant to these rules. The log is maintained and made available for inspection by the Board or its agent by the outfitter during the time the guide is employed by the outfitter and for one (1) complete license year following the termination of employment of the guide, and for three (3) years from the date of an accident or incident jeopardizing the health, safety or welfare of a client, in which the trainee or guide is involved. (7-1-22)T
27. **Unethical/Unprofessional Conduct.** Any activity(ies) by a licensee which is inappropriate to the conduct of the outfitting or guiding profession. These activities include, but are not limited to: (7-1-22)T
- a. Providing false, fraudulent or misleading information to the Board or another governmental entity regulating outfitting activities including the use or verification of allocated tags; (7-1-22)T
 - b. Violation of an order of the Board; (7-1-22)T
 - c. Failure to provide services as advertised or contracted; (7-1-22)T
 - d. Harassment of the public in their use of Idaho’s outdoor recreational opportunities; (7-1-22)T
 - e. Violation of state or federal fish and game laws or rules or to condone or willfully allow a client's violation of those laws and rules; (7-1-22)T
 - f. For a licensed boating outfitter or guide, violation of the Idaho Safe Boating Act (Title 67, Chapter 70, Idaho Code) and IDAPA 26.01.30 “Idaho Safe Boating Rules”; (7-1-22)T
 - g. Engaging in unlicensed activities or conducting outfitter/guide services outside the operating area for which the licensee is licensed; (7-1-22)T

- h.** Disregard for the conservation, maintenance or enhancement of fish, game, land and water resources; (7-1-22)T
- i.** Killing a client's game or catching a client's fish. (7-1-22)T
- j.** Failure to pay a supplier of goods or services to the outfitter business; (7-1-22)T
- k.** Failure to pay state taxes; (7-1-22)T
- l.** Operating in a manner which endangers the health, safety, or welfare of the public. (7-1-22)T
- m.** Selling lifetime excursions, lifetime hunts, or selling of outfitted activities to an individual for the life of that individual and collecting fees accordingly. (7-1-22)T
- n.** Operating under a name that is not associated with the license issued by the Board; or (7-1-22)T
- o.** Interference with private landowners, public land management agencies, and/or stockmen and their rights and privileges. (7-1-22)T

28. Watercraft. A boat or vessel propelled mechanically or manually, capable of operating on inland water surfaces. Excluded as watercraft are hovercraft, jetskis, personal flotation devices (PFD's), or similar devices. (7-1-22)T

003. -- 004. (RESERVED)

005. LICENSE PRODUCTION.

A license or proof of licensure must be in possession of the licensee while engaged in outfitting or guiding and be produced upon the request of an authorized person. (7-1-22)T

006. FIRST AID KIT.

A first aid kit must be present and available on every outfitted excursion. (7-1-22)T

007. LICENSE RESTRICTIONS.

01. Qualified. All outfitters must be qualified to guide or employ a licensed guide(s) qualified for the activity(ies) for which the outfitter is licensed. (7-1-22)T

02. Review. An outfitter's qualifications to guide will be reviewed by the Board and, if approved, a guide license will be issued at no additional fee. (7-1-22)T

03. Qualifications. The qualification(s) of an outfitter or guide licensee are determined in accordance with the Act and these rules. (7-1-22)T

04. Limitation. A limitation in number of clientele served, operating area, or any other criteria affecting the safety, health, and welfare, of the public or viability of the fish, and wildlife, or other natural resources will be imposed in licensing where such limitation is deemed necessary by the Board in accordance with the Act and these rules. (7-1-22)T

05. Temporary Employment. An outfitter may employ a licensed guide who is not currently licensed under the outfitter's license in the case of temporary employment, or short term "loan" or transfer (less than fifteen (15) days duration and not on a routine basis) of a guide between outfitters, or termination of employment of a guide upon completion of the seasonal activity for which the guide was employed. The employing outfitter or authorized agent must keep written documentation of the loan or transfer and dates and times. Repeated transfers or loans of guides require a license amendment. (7-1-22)T

008. EMPLOYMENT OF OUTFITTERS.

An outfitter may guide for another outfitter or rent or lease equipment or services as follows: (7-1-22)T

01. Other Outfitter. An outfitter may guide for another outfitter when properly employed by that outfitter and approved by the Board. (7-1-22)T

02. Other. If an outfitter is employed to guide activities not covered by his own guide license, the outfitter must apply to the Board for a license amendment and submit the employing outfitter certification prescribed in Subsection 034.02. (7-1-22)T

03. No Sharing of Profits. While an outfitter is employed as a guide by another outfitter, the outfitters may not share profits or equipment and/or animals other than leased equipment and/or leased animals. An outfitter when employed as a guide may only render personal services as would any other guide. (7-1-22)T

04. Agreement. When an outfitter utilizes equipment from another outfitter or a guide in the provision of facilities, services and transportation to clientele, a written notice of usage must be filed with the Board including a current certificate or proof of non-owner liability insurance. (7-1-22)T

009. (RESERVED)

010. COMPLIANCE WITH LAWS.

All licensees must comply with all local, state, and federal laws, and they must report all violations to a law enforcement officer. In instances where violations of local, state, or federal laws have occurred, such violations will be handled in accordance with the following discretionary criteria: (7-1-22)T

01. Violations. An applicant who has never held an outfitter or a guide license and who has been convicted of a violation of local, state, or federal law may be required to appear before the Board. Each such conviction will be appraised and a decision to approve or deny the application will be based upon the nature and the circumstances of the violation. (7-1-22)T

02. Examination by Board. When a license holder is convicted of a violation of local, state, or federal law, the Board will examine the nature of the violation and the circumstances in determining whether or not a hearing will be held for the purpose of restricting, suspending or revoking the outfitter or guide license or imposing an administrative fine for any violation. Any such violator may be required to appear before the Board before a license will be issued for the following year. (7-1-22)T

011. (RESERVED)

012. OUTFITTER RESPONSIBILITIES.

An outfitter is responsible for: (7-1-22)T

01. Camps. Maintaining safe and sanitary camps at all times. (7-1-22)T

02. General. Providing clean, fresh drinking water, protecting all food from contamination, and disposing of all garbage, debris, and human waste in the manner prescribed by regulations concerning use of private and public lands. (7-1-22)T

03. Livestock Facilities. Ensuring that livestock facilities are kept separate from camp facilities, and that streams are protected from contamination. (7-1-22)T

04. Emergency Provisions. Ensuring that all cross-country and backcountry alpine skiing and technical mountaineering/rock climbing tours have the necessary emergency provisions with them. (7-1-22)T

05. Actions. The actions of all guides, and other persons, while in the scope of their employment. (7-1-22)T

013. -- 014. (RESERVED)

015. ANNUAL DATE, FEES, AND PAYMENT.

01. Due Date. All outfitter and designated agent license applications must be completed and received by the Board by January 31 of each year. (7-1-22)T

02. Penalty Fee. When a completed renewal application is filed with the Board after the last day of the license year, a penalty fee must be paid before the license is issued. (7-1-22)T

03. License Lapsed and Expired. All licenses expire on March 31, and when a completed outfitter application has not been received by the Board after ninety (90) days after the last day of the license year, a renewal application will not be accepted for licensure. (7-1-22)T

04. Payment. (7-1-22)T

a. Prior to the issuance of a license, an applicant must submit the appropriate fee. (7-1-22)T

b. The applicant must pay an annual license fee for each license issued, except for an outfitter licensed as a guide for the outfitter's operation. (7-1-22)T

016. -- 017. (RESERVED)

018. NEW OUTFITTER OR OUTFITTER LICENSE AMENDMENT APPLICATION.

A complete application for a new outfitter license, outfitter license major amendment, or new landowner statement in existing areas must, in addition to all other requirements include: (7-1-22)T

01. Name. The name(s) registered with the Idaho Secretary of State as an assumed business name, the name of the business entity, or both. (7-1-22)T

02. Other Signatures. Signed landowner or land manager statement from: (7-1-22)T

a. The affected state and federal land managers in all areas where an outfitter plans to utilize lands administered by the state or federal government (this may involve memorandum of understanding procedures as applicable to proposed operation on national forest or public domain lands); and, (7-1-22)T

b. Private land owners, or their agents, where an outfitter applicant proposes to use such private lands in his operation. (7-1-22)T

03. Operating Plan. An operating plan that includes, among other things, the following: (7-1-22)T

a. A list of the activities to be conducted in the operating area(s) requested. (7-1-22)T

b. A detailed map showing the operating area(s) requested for each activity and a worded description of the boundaries of said operating area(s), described in terms of rivers, creeks, and ridges with prominent reference coordinates (section, township, and range). (7-1-22)T

c. An outfitter whose operation is solely on rivers, streams, lakes or reservoirs should specify put-in and take-out points but need not send maps. (7-1-22)T

d. A detailed description of how and when each operating area(s) will be used for each activity. (7-1-22)T

e. The proposed number of guests intended to be accommodated for each activity within the proposed operating area(s). (7-1-22)T

f. A list of the names and locations of camps that will be used for each activity, and whether on public or private land. (7-1-22)T

g. A list of the basic equipment, facilities, and livestock, and proof of financial capability necessary to conduct the proposed outfitted activity or business. (7-1-22)T

h. The number, title (guide, lead guide, etc.), and principal activities of individuals to be employed in the business operation. (7-1-22)T

i. A plan to assure the safety and provide for emergency medical care of guests. (7-1-22)T

04. Public Need and Existing Use. Statement of the public need for the proposed service(s) in the area requested and the use by the general public and commercial use already licensed in the area. (7-1-22)T

05. Insurance. Current certificate or proof of insurance for the following: (7-1-22)T

a. Insurance coverage against loss resulting from liability imposed by law for bodily injury or death or damage to property suffered by any person, excluding employees, caused by the outfitter's operation, in the minimum amount of one hundred thousand (\$100,000) per accident, with the aggregate of three hundred thousand (\$300,000), because of bodily injury or death occurring in an accident. (7-1-22)T

b. Insurance coverage on vehicles carrying passengers against loss resulting from liability for bodily injury or death or property damage suffered by any person caused by the outfitter's operation, in the amount of three hundred thousand (\$300,000) for vehicles carrying one (1) to fifteen (15) passengers, and in the minimum amount of five hundred thousand (\$500,000) for vehicles carrying sixteen (16) or more passengers. (7-1-22)T

06. Designated Agent. When the applicant is a corporation, firm, partnership, or other organization or combination thereof, the designation at least one (1) designated agent who is a qualified outfitter, covered by the outfitter's bond, and who will be responsible for the outfitting business. The designated agent must apply for and be granted a license. (7-1-22)T

07. Hearing. If more than one (1) applicant submits a complete application with landowner statement(s), a hearing will be held to decide the successful applicant. (7-1-22)T

08. Existing Operating Area. A licensed outfitter may be given priority for any opportunities within the outfitter's existing operating area boundaries. (7-1-22)T

019. (RESERVED)

020. EXAMINATION.

All new applicants applying for an outfitter or designated agent license must successfully pass a written and/or oral examination on the Act, the rules, and general outfitting procedures. An applicant who fails the test may retake it after a five (5) day waiting period. (7-1-22)T

021. (RESERVED)

022. ISSUANCE OF AN OUTFITTER LICENSE.

In order to safeguard the health, safety, and welfare of the public and for the conservation of wildlife resources, the Board may place a limit on the number of outfitter licenses issued within an operating area. (7-1-22)T

023. THIRD PARTY AGREEMENTS.

An outfitter may not sublet or enter into any third party agreements involving the use of his activity(ies), operating area(s), or license. (7-1-22)T

01. Employed. No outfitter may allow any person to conduct any of the activities for which he is licensed unless said person is employed directly by the outfitter as a guide. (7-1-22)T

02. Other Activities. Any arrangement wherein an outfitter licensed to conduct outfitted activity(ies) in an operating area(s) knowingly allows, condones, or otherwise abets and supports the conduct of outfitting activity(ies) by another, wherein said outfitter does not assume full and complete responsibility for all clients booked

for such activity(ies), constitutes an unlawful third party agreement. Complete responsibility includes providing liability insurance to cover the client, collection of fees paid for the activity(ies), payment of user fees and taxes, and making the client aware as to who is the responsible outfitter(s). Such unlawful activity(ies) is grounds for discipline as unethical and unprofessional conduct in addition to any other penalties which may be assessed for violations of these rules or the laws of the state of Idaho. (7-1-22)T

03. Booking Agent. This Rule does not apply to the conduct of a booking agent or an agreement between two (2) or more outfitters in which the outfitters provide services to the same party or parties within their respective operating areas. (7-1-22)T

024. STANDARDS FOR NON-USE.

In order to carry out the intent of the Act to promote and encourage participation in the enjoyment and use of the state's natural resources and fish and game and ensure an outfitter adequately serves the public, the Board will monitor, prioritize, and fairly administer identified remedies based on, among other factors, interest or demand for the particular activity or area and as set forth in this rule. (7-1-22)T

01. Requirement. The Board may annually review the outfitter's use reports for the preceding three (3) years to determine whether any licensed activity or operating area fall within non-use. If the outfitter falls within non-use, a "notice of non-use" may be issued to the outfitter. (7-1-22)T

02. Definitions. (7-1-22)T

a. Non-use. When an outfitter is making zero (0) or negligible use of major licensed activities for any two (2) of the three (3) preceding years unless the lack of use is due to an act of nature or because of state or federal agency restrictions on hunting or fishing that limit the ability of the outfitter to seek and accommodate clients; (7-1-22)T

b. Zero (0) use. No recorded use by an outfitter of their licensed area or activities; (7-1-22)T

c. Negligible use. An unreasonable lack of use as determined by the Board for any one (1) or more of the particular activities in the assigned operating area. Typically, use may be determined by comparison of use levels for the same activity(s) in similar operating areas. Other factors in determining use are found in Subsection 024.04. (7-1-22)T

03. Process. (7-1-22)T

a. The notice of non-use will include the activity(s) and operating area(s) that appear to be in non-use and an explanation of how the determination was made. The outfitter will be given the opportunity to correct the use records by supplying staff with evidence of use, prior to a hearing being scheduled. If adequate proof of use is not provided, the matter will be scheduled for a hearing. (7-1-22)T

b. When the Board determines that any activity or operating area has had zero (0) use or negligible use, certain requirements may be imposed by the Board up to and including revocation of some or all of the outfitter's operating areas and activities. (7-1-22)T

04. Examples of Acceptable Use: (7-1-22)T

a. Paying clients participating in activities occurring within a designated operating area; (7-1-22)T

b. Donated trips; (7-1-22)T

c. Outfitter initiated applications for controlled hunts in their licensed operating area; (7-1-22)T

d. Outfitter initiated applications for trophy species; and (7-1-22)T

e. Use in conformance with a current and accepted operating plan. (7-1-22)T

05. Required Records. Outfitters may be required to submit client records that include the name, address, and date of activity of individual clients or groups for a period of three (3) consecutive years. (7-1-22)T

06. Non-Use During a Sale. Board staff reviews all full or partial business sales for non-use. If it is determined a major activity or operating area has had zero (0) or negligible use, the Board may review the sale and the issuance of a license may be denied. In some instances the Board may approve the sale with notification to the buyer that use must be established within the following two (2) out of the next three (3) years or the area or activity may be removed from their license. (7-1-22)T

07. Waiver of Compliance. The Board may waive compliance with the non-use standard upon a showing of good cause, including an act of nature, state or federal agency seasonal restrictions on hunting or fishing or personal circumstances such as illness or injury that limit the ability of the outfitter to seek and accommodate clients. An outfitter must apply for a waiver prior to the beginning of the license year or immediately upon the event constituting good cause. If a federal permit holder is requesting zero (0) or negligible use, the request for a waiver must be accompanied by a Land Manager's Statement. (7-1-22)T

025. OUTFITTER RENEWAL.

All licenses expire on March 31 and every application for license renewal for an outfitter and designated agent must be complete and submitted by January 31 of the license year and include a use report containing an activity, use, and harvest report on the actual use during the preceding year and other information about outfitting or guiding activities. (7-1-22)T

026. OPERATING AREA ADJUSTMENTS.

An outfitter's operating area may be adjusted for reasons of wildlife harvest, where territorial conflict exists, or for the safety of persons utilizing the services of outfitters. (7-1-22)T

01. Hearing. If the Board determines that a hearing is necessary prior to the adjustment of a licensee's operating area, such hearing will be conducted in accordance with the Idaho Administrative Procedures Act, Title 67, Chapter 52, Idaho Code, and all affected parties will be afforded an opportunity to participate. (7-1-22)T

02. Consideration. In determining whether to adjust an operating area for reasons of wildlife harvest, the Board or the hearing officer considers, among other things, the following: (7-1-22)T

a. Any changes in wildlife harvest, including any increase or decrease in wildlife harvest attributable to the licensee's activity(ies). (7-1-22)T

b. Any new limitation(s) imposed or recommendation(s) made regarding wildlife harvest in the operating area(s) by any governmental agency since the issuance of the license. (7-1-22)T

c. Any environmental change(s) that have occurred in the operating area(s) that affect wildlife management. (7-1-22)T

d. Any undesirable wildlife impact(s) that may be ameliorated by a territorial adjustment. (7-1-22)T

e. Any new information discovered since the issuance of the license regarding wildlife management in the operating area(s). (7-1-22)T

03. Consideration. In determining whether to adjust an operating area for reasons of territorial conflict, the Board or the hearing officer considers, among other things, the following: (7-1-22)T

a. Any incident(s) of territorial conflict and how they might be ameliorated by a territorial adjustment. (7-1-22)T

b. The extent of each licensee's legal use of the disputed area. (7-1-22)T

c. Any public or client safety concerns that might be ameliorated by or might arise from the inclusion of the disputed area as part of a particular licensee's operation. (7-1-22)T

d. Any environmental or operational factors that indicate which licensee will be able to make the best use of the disputed area in providing services to the public considering, among other things, each licensee's licensed activity(ies) and the relationship of that activity(ies) to the activity(ies) conducted in the disputed area, each licensee's total operating area, the financial stability of each licensee, and the accessibility of the disputed area from adjacent operating area(s). (7-1-22)T

e. Any recommendation(s) submitted by any governmental agency that regulates or manages land or wildlife within the disputed area. (7-1-22)T

04. Safety Adjustment. In determining whether to adjust an operating area for reasons of safety of persons using the services of an outfitter, the Board or hearing officer considers, among other things, the following: (7-1-22)T

a. Any change(s) in the environmental condition(s) in the area that may pose a threat to the health and safety of persons using the operating area. (7-1-22)T

b. Any change(s) in the manner or amount of public use of the operating area since the issuance of the license that may pose a threat to the health and safety of persons using the operating area. (7-1-22)T

c. Any change(s) in a licensee's manner of operation within the operating area that may affect clientele safety considering, among other things, change(s) in the condition(s) of the licensee's capability or equipment. (7-1-22)T

d. Any safety-related incident(s) that have occurred in the operating area. (7-1-22)T

e. Any safety concern(s) expressed by any governmental agency that regulates or manages land or wildlife within the operating area. (7-1-22)T

f. Any new information discovered since the issuance of the license regarding safety. (7-1-22)T

027. OUTFITTER LICENSE PRIORITY.

Priority for licensure in any outfitter's operating area may be maintained by submitting a complete application for a license for the ensuing license period before the expiration date of the current license. (7-1-22)T

028. OUTFITTER BUSINESS PURCHASE, LICENSE CONSIDERATIONS.

01. Sale of Outfitting Business. The sale of an outfitting business requires an application for a new outfitter license by the purchaser, provided that the Board may give priority for licensure to an applicant who has negotiated an agreement related to a sale with a licensee if the applicant meets all other requirements or upon documentation from a court. (7-1-22)T

02. Notification to Clients. When an existing operation is acquired by another outfitter, all clients who have booked with the original outfitter must be promptly notified and refunded any advanced payment, unless the client is satisfied with the new arrangements. (7-1-22)T

029. OUTFITTER BOND OR INSURANCE CANCELLATION.

An outfitter or designated agent must immediately notify the Board when their bond or insurance is canceled. The cancellation of an outfitter license bond or insurance by the insurer is grounds for emergency suspension of the outfitter's license under Section 67-5247, Idaho Code. (7-1-22)T

030. AVAILABILITY OF OUTFITTING OPPORTUNITIES.

Except as provided in other sections of this chapter, when a new opportunity or existing opportunity, which had previously been licensed to another outfitter, becomes available, the Board may use a competitive application process through a waiting list, public notice, or both to select a qualified applicant. A competitive application process may be coordinated with another governmental agency that has management or permitting authority over the opportunity. (7-1-22)T

01. Waiting List. The waiting list will be maintained for each individual river, lake and reservoir outlined in Section 059 and for each specific IFGC unit listed in IDAPA 13.01.08, “Rules Governing the Taking of Big Game Animals in the State of Idaho.” (7-1-22)T

02. Placement on Waiting List. A written request, in a form specified by the Board, must be submitted to be placed on the waiting list, and a name on the waiting list will be maintained for a period of five (5) years or until December 31 of the fifth year that the name is placed on the list, whichever comes first. (7-1-22)T

03. Notification. When public notice is used when an opening occurs, a public announcement will be made and may be made in conjunction with notice by another governmental agency. Persons on the waiting list will be notified of the available opportunity in any competitive application process. (7-1-22)T

04. Application Period and Consideration. Anyone wishing to apply for the opportunity must submit a complete application or amendment, including all applicable fees, by the date specified in the notice. The Board will consider the qualifications of all applicants and in its discretion select the best qualified applicant. (7-1-22)T

031. -- 033. (RESERVED)

034. GUIDE APPLICATION REQUIREMENTS - GENERAL.

To be complete, an application for a guide license must: (7-1-22)T

01. First Aid Card. Be accompanied by an affidavit signed by the employing outfitter that the applicant will have a current, valid first aid card before they are employed as a guide. (7-1-22)T

02. Signatures. Be attested to by the applicant and certified by the licensed outfitter(s) who wishes to employ the applicant as a guide that the applicant: (7-1-22)T

a. Is qualified to perform the type of guiding activity(ies) for which the applicant seeks licensure. (7-1-22)T

b. Has extensive, first-hand knowledge of the operating area(s) and water(s) in or on which the applicant will be guiding. (7-1-22)T

c. If the applicant is land based, is able to read and understand a map and compass or operate a global positioning system (GPS) or other computerized map system. (7-1-22)T

d. If the applicant is water based, is proficient in reading the water and handling the type of boat required to be used. (7-1-22)T

e. Provide directly from the outfitter a training log or documentation demonstrating satisfaction of the training requirements pursuant to Sections 035 through 042, 044, 046, 047 and 048 of these rules, as applicable for the activities sought to be licensed to guide. (7-1-22)T

03. Amendment. A guide may apply for an amendment to add additional employing outfitters or additional activities by submitting complete application that includes certification from the outfitter that training requirements for the area and activity to be added have been met and proof of such training will be available at the Board's request. (7-1-22)T

035. GUIDE APPLICATION REQUIREMENTS - HUNTING.

A guide applicant for big game hunting may be licensed either as an apprentice guide or as a guide. (7-1-22)T

01. Apprentice Guide. A new applicant may be licensed as an apprentice guide to pursue training necessary for licensure as a guide by submitting a completed application form and fee. (7-1-22)T

02. Apprentice Guide. An apprentice guide may assist a hunting guide in the scope of training, but may not be primarily responsible for guiding a hunt. (7-1-22)T

03. Guide. In addition to Section 034, a new hunting guide applicant must have the following minimum training. (7-1-22)T

a. Been in the outfitter's operating area(s) for at least ten (10) days and is knowledgeable of trails, terrain, drainages, and game habits and habitat. (7-1-22)T

b. Be able to care for meat and trophies, including the ability to correctly cape an animal and with adequate training to be able to instruct and assist clients in the proper care of meat. (7-1-22)T

04. Upgraded. A licensed apprentice guide may apply by amendment to upgrade a guide license when the required training is completed as certified by the employing outfitter, and a copy of the completed training form is submitted to the Board. (7-1-22)T

036. (RESERVED)

037. BOATMAN LICENSE TRAINEES.

A trainee boatman may not obtain a guide license until training is complete and may not operate a boat except as prescribed in Section 040 and provided that the boat trainee must be in a boat operated by a licensed boatman, or one in which the operation is closely monitored by a licensed boatman. The licensed boatman need not be in the same boat during training as long as the trainee's activity is closely monitored. (7-1-22)T

038. FLOAT BOAT GUIDE -- UNCLASSIFIED RIVERS.

An applicant for a float boat guide on unclassified rivers and streams must have one (1) complete commercial float boat trip on each of the rivers applied for, (complete trip means the total section of river designated by the Board in Subsection 059.01), under the supervision of a float boat guide licensed for each of those rivers. (7-1-22)T

039. FLOAT BOAT GUIDE -- CLASSIFIED RIVERS.

A float boat guide on a classified river must be licensed as a float boatman or a float lead boatman according to his experience on that specific river. Each trip on a classified river must have a lead boat operated by a guide licensed as a lead boatman for that specific river and all other boats participating in that trip must follow the lead boat and must be operated by a guide licensed as a boatman or a lead boatman for that specific river. (Note exception for trainees in Section 040). (7-1-22)T

040. FLOAT BOATMAN QUALIFICATIONS -- CLASSIFIED RIVERS.

An applicant for a float boatman license on classified rivers may qualify in one (1) of three (3) ways: (7-1-22)T

01. General. Three (3) complete float boat trips on each of the classified rivers applied for under the direct supervision of a float boatman licensed for that river (complete trip means the total section of river designated by the Board in Subsection 059.01), or he must have had one (1) or more complete float boat trips on each of the classified rivers applied for under the direct supervision of a float boatman licensed for that river with the remaining trip(s) in a boat with no more than one (1) other trainee, following a licensed float boatman for that river, but he must not have passengers in the boat. (7-1-22)T

a. Allowances may be made for experience gained as a commercial boat operator on selected whitewater rivers with characteristics similar to Idaho's classified rivers; e.g. Colorado River (Grand Canyon or Cataract Canyon), Yampa River, Rogue River, American and Toulumne Rivers, other Idaho classified rivers, or the unclassified section of the Salmon River from North Fork to Corn Creek, provided the applicant has logged at least five hundred (500) miles as a commercial float boat operator on one (1) or more of those rivers. (7-1-22)T

b. To document this experience, a statement signed by the applicant under oath or affirmation and notarized must be recorded on a form provided by the Board office that includes precise put-in and take-out points, miles logged for each trip, and the names and addresses of the boat operators who have employed them. (7-1-22)T

02. Other. Logged at least five hundred (500) miles as a commercial float boat guide on any rivers applicable to Subsection 040.01.a., and must have one (1) complete float boat trip on each river applied for under the direct supervision of a float boatman licensed for that river, or in a boat with no more than one (1) other trainee,

following a float boatman licensed for that river, but there must not be any passengers in the boat. (Complete trip means the total section of river designated by the Board in Subsection 059.01). (7-1-22)T

03. Float Lead Boatman. Or, hold a license as a float lead boatman on a classified Idaho river and complete one (1) complete float boat trip on each other classified river applied for, under the direct supervision of a float boatman licensed for that river, or in a boat with no more than one (1) other trainee, following a float boatman licensed for that river, but he must not have passengers in the boat. (Complete trip means the total section of river designated by the Board in Subsection 059.01.) (7-1-22)T

041. FLOAT LEAD BOATMAN QUALIFICATIONS.

An applicant for a float lead boatman license must have six (6) complete float boat trips except that upon Board approval, a licensee may train on and be licensed for a specific reach of a section only. (Complete trip means the total section or reach of a section of river designated by the Board in Subsection 059.01). One (1) trip must have been within the sixty (60) months preceding the date of the application on each of the classified rivers applied for. (7-1-22)T

042. POWER BOAT GUIDE.

To qualify for a power boat guide license on the following waters, an applicant must have spent the following power boating hours that are distributed as evenly as possible along the total length or section of river or area of the lake or reservoir and under the direct supervision of a power boat guide licensed for the body of water for which qualification is sought: (7-1-22)T

01. Classified Rivers. Fifty (50) hours on the total length of the river or section of river designated on the application by the Board for which he wishes to operate, except that an applicant may have spent twenty-five (25) hours on each section for the Salmon River from the mouth of the Middle Fork to Salmon Falls, Salmon Falls to Ludwig Rapids, and Ludwig Rapids to Vinegar Creek or Spring Bar. (7-1-22)T

02. Unclassified Rivers and Streams. At least ten (10) hours on the total length of the river or section of river designated by the Board on the application for which he wishes to operate. (7-1-22)T

03. Lakes and Reservoirs. Ten (10) hours on the lake or reservoir on which he wishes to operate. (7-1-22)T

04. Log. The outfitter must maintain a log of this experience recorded on a form provided by the Board, showing the dates, river, lake or reservoir, location of put-in, destination, take-out, hours logged, and signature of outfitter. (7-1-22)T

043. (RESERVED)

044. SKIING, NON-HAZARDOUS AND HAZARDOUS TERRAIN OUTFITTER, DESIGNATED AGENT, SKI GUIDE AND SKI GUIDE TRAINEE.

01. Applications. (7-1-22)T

a. An outfitter, designated agent or guide must submit an outfitter or a guide application with current outfitter operating plan, if required, ski resume, and avalanche training certificates. (7-1-22)T

b. The Technical Advisory Committee (TAC) will evaluate and advise the Board on the scope and appropriate designations for licensure of any application for outfitting or guiding principally in non-hazardous and hazardous terrain skiing. The TAC is a five (5) member body of qualified backcountry ski outfitters and ski guides appointed by the Executive Director and confirmed by the Board. (7-1-22)T

02. Designations and Qualifications for Outfitters, Designated Agents, Guides and Trainees. The designations and qualifications are as follows: (7-1-22)T

a. Level I ski guide (non-hazardous terrain, principally sub-alpine or skiing operations in forests). Is qualified to lead ski tours in the outfitter's operating area. One (1) year training as a ski guide assistant in a non-

hazardous backcountry setting. Level I Ski Guides may work in hazardous terrain as a Level II Ski Guide Trainee under the supervision of a Level II Ski Guide. Level I Ski Guides are required to have: (7-1-22)T

i. Level I field-based avalanche training consisting of a twenty-four (24) hour curriculum submitted and an instructor roster; (7-1-22)T

ii. Knowledge of Outfitters Scope of Operation including logistics, services, terrain; and (7-1-22)T

b. Level II ski guide (hazardous terrain with a high degree of avalanche exposure). Has in-depth ski guiding experience on hazardous terrain and has the following qualifications: (7-1-22)T

i. Two (2) winter seasons training with licensed Level II Ski Outfitter or Guide or equivalent work experience with another Level II ski operation which conduct services principally in hazardous or avalanche terrain; (7-1-22)T

ii. Advanced First Aid, WFR, or EMT of a minimum of forty-eight (48) hours; (7-1-22)T

iii. Level I and Level II field-based avalanche training consisting of at least forty-eight (48) hours curriculum with a submitted instructor roster; (7-1-22)T

iv. Knowledge of the Outfitters Scope of Operation including logistics, services, terrain; and (7-1-22)T

03. Outfitters. Outfitters who conduct winter ski-based operations may be designated as: (7-1-22)T

a. Level I: self-propelled, with snowcat, or with snowmobile assisted including day skiing, hut skiing in non-hazardous terrain; (7-1-22)T

b. Level II: self-propelled including day skiing, hut skiing, multi-day expeditions, in hazardous terrain; or (7-1-22)T

c. Level II skiing operations with snowcats, helicopters, or ski from out of bounds from ski areas. (7-1-22)T

04. Outfitters Plan of Operation. The outfitter's operating plan will include a plan for snowpack, terrain and avalanche safety assessment, additional transport utilized (i.e., snowmobiles, snowcats, helicopters) and instruction and training plans of guides working around related equipment, and any additional safety and training standards for guides. (7-1-22)T

05. Field Supervisor. The Outfitter must employ at least one individual acting as a field supervisor who is a working Guide with the appropriate level of licensing for the operation and a minimum of five (5) years working at that level of guiding as to the scope of the operation, unless the outfitter or Designated Agent has this experience. (7-1-22)T

06. Ski Guide Trainee. An outfitter may employ an unlicensed trainee, provided the trainee may only assist when under the direct supervision of a licensed guide and a trainee may not provide guided services to clients. A trainee who applies for licensure must have thirty (30) days experience with a licensed ski guide in the outfitter's operating area and meet all other qualifications of Section 044. (7-1-22)T

045. (RESERVED)

046. TECHNICAL MOUNTAINEERING/ROCK CLIMBING GUIDE.

Any applicant for a technical mountaineering/rock climbing guide license must submit to the Board a detailed explanation of the applicant's qualifications, experience, and training. (7-1-22)T

047. SNOWMOBILING GUIDE.

An applicant for a snowmobiling guide license must: (7-1-22)T

- 01. Snowmobiling Techniques.** Have working knowledge of snowmobiling techniques; (7-1-22)T
- 02. Avalanche.** Have good leadership qualities and be knowledgeable in regards to potential avalanche conditions and proper route selection; (7-1-22)T
- 03. Hypothermia.** Be knowledgeable in the treatment of hypothermia and in winter survival techniques; and (7-1-22)T
- 04. Mechanics.** Have knowledge of the mechanical characteristics of snowmobiles and other equipment being used. (7-1-22)T

048. POWER BOAT FISHING GUIDE -- (LAKES AND RESERVOIRS).

All applicants for a power boat fishing guide license must possess the ability and knowledge to: (7-1-22)T

- 01. Maneuver or Pilot.** Maneuver or pilot a power boat upon Idaho lakes and reservoirs open to power boat fishing. (7-1-22)T
- 02. Operation.** Have operated a power boat for a minimum of ten (10) hours upon the lakes and reservoirs being requested. (7-1-22)T
- 03. Law.** Comply with the Idaho Safe Boating Act (Title 67, Chapter 70, Idaho Code). (7-1-22)T

049. -- 050. (RESERVED)

051. PLACEMENT OF HUNTING CAMPS AND LEAVING OUTFITTER'S OPERATING AREA, BIG GAME HUNTING AND INCIDENTAL TRAPPING.

01. Hot Pursuit of Bear and Cougar With Hounds and Hot Pursuit Agreements. The Board may approve a minor amendment to allow an outfitter licensed for bear and cougar hunting to enter into an adjacent area with a client for hot pursuit of bear and cougar hunting when hunting with hounds, provided that the pursuit starts inside the outfitter's licensed area. The application for minor amendment must include: (7-1-22)T

- a.** Written permission from all outfitters whose licensed area(s) will be directly involved in the hunt and which will be provided annually to the Board; (7-1-22)T
- b.** Written permission from all applicable landowners or land managers; (7-1-22)T
- c.** With prior Board approval, on a case by case basis and under special circumstances, the Board may waive the requirement for approval from the adjacent outfitter. (7-1-22)T

02. Camps. A hunting outfitter may not place a camp, nor cause one to be placed, in an area for which he is not licensed, except as identified in his approved operating plan. Whenever possible, camps used for big game hunting must be placed well within the operating area and not near the boundary line. (7-1-22)T

03. Wolf Trapping Incidental to Big Game Hunts. Outfitters licensed for big game hunting and for hunting wolves may qualify to provide wolf trapping as a hazardous excursion during the course of big game hunting as a minor (incidental) activity during open wolf trapping season as set forth below. (7-1-22)T

- a.** The Outfitter or Designated Agent and guide must have completed the mandatory wolf trapping education class prior to the activity taking place. The outfitter is responsible for maintaining the certificate(s) of completion on file and making it available for inspection. (7-1-22)T
- b.** Wolf trapping may not be advertised, promoted, or booked as an outfitted or guided service. (7-1-22)T
- c.** Outfitter or Designated Agent may not kill or allow domestic livestock or animals to be killed for

use as bait while in their operating area or to use live animals as bait and will be otherwise expected to follow existing state laws regarding handling of domestic livestock. (7-1-22)T

d. A trapped animal must be killed quickly and humanely. It cannot be released and then “hunted” or killed. (7-1-22)T

e. Outfitters and guides may not directly engage a client in trapping activities handle or be involved with handling traps or trapped animals. Clients may be allowed to: (7-1-22)T

i. Hunt and kill any free ranging animal for which they have an appropriate license and tag, except when the animal is in or within two hundred (200) yards of the Outfitter's or guide's trap line. (7-1-22)T

ii. Accompany a properly licensed guide who is checking the outfitter's traps provided the client is directly accompanied by that guide at all times. (7-1-22)T

iii. Only observe the handling of trapped animals by properly licensed guides. (7-1-22)T

f. Guides who have completed the required education in Paragraph 051.01.a. are subject to the following: (7-1-22)T

i. Guides may check their employing outfitter’s or their own wolf traps as per state requirements as part of outfitted, big game hunts. (7-1-22)T

ii. May not provide services to the same client for two (2) different outfitters within a five (5) day period. (7-1-22)T

052. BOAT TRANSPORT OF HUNTING CLIENTS.

A boatman licensee (either power or float) must not transport big game hunters to any big game hunting area unless licensed to outfit for big game hunting in that area or is in the employ of the licensed outfitter for that area. (7-1-22)T

053. CONTROLLED HUNTS OUTSIDE OUTFITTER’S OPERATING AREA.

The Board may authorize an outfitter who is licensed for a controlled hunt species to conduct a one-time hunt for a controlled hunt outside of the outfitter's licensed area when the outfitter submits a minor amendment fee and a written request with the following: (7-1-22)T

01. Written Permission. Written permission from all outfitters whose licensed area(s) will be directly involved in the hunt and all applicable landowners or land managers; (7-1-22)T

02. Identification of Hunter. The hunter name and address, hunting license, tag and permit numbers, controlled hunt number, and dates of hunt. (7-1-22)T

03. Compensation Between Outfitters. No compensation is permitted between outfitters participating in the conduct of a controlled hunt in another outfitter’s area, unless the outfitter supplies a service for that compensation. (7-1-22)T

054. BOAT EQUIPMENT REQUIREMENTS.

Each float or power boat must be identified as follows: (7-1-22)T

01. Identification. Identification recorded with the Board on the outfitter application consisting of words, names, or letters not less than three (3) inches in height, and be of a contrasting color indicating the current licensed outfitter and that is placed above the water line on each side of the bow or stern of the boat utilized by that outfitter in letters. (Does not apply to single person boats or two (2) person inflatable boats). (7-1-22)T

02. Clearwater. On Sections CL2 and CL3 of the Clearwater River, a sticker affixed to the surface of any boat used for anadromous fishing that is not less than eight (8) inches in height and placed immediately adjacent to the identification words, names or letters on each side of the boat towards the bow, identifying the boat as operated by a licensed outfitter. Stickers will be provided and sold annually by the Board or a vendor designated by the Board.

(7-1-22)T

055. BOATING CLIENT/GUIDE RATIO.

All float boats, occupied by three (3) or more clients, must be under the control of a licensed guide; except a boat guide trainee may operate a boat under the direct supervision of a licensed boatman, or may train as indicated in Section 040. Kayaks and canoes and clients rowing rafts that they provide are exempt from this rule. (7-1-22)T

056. (RESERVED)

057. DESIGNATION OF ALLOCATED DEER AND ELK TAGS.

For the purposes of this section, an outfitting operation is an outfitter licensee whose licensed activities include hunting for the species in the area of the allocated tag being designated. When IFGC sets big game seasons all allocated tags will be designated pursuant to Section 36-2120, Idaho Code, and IDAPA 24.35.01.057. The designation applies until the next big game season setting by IFGC. (7-1-22)T

01. Base Allocation. The base allocation number is computed pursuant to Section 36-2120(b), Idaho Code. (7-1-22)T

02. Outfitted Hunter Tag Use History. Until the IFGC is able to collect and verify outfitted tag use pursuant to Section 36-408(4), Idaho Code, the use history will be based on each outfitter's use reports, or the best data available, and subject to verification by documentation or other reliable information acceptable to the Board showing that the outfitter provided outfitting services to the hunter using the tag. (7-1-22)T

a. The use history for a capped hunt is the number of tags used by clients of each outfitter for the hunt with the most similar framework to the hunt for which the allocated tag is being designated. (7-1-22)T

b. The use history for a controlled hunt is the number of tags used by clients of each outfitter in the hunt or hunts that have the most similar framework to the hunt for which the allocated tag is being designated. Both the hunt with allocated tags and the matching hunt with non-allocated tags will be used. (7-1-22)T

c. Transfers – The original outfitter may transfer a designated allocated tag(s) to another outfitting operation for use that year in the same hunt and still retain credit for the tag. (7-1-22)T

d. Surrenders - An outfitter may surrender a designated allocated tag(s) to the undesignated tag pool at any time after notification of its tag designation. The surrendering outfitter does not retain credit for the surrendered tag unless it later uses the tag from the pool. The surrendered tag will be available to any outfitter in the same hunt pursuant to IDAPA 24.35.01.057.09. (7-1-22)T

03. New Hunt Allocated Tag Designation. When the IFGC initially allocates tags for a new capped or controlled hunt, allocated tags will be designated for that hunt proportionately as follows: (7-1-22)T

a. Divide each outfitting operation's base allocation by the total of all base allocations in the hunt, resulting in a percentage of total use. Truncate the decimal at the hundredths place. (7-1-22)T

b. Multiply the percentage of total use from IDAPA 24.35.01.057.03.a. by the total number of allocated tags for the hunt, which determines the number of allocated tags designated to the outfitting operation. (7-1-22)T

04. Use of Previously Designated Allocated Tags. For established capped or controlled hunts, allocated tags will first be designated to each outfitting operation in an amount equal to the outfitting operation's use of the allocated tags previously designated to it for the same hunt. (7-1-22)T

a. In a capped hunt, the use of previously designated allocated tags is the average use of allocated tags in the preceding two (2) years. (7-1-22)T

b. In a controlled hunt, the use of previously designated allocated tags is the highest year of use of allocated tags in the preceding two (2) years. (7-1-22)T

05. Remaining or Additional Allocated Tags. Allocated tags that were not designated pursuant to IDAPA 24.35.01.057.04 will be designated proportionately as follows: (7-1-22)T

a. Subtract each outfitting operation's use of previously designated allocated tags from its base allocation number to determine the number of non-allocated tags it used; then (7-1-22)T

b. Divide the result by the total number of non-allocated tags used by all outfitting operations, resulting in a percentage of the total non-allocated tags used by all outfitting operations in that hunt. Truncate the decimal at the hundredths place; and finally (7-1-22)T

c. Multiply the percentage of total use from IDAPA 24.35.01.057.05.b. by the number of allocated tags yet to be designated, which determines the number of allocated tags designated to the outfitting operation. (7-1-22)T

06. Rounding. If allocated tag designation results in a partial tag, the calculation will be rounded up when a decimal equals or exceeds six tenths (.6) and rounded down when a decimal is less than six tenths (.6). When calculating the reduction to the designation of allocated tags pursuant to Section 36-2120(4), Idaho Code, the calculation will be rounded up when a decimal equals or exceeds five tenths (.5) and rounded down when a decimal is less than five tenths (.5). (7-1-22)T

07. Tie-breaker. If after applying IDAPA 24.35.01.057.03-06 there is a surplus or deficit of allocated tags to be designated, the unrounded proportion, with as many decimal places as necessary, will be used as follows: (7-1-22)T

a. A surplus allocated tag will be designated to the outfitting operation whose unrounded proportion is the greatest. In the event there is more than one outfitting operation with the same unrounded proportion, the undesignated tag will be designated based on a random drawing between those outfitting operations. (7-1-22)T

b. A deficit will be resolved from the outfitting operation whose unrounded proportion is closest to six tenths (.6). If there is more than one (1) outfitting operation with the same unrounded proportion, a random drawing will be held between those outfitters. (7-1-22)T

08. Stipulation by Outfitters. Outfitting operations in a hunt may submit to the Board a written stipulation determining the number of allocated tags designated for each outfitting operation within that hunt. The stipulation must be signed by all eligible outfitting operations for the hunt. If the Board approves the stipulation, the stipulation will be effective until the IFGC sets the next big game season. On or before November 1 preceding the hunt, any outfitting operation may petition the Board to vacate the stipulation for good cause that would make it unconscionable or unjust to enforce the stipulation. If the Board vacates the stipulation, the allocated tags in that hunt will be designated pursuant to Section 36-2120, Idaho Code, and IDAPA 24.35.01.057. (7-1-22)T

09. Undesignated Tag Pool. Any designated allocated tags that are surrendered or have not been utilized by an outfitting operation on or before the tenth (10) business day prior to July 31 for a capped hunt, or on or before September 10 or the next business day for a controlled hunt, will be available in an undesignated pool for any outfitting operation, as follows: (7-1-22)T

a. Beginning April 10 preceding the hunt, an outfitting operation without any designated allocated tags or who has utilized all of its designated allocated tags may submit a request for an allocated tag from the pool. The request must be in such a form as designated by the Board. (7-1-22)T

b. Beginning April 20 preceding the hunt or next business day, an allocated tag will be designated from the pool on a first-come, first-served basis, using a waiting list when as necessary, with a maximum of two (2) allocated tags designated to each requesting outfitting operation until all other requesting outfitting operations have been served, then a requesting outfitting operation is eligible to receive a maximum of two (2) additional allocated tags from the pool, repeated until all requesting outfitting operations are served or until no tags remain. (7-1-22)T

10. Objection to Calculation. If an outfitting operation believes the calculation is incorrect it may

object by filing a petition with the Board within fourteen (14) days from the date the notification was sent and in accordance with the Idaho administrative procedures act. The petition will include any supporting information or documentation. (7-1-22)T

- a. All outfitting operations in the hunt in question will be notified of the petition. (7-1-22)T
- b. The outfitting operation bears the burden of establishing that the calculation was incorrect. (7-1-22)T

11. Hardship Request. A written hardship request to maintain all or a portion of previous outfitted hunter tag use history may be submitted to the Board on or before the November 1 preceding the biennial IFGC big game season setting. If a hardship occurs after October 21 but prior to the hunt being completed the request may be submitted within ten (10) days of the occurrence. A hardship may include health, act of nature, state or federal restrictions on hunting or access, or other good cause that prevented or limited the outfitting operation’s ability to seek and accommodate clients and impacted its use of designated allocated tags. The outfitting operation must provide any information requested by the Board to substantiate the request. (7-1-22)T

12. Change in Operating Area or Owner of Business. When an outfitting operation is sold or when an operating area is adjusted and designated allocated tags are associated with the affected operating area, the associated designated allocated tags will transfer to the new owner. (7-1-22)T

058. NUMBER OF OUTFITTERS AND GUIDES LIMITED.
Big Lost and Little Lost Rivers and the Big Wood and the Little Wood Rivers -- All reaches from headwaters to the termination of the flow of the Big Lost and the Little Lost Rivers and all reaches of the Big Wood and Little Wood Rivers are limited to a maximum of five (5) outfitters on both rivers combined. (7-1-22)T

059. RIVER, LAKE AND RESERVOIR POWER AND FLOAT OUTFITTER LIMITS.
The following rivers and streams or sections that lie totally or partially within the state of Idaho are open to commercial boating operations by outfitters and guides. The Board may open other rivers and streams or sections upon a petition to adopt rules under Section 67-5230, Idaho Code. (7-1-22)T

01. Licensable Waters -- River Sections (BL1) Blackfoot River through (PR1) Priest River -- Table.

River/Section	Maximum No. Power	Maximum No. Float
(BL1) Blackfoot River - Morgan Bridge to Trail Creek Bridge	none	2
(B01) Boise River, South Fork - Danskin Bridge to the Neal Bridge EXCEPT on weekends or holidays. Each outfitter may use only one (1) boat for fishing only with a maximum of two (2) fisherman. No overnight camping or walk-and-wade fishing allowed.	none	2
(B01A) Boise River - Eckert Road Bridge to Main Street Bridge.	none	
(B01B) Boise River - Main Street Bridge to West side of Garden City limits.	none	

River/Section	Maximum No. Power	Maximum No. Float
(BO2) Boise River - Downstream from the west side of the Garden City municipal limits to the east side of the Caldwell municipal limits. Each outfitter may use at any time a maximum of four (4) boats for boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitters operating plan.	none	2
(CF1) Clark Fork River - Montana stateline to Lake Pend Oreille (boating closing date September 30)	4 outfitters for either power or float or combination thereof	
(CL1) Clearwater River - Lowell to the Lower Bridge at Kooskia. Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. Fishing may not be conducted downstream from the Upper Bridge at Kooskia by CL1 outfitters. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan.	none	5
(CL2) Clearwater River - The Upper Bridge at Kooskia to the Orofino Bridge. Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan.	6	10
(CL3) Clearwater River - The Orofino Bridge to the mouth of the Clearwater River with the Snake River at Lewiston. Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitters operating plan.	10	10
* (NFCL) North Fork Clearwater River - Kelly Forks Bridge downstream to backwaters of Dworshak Reservoir	none	4
(CDNF) Headwaters of North Fork Coeur d'Alene - Including tributaries (Independence and Tee Pee Creeks) upstream from Devils Elbow Campground. Three (3) walk and wade only licenses. Up to four (4) clients on the river at one time per license.	none	none
(CD1) Coeur d'Alene River - Devil's Elbow to South Fork confluence. Fishing limit is two (2) float boats per license with a maximum of two (2) clients at a time per boat. Two (2) additional walk and wade licenses can be issued. Walk and wade limited to a maximum of two (2) clients at a time per license.	none	1

River/Section	Maximum No. Power	Maximum No. Float
(CD2) Coeur d’Alene River - South Fork confluence downstream to Cataldo Mission Boat Ramp. Fishing limit is one (1) float boat per license with a maximum of two (2) clients or two walk and wade clients per license at a time. Walk and wade activities do not have to be initiated from a float boat.	none	1
(CD3) Lateral (Coeur d’Alene chain) Lakes - Connected by the Coeur d’ Alene river. Cataldo Mission Boat Ramp to Highway 97 Bridge. A limit of one (1) power boat per license with a maximum of two (2) clients at a time or a limit of one (1) guide per license and two (2) float tubes at a time or two (2) clients walking and wading. The walk and wade activities must be associated with the power boating.	3	none
* (JB1) Jarbidge/Bruneau Rivers	none	4
(K01) Kootenai River - Montana stateline to Canada boundary	5	5
(LCL1) Little North Fork Clearwater River - Mouth of Canyon Creek to first bridge on the Little North Fork Clearwater River. Fishing only. Each outfitter may use only two (2) boats per day with a maximum of two (2) fishermen per boat.	none	2
* (LO1) Lochsa River	none	5
(MO1) Moyie River - Canada boundary to Bonners Ferry Municipal Dam (boating closing date July 20)	none	5
* (OW1) Owyhee River - Nevada stateline to Oregon stateline or South Fork to confluence with Owyhee River and continuing on to a take-out point.	none	6
(PN1) Payette River, North Fork - Payette Lakes Outlet to Hartsell Bridge. Restrictions: NO FISHING ALLOWED. Four (4) boat or ten (10) canoe limit per trip, and only two (2) trips per day per outfitter.	none	2
(PN1A) Payette River, North Fork - Cascade City Park, 1/4 mile south of Cascade on Highway 55 to Cabarton. Restrictions: Catch and release for TROUT ONLY, other species F & G rules apply. No stopping by commercial groups from 1/4 mile above to 1/4 mile below heron nesting trees. Four (4) boat or ten (10) canoe limit per trip, and only two (2) trips per day per outfitter.	none	2

River/Section	Maximum No. Power	Maximum No. Float
(PN2) Payette River, North Fork - Cabarton to Smiths Ferry Bridge	none	5
(PS1) Payette River, South Fork - Grandjean to Deadwood River	none	5
* (PS2) Payette River, South Fork - Deadwood River to Banks	none	5
(PA1) Payette River - Banks to Black Canyon Dam	none	5
(PO1) Pend Oreille River	5	5
(PR1) Priest River - Dickensheet Campground to Priest River City	none	5

(7-1-22)T

02. Licensable Waters -- River Sections (MF1) Middle Fork Salmon River Through (SE2) Selway River -- Table.

River/Section	Maximum No. Power	Maximum No. Float
###(MF1) Salmon River, Middle Fork - Boundary Creek to Cache Bar on the Salmon River	none	27
(SA1) Salmon River - First bridge across Salmon River above Redfish Lake Creek to Torrey's Bar	none	6
(SA2) Salmon River - Torrey's Bar to first Highway 93 bridge above Challis. Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are a part of an outfitter's operating plan.	none	5
(SA3) Salmon River - First Highway 93 bridge above Challis to Kilpatrick River access. Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are a part of an outfitter's operating plan.	none	6

River/Section	Maximum No. Power	Maximum No. Float
(SA4A) Salmon River - Kilpatrick River access to North Fork - License period from May 1 to September 30. Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing and (b) five (5) boats for other boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan.	5	11
(SA4B) Salmon River - Kilpatrick River access to North Fork - License period from October 1 to April 30. Each power boat outfitter may use at any one time a maximum of one (1) boat and each float boat outfitter may use at any one time a maximum of three (3) boats.	2	8
(SA5) Salmon River - North Fork to Corn Creek	3	9
##(SA6) Salmon River - Corn Creek to Spring Bar Boat Ramp with no outfitter fishing below Vinegar Creek from September 15 through March 31 except that on a case-by-case basis, outfitter fishing may occur when permitted by the BLM and with the notification to and concurrence of the Board Executive Director.	14	31
* (SA7A) Salmon River - Vinegar Creek to Hammer Creek - License period from March 15 to October 15. No power boating is allowed from the Saturday before Memorial Day through Labor Day from 10:30 a.m./Mountain Time to 5:00 p.m./Mountain Time daily between the Riggins City Boat Dock and Lucile.	10	26
* (SA7B) Salmon River - Power boats from Vinegar Creek to Spring Bar Boat Ramp and float boats from Vinegar Creek to Island Bar Boat Ramp, open from September 15 to March 31 only. Each float boat outfitter may use at any one time a maximum of three (3) boats for fishing, or two (2) additional boats for fishing when permitted by the BLM and with the notification to and concurrence of the Board Executive Director; and each power boat outfitter may use at any one time a maximum of two (2) boats for fishing, or one (1) additional boat for fishing when permitted by the BLM and with the notification to and concurrence of the Board Executive Director.	6	12
* (SA7C) Salmon River - Riggins City Park Boat Ramp to Hammer Creek. Three (3) designated outfitters may utilize float boats to fish from the Riggins City Boat Dock to Hammer Creek during the period from September 15 to March 31.	none	3
##(SA8) Salmon River - Hammer Creek to Heller Bar or Lewiston on the Snake River	15	35

River/Section	Maximum No. Power	Maximum No. Float
* (SE1) Selway River - Paradise Campground to Selway Falls	none	4
(SE2) Selway River - Selway Falls to the mouth of the Selway River at Lowell. Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. The Board may approve adjustments to these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan.	none	5

(7-1-22)T

03. **Licensable Waters -- River Sections (SH1) Henry's Fork Snake River Through (TE3) Teton River -- Table.**

River/Section	Maximum No. Power	Maximum No. Float
(SH1) Snake River, Henry's Fork - Henry's Lake Outlet to Hatchery Ford. (Each outfitter may use at any one time a maximum of (a) eight (8) boats for fishing No more than three (3) of these boats may be used at any one time on any of the following river reaches: Henry's Lake Outlet to Island Park Dam, Island Park Dam to Last Chance, Last Chance to Osborn Bridge, and Osborn Bridge to Hatchery Ford), and (b) five (5) boats for other boating activities. The Board may approve adjustments to these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan.	none	7
(SH2) Snake River, Henry's Fork - Mesa Falls to St. Anthony. Each outfitter may use at any one time a maximum of (a) eight (8) boats for fishing, no more than three (3) of these boats may be used at any one time on any one of the following river reaches: Mesa Falls to Warm River, Warm River to Ashton Dam, and Ashton Dam to St. Anthony, and (b) five (5) boats for other boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan.	none	8

River/Section	Maximum No. Power	Maximum No. Float
<p>(SH3) Snake River, Henry's Fork - No more than three (3) boats for fishing may be used by an outfitter at any one (1) time in each of the following river sections:</p> <ul style="list-style-type: none"> a) St. Anthony to Red Road Bridge Boat Access (i.e., Parker/Salem or Fort Henry) b) Red Road Bridge Boat Access to Warm Slough Boat Access c) Warm Slough Boat Access to Menan Boat Access <p>No outfitter may have more than six (6) boats on the SH3 in any one (1) day.</p> <p>When permitted by the BLM and with the notification to and concurrence of the IOGLB Executive Director, each outfitter may be allowed adjustments to the maximum boat limits in order to accommodate non-fishing boating activities (e.g., canoeing, paddle boards, and kayaks) and hazardous excursions that are part of an outfitter's operating plan. These adjustments must be reviewed and approved annually.</p> <p>IOGLB licenses are for the entire SH3 segment; a section of SH3 cannot be separated from SH3 for the purposes of selling a portion of an outfitter's business.</p>	<p>none</p>	<p>4</p>

River/Section	Maximum No. Power	Maximum No. Float
<p>(SS1) Snake River - South Fork - No more than four (4) boats per section/per day may be used by an outfitter at any one (1) time in each of the following river sections:</p> <ul style="list-style-type: none"> a) Palisades Dam to the Conant Boat Access; b) Conant Boat Access to Fullmer Boat Access. Exception: Not more than eight (8) boats would be permitted in Section (b) on the same day, provided that no more than four (4) of said boats are in this Section after 11:00 a.m. due to overnight use at designated outfitter camps; c) Fullmer Boat Access to Byington Boat Access; d) Byington Boat Access to Lorenzo Boat Access; and e) Lorenzo Boat Access to Menan Boat Access; <p>Additionally, no outfitter may have more than twelve (12) boats on the SS1 in any one day.</p> <p>A one-time per year exception after July 15 may be granted from Conant Boat Access to Byington Boat Access that would allow two (2) additional boats per section to accommodate large client groups. During this one-time exception, if the two (2) additional boats do not accommodate the large client group, additional boats must come from slots allocated to other outfitters. The maximum daily boat limit for SS1 may not be exceeded. This would require written concurrence from the BLM/USFS and the IOGLB Executive Director.</p> <p>Float boats may use motors (5HP or less) for downstream steerage only within the entire SS1 reach. Downstream steerage would not include holding or upstream travel of watercraft with a motor.</p> <p>IOGLB licenses are for the entire SS1 segment; a section of SS1 cannot be separated from SS1 for the purposes of selling a portion of an outfitter's business.</p>	None*	8**
<p>* Each licensed float boat outfitter may use one (1) supply boat (float or power) that does not carry clients. During periods of preparing overnight camps (i.e., setting up tents and portable toilet facilities, boating in grills and other cooking supplies) for the season, usually May or June of each year; and removing the same items listed above from overnight camps at the end of the season, usually October or November; multiple supply boats may be used.</p> <p>** One (1) license additional for waterfowl hunting covering both BLM and USFS managed lands and waters for the South Fork (Palisades Dam to Wolf Flats Boat Access) may be issued. This license opportunity is in addition to the eight (8) float licenses and is limited to providing waterfowl hunting during waterfowl hunting season as defined by Idaho Fish and Game Rules and where no more than two (2) float or power boat boats per day per section a and b only can be used by the outfitter at any one time for that purpose. Fishing may not be provided or conducted unless the outfitter is also licensed and permitted as one (1) of the eight (8) outfitters addressed in this rule who may not provide hunting activities. This business opportunity may be sold separately.</p>		

River/Section	Maximum No. Power	Maximum No. Float
<p>(SN1) Snake River - For each license/permit issued, no more than four (4) boats per section/per day may be used by an outfitter at any one time in each of the following river sections:</p> <p>a) Menan Boat Access to Mike Walker Boat Access (includes Federally managed lands);</p> <p>b) Mike Walker Boat Access to Gem State Power Plant (includes non-Federal lands).</p> <p>Float boats may use motors (5HP or less) for downstream steerage only within the entire SS1 reach. Downstream steerage would not include holding or upstream travel of watercraft with a motor.</p> <p>OGLB licenses are for the entire SN1 segment; a section of SN1 cannot be separated from SN1 for the purposes of selling a portion of an outfitter's business.</p>	3 outfitters either float or power or combination thereof	
<p>(SN2) Snake River - Gem State Power Plant downstream to headwaters of American Falls Reservoir</p>	3	3
<p>(SN3) Snake River - American Falls Dam to Massacre Rocks State Park</p>	3	3
<p>(SN4) Snake River - Massacre Rocks State Park to Milner Dam</p>	3	3
<p>* (SN5) Snake River - Milner Dam to Star Falls</p>	none	3
<p>* (SN6) Snake River - Star Falls to Twin Falls</p>	none	5
<p>(SN7) Snake River - Twin Falls to Lower Salmon Falls Dam</p>	3	3
<p>(SN8) Snake River - Lower Salmon Falls Dam to Bliss Dam</p>	3	5
<p>(SN9) Snake River - Bliss Dam to headwaters of C.J. Strike Reservoir</p>	5	5
<p>(SN10) Snake River - C.J. Strike Dam to Walter's Ferry</p>	5 outfitters for either power or float or combination thereof	
<p>(SN11) Snake River - Walter's Ferry to headwaters of Brownlee Reservoir</p>	5	none

River/Section	Maximum No. Power	Maximum No. Float
* (SN12) Snake River - Hells Canyon Dam to Pittsburg Landing	18	15
* (SN13) Snake River - Hells Canyon Dam to Pittsburg Landing, two (2) one-day float trips only	none	2
(SN14) Snake River - Pittsburg Landing to Heller Bar or Lewiston	19	15
(SN15) Snake River - Washington/Oregon stateline to Lewiston	Limitations pending. (This section is set aside for future rules of fishing only outfitters.)	
(SJ1) St. Joe River - St. Joe River Headwaters to Red Ives. No outfitted boating. One (1) walk and wade only fishing outfitter.	none 2	none
(SJ2) St. Joe River - Red Ives to Avery. In addition to one (1) float boat license, three (3) walk and wade only outfitters. No fishing from float boats, boat clients may fish via walk and wade.	none	1
(SJ3) St. Joe River - Avery to St. Joe City Bridge	none	2
(SJ4) St. Joe River - St. Joe City Bridge to Lake Coeur d'Alene	2	none
(SM1) St. Maries River	5	5
(TE1) Teton River - Upper put-in to Cache Bridge, motors not to exceed 10 hp	5 outfitters for either power or float or combination thereof	
(TE2) Teton River - Cache Bridge to Harrop Bridge, motors not to exceed 10 hp	6 outfitters for either power or float or combination thereof	

River/Section	Maximum No. Power	Maximum No. Float
<p>(TE3) Teton River - No more than two (2) boats per section/per day may be used by an outfitter at any one time in each of the following river sections: a), b), d), e) and f). No more than four (4) boats per section/per day may be used by an outfitter at any one time on river section c) and where two (2) boats from same outfitter must be spaced at three-hour (3) intervals:</p> <p>a) Harrop Bridge Boat Access to Felt Dam Boat Access; b) Felt Dam Boat Access to Spring Hollow Boat Access; c) Spring Hollow Boat Access to Teton Dam Site Boat Access; d) Teton Dam Site Boat Access to Hog Hollow Bridge Boat Access e) Hog Hollow Bridge Boat Access to Teton Highway; f) Teton Highway to confluence with the Henrys Fork of the Snake River.</p> <p>Note: No boat access exists at the confluence with the Henrys Fork of the Snake River. Outfitters would utilize Hibbard Bridge or Warm Slough Access on SH3. No fishing on SH3</p> <p>No outfitter may have more than eight (8) boats on the TE3 in any one day.</p> <p>Float boats may use motors not to exceed 10 hp in section a) (Harrop Bridge to Felt Dam Access) only. Float boats may use motors (5HP or less) for downstream steerage only in sections d), e) and f). Motors are not allowed in other sections. Downstream steerage does not include holding or upstream travel of watercraft with a motor.</p> <p>IOGLB licenses are for the entire TE3 segment; a section of TE3 cannot be separated from TE3 for the purposes of selling a portion of an outfitter's business.</p>	<p>none</p>	<p>5</p>

* Classified rivers

Floatboat and powerboat outfitters on these sections are considered within their area of operations when hiking from the river or fishing in tributaries away from the river, but does not include overnight activities. Conflicts with land-based outfitters will be handled on a case-by-case basis. (7-1-22)T

04. Other -- Table. The following lakes and reservoirs or portions thereof that lie totally or partially within the state of Idaho are open to fishing by outfitters with the following limitations:

Lake or Reservoir	Maximum No. of Operators	Maximum No. Boats per Operator per Lake or Reservoir
Lake Coeur d'Alene	8	1
Dworshak Reservoir	7	2
Hayden Lake	1	2
Henry's Lake	8	2
Island Park Reservoir	7	2
Magic Reservoir	3	2
Palisades Reservoir	10	2

Lake or Reservoir	Maximum No. of Operators	Maximum No. Boats per Operator per Lake or Reservoir
Lake Pend Oreille	11	1
Priest Lake	5	1
American Falls Reservoir	3	2
C.J. Strike Reservoir	4	2
Brownlee Reservoir	5	2
Oxbow Reservoir	3	2
Hells Canyon Reservoir	3	2

(7-1-22)T

05. Other Lakes and Reservoirs. All other Idaho lakes and reservoirs are limited to two (2) outfitters with a maximum of two (2) boats (float or power) per outfitter. (7-1-22)T

060. (RESERVED)

061. TECHNICAL MOUNTAINEERING/ROCK CLIMBING.

Any outfitter applicant for technical mountaineering/rock climbing must appear before the Board to explain in full detail his qualifications, experience, plans, and areas of operation demonstrating the necessary specialized training and skill. (7-1-22)T

062. (RESERVED)

063. SNOWMOBILING.

In addition to other requirements, outfitters and guides for snowmobiling must ensure the following: (7-1-22)T

01. Non-Groomed Trails. All machines are accompanied by at least one (1) guide for one (1) through five (5) snowmachines, two (2) guides for six (6) through twelve (12) snowmachines, and one (1) additional guide for each additional ten (10) snowmachines. The maximum number of snowmachines allowed in one (1) group may not exceed thirty (30). One (1) guide leads and one (1) trails where more than five (5) snowmachines are involved. (7-1-22)T

02. Groomed Trails. All machines are accompanied by at least one (1) guide for one (1) through fifteen (15) snowmachines, and two (2) guides for sixteen (16) through a total of thirty (30) snowmachines. One (1) guide leads and one (1) trails where more than fifteen (15) machines are involved. The maximum number of snowmachines allowed in one group may not exceed thirty (30). (7-1-22)T

03. Emergency Equipment. All snowmobiling tours have with them necessary emergency equipment, tools, and spare parts for the machine(s) in use. (7-1-22)T

04. Reduction in Guide Ratios. An outfitter may apply to the Board to reduce the number of guides on non-groomed trails to one (1) guide for six (6) through twelve (12) snowmachines and the number of guides on groomed trails to one (1) guide for sixteen (16) through thirty (30) snowmachines, when the guide has electronic communication for summoning assistance at all times during the excursion. (7-1-22)T

064. AUTHORIZATION FOR GRANTING, DENIAL AND REVOCATION OF LICENSES.

01. Executive Director Authorizations. The Executive Director is authorized to grant, issue or deny, temporary authorizations, licenses and license amendments, hot pursuit agreements and designations of allocated tags with the concurrence of the Board, under the following conditions: (7-1-22)T

a. The Executive Director may grant and issue all routine temporary authorizations, license applications, amendments and related matters when the applicant does not have any convictions for fish and game violations or other violations of the grounds enumerated in Section 36-2113(a), Idaho Code, has not falsified or provided any misleading information to the Board, and otherwise qualifies for licensure. (7-1-22)T

b. The Executive Director may grant all license applications which otherwise qualify for licensure, but which have violations of the grounds enumerated in Section 36-2113(a), Idaho Code, which occurred five (5) years prior to the date of application, except that a license will not be granted by the Executive Director to an applicant who has a felony conviction of any nature, or conviction of a flagrant violation pursuant to Section 36-1402(f), Idaho Code. (7-1-22)T

c. The Executive Director may grant a license with probationary status for conviction of minor fish and game violations or violations enumerated in Section 36-2113(a), Idaho Code, that occurred at least five (5) years prior to the date of application, excluding felony convictions. (7-1-22)T

d. The Executive Director may defer granting or denying any license or related matter to the Board for action by the Board. (7-1-22)T

e. The Executive Director may not waive fees. (7-1-22)T

02. Board Conditions. The Board may grant or deny a license pursuant to the provisions of Sections 36-2109 and 36-2113, Idaho Code, under the following conditions: (7-1-22)T

a. The Board may grant a license to an applicant with convictions of violations enumerated in Section 36-2113(a), Idaho Code, which are over five (5) years old and may place the licensee on probation. (7-1-22)T

b. The Board may grant a license to an applicant with convictions of violations enumerated in Section 36-2113(a), Idaho Code, which are less than five (5) years old and may place the licensee on probation. (7-1-22)T

c. The Board will proceed with the denial of an applicant for a hunting or fishing outfitter or guide license or proceed with the revocation process on a licensee upon conviction of a flagrant violation pursuant to Section 36-1402(f), Idaho Code, unless unusual mitigating circumstances exist. (7-1-22)T

065. -- 066. (RESERVED)

067. INSPECTIONS.

Outfitter camps and equipment may be inspected at any time by an authorized person or any member of the Board with a written report submitted to the Board to ensure adequate equipment and gear is utilized and maintained in a manner which meets minimum standards of public acceptability and which meets the requirements of applicable local, state, or federal laws and rules. (7-1-22)T

068. ADMINISTRATIVE FINES/PROBATION/RESTRICTIONS.

01. Penalties -- Table. In addition to suspension, probation, restriction or revocation of a license, the following penalties may be applied to that licensee or those licensees found to have violated the provisions of the Act, these rules, or both.

I.C. Section 36-2113(a)	First Offense	Second Offense	Third Offense
1.	\$100 - \$500 Fine	\$500 - \$5,000 Fine	Suspension or Revocation of License

I.C. Section 36-2113(a)	First Offense	Second Offense	Third Offense
2.	Probation/Restriction of License	\$100 - \$500 Fine	\$500 - \$5,000 Fine
3.	All Penalties Are Within The Board's Discretion.		
4.	Probation/Restriction of License	\$100 - \$500 Fine	\$500 - \$5,000 Fine
5.	\$100 - \$300 Fine	\$100 - \$500 Fine	\$500 - \$5,000 Fine
6.	Probation/Restriction of License	\$100 - \$500 Fine	\$500 - \$5,000 Fine
7.	Probation/Restriction of License	\$100 - \$500 Fine	\$500 - \$5,000 Fine
8.	\$100 - \$500 Fine	\$500 - \$5,000 Fine	Suspension or Revocation of License
9.	\$100 - \$500 Fine	\$500 - \$5,000 Fine	Suspension or Revocation of License
10.	\$100 - \$500 Fine	\$500 - \$2,500 Fine	\$2,500 - \$5,000 Fine
11.	\$100 - \$300 Fine	\$100 - \$500 Fine	\$500 - \$5,000 Fine
12.	\$100 - \$500 Fine	\$500 - \$2,500 Fine	\$2,500 - \$5,000 Fine
13.	All Penalties Are Within The Board's Discretion.		
14.	\$100 - \$300 Fine	\$100 - \$500 Fine	\$500 - \$5,000 Fine

(7-1-22)T

02. Restrictions. No license will be issued while any outstanding administrative fine monies are due unless an arrangement has been made and approved by the Board for the payment of same. (7-1-22)T

03. Terms of Probation. Typical terms of probation are that there are no violations of local, state or federal laws or ordinances, and no amendments to the license during the term of probation, and other restrictions as the Board orders. (7-1-22)T

069. -- 999. (RESERVED)

IDAPA 31 – IDAHO PUBLIC UTILITIES COMMISSION

31.61.01 – RULES FOR THE MEASUREMENT OF STRAY CURRENT OR VOLTAGE (STRAY VOLTAGE RULES)

DOCKET NO. 31-6101-2201 (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 Idaho Public Utilities Law Section(s) 61-515 and 61-520 of the Idaho Code and the Stray Current and Voltage Remediation Act, Section 61-803, Idaho Code, and [Executive Order No. 2020-01](#).

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 20, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 IDAPA 31.61.01 up for review in 2022.

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 April 6, 2022 – Administrative Bulletin, [Vol. 22-4 page 43-44](#).

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

Sets the ground rules and guidelines for practical safeguarding of utility workers and the public during the installation, operation, and maintenance of electric supply, communication lines and associated equipment. The National Electrical Safety Code ([NESC](#)) and the National Electrical Code ([NEC](#)).

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 July 27, 2022.

DATED this May 17, 2022.

Jan Noriyuki
Commission Secretary
11331 West Chinden Blvd, Ste 201-A
Boise, ID 83714
(208) 334-0323
Secretary@puc.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 31-6101-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)

31.61.01 – RULES FOR THE MEASUREMENT OF STRAY CURRENT OR VOLTAGE
(STRAY VOLTAGE RULES)

GENERAL PROVISIONS

Rules 0 through 20

000. LEGAL AUTHORITY (RULE 0).

Idaho Public Utilities Law, Sections 61-515 and 61-520, Idaho Code, and the Stray Current and Voltage Remediation Act, Section 61-803, Idaho Code. ()

001. TITLE (RULE 1).

01. Title. The title of these rules is the IDAPA 31.61.01, “Rules for the Measurement of Stray Current or Voltage” (Stray Voltage Rules). ()

002. -- 003. (RESERVED)

004. INCORPORATION BY REFERENCE – REFERENCE TO SAFETY CODES (RULE 4).

01. Safety Codes. ()

a. The National Electrical Safety Code (NESC) is applicable to public utilities and is adopted by the Commission Order, “Safety and Accident Reporting Rules for Utilities Regulated by the Idaho Public Utilities Commission.” ()

b. The National Electrical Code (NEC) is applicable to the installation of wires and facilities used to convey electric current and to apparatus to be operated by such electric current. Adoption of the National Electrical Code is found at Section 54-1001, Idaho Code, and IDAPA 07.01.06, “Rules Governing the Use of National Electrical Code,” Section 011. ()

005. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

01. Incorporation by Reference. These rules incorporate by reference definitions found in Idaho Code 61-802, the NEC and the NESC. ()

02. Equipotential Plane (EPP). See NEC. ()

03. Primary System. The high voltage utility electrical system including the generation, transmission and distribution systems. It also refers to the high voltage side of a distribution transformer. ()

04. Secondary System. Means the low-voltage utility electrical system on the secondary side of a distribution transformer. The dairy’s on-farm system begins on the dairy’s side of the metering points, except for dairies metered on the high voltage side of the transformer(s). In the case of dairies metered on the high voltage side, the on-farm system begins at the transformer’s low-voltage lugs. ()

05. Service Provider. Any person, company or other legal entity providing stray voltage or current

testing, consulting, measurements, analysis services, construction, or hardware. ()

06. Shunt Resistor. A physical resistor or combination of resistors used to simulate a dairy cow’s body resistance, body-to-metal contact resistance, and hoof-to-earth contact resistance between the cow and contact points during the measurement of cow contact voltage. A shunt resistor shall be five hundred (500) ohm plus or minus two percent (+/- 2%). ()

07. Source Resistance. That portion of resistance in the circuit, other than the resistance of the cow and its contact resistance, when the cow is completing a circuit between contact points. ()

08. Stray Current or Voltage. ()

a. Unless the context otherwise requires, the term “stray voltage” shall mean stray current or stray voltage. ()

09. Tests, Measurements, Procedures and Analysis. Means any or all of the stray voltage testing, measurement, work and work product defined in these rules. ()

10. Transient. Transient or transient deviation means a non-steady state increase or spike in voltage or current. For the purpose of identifying and reporting transients in cow contact voltage (Vcc) or current (Icc), a transient occurs when the recorded maximum Vcc or Icc in a recording interval exceeds two hundred percent (200%) of the steady state Vcc or Icc recorded during the same recording interval. ()

11. Utility. Means a public electric utility as defined in Section 61-332A, Idaho Code. ()

011. -- 020. (RESERVED)

APPLICABILITY AND ADMISSIBILITY
Rules 21 through 30

021. UTILITY (RULE 21).

A utility measuring or testing for stray voltage or current at the request of a dairy producer, as directed by the Commission or on its own initiative, shall conduct such measurements in accordance with these rules. ()

022. DAIRY PRODUCER (RULE 22).

01. Serving Notice on the Utility. A dairy producer providing written notice to a utility pursuant to Section 61-804, Idaho Code, may provide such notice with or without first having conducted tests or measurements of stray voltage. ()

02. Cooperation. When a written notice is filed with the utility, the dairy is obligated to make any contact point(s), service panels, grounding rods or other electrical equipment at the dairy available to the utility for measuring and testing. The utility shall provide reasonable notice and cooperate with the dairy producer to establish an appropriate time to conduct the tests and measurements. The dairy shall cooperate with the utility so that all tests and measurements necessary to identify the existence and magnitude of stray current or voltage, if any, are completed within fourteen (14) days of the utility’s receipt of such notice. ()

023. SERVICE PROVIDERS (RULE 23).

All service providers shall follow these rules. ()

024. -- 030. (RESERVED)

QUALIFICATIONS OF PERSONS PERFORMING AND ANALYZING
RESULTS OF STRAY VOLTAGE TESTS
Rules 31 through 50

031. PERFORMANCE OF TESTS AND MEASUREMENTS (RULE 31).

Measuring and testing for stray voltage under these rules for consideration by the Commission shall be performed by a qualified testing professional as such: ()

01. Professional Engineer. A professional engineer, licensed in any state, who has completed no fewer than forty-eight (48) hours of Commission-approved stray voltage training and who has been involved in no fewer than five (5) prior investigations involving the measurement or testing of stray voltage. ()

02. Master Electrician. A master electrician, licensed in any state, who has completed no fewer than forty-eight (48) hours of Commission-approved stray voltage training and who has been involved in no fewer than five (5) prior investigations involving the measurement or testing of stray voltage. ()

03. Technician. A technician who, under the supervision of a person presumed qualified under Subsections 031.01 and 031.02, has completed no fewer than eight (8) hours of Commission-approved stray voltage training and who has been involved in no fewer than five (5) prior investigations involving the measurement or testing of stray voltage. ()

032. DATA ANALYSIS (RULE 32).

Analysis of data under these rules, for consideration by the Commission, shall be performed by a qualified analyst. A professional engineer, licensed in any state, who has completed no fewer than forty-eight (48) hours of stray voltage training and who has been involved in no fewer than five (5) prior investigations involving measurement or testing of stray voltage shall be presumed to be a qualified analyst. ()

033. PERSONS OTHERWISE QUALIFIED (RULE 33).

A person who does not satisfy the qualifications in Sections 031 and 032, may nonetheless be determined by the Commission to be a qualified testing professional or a qualified analyst if, on motion of any party, the Commission finds that person otherwise possesses the knowledge, skill, experience, training, or education that qualifies that person to offer expert testimony before the Commission. ()

034. -- 050. (RESERVED)

**CALIBRATION OF AND EQUIPMENT USED FOR MEASURING
AND RECORDING VOLTAGE, CURRENT, AND RESISTANCE**
Rules 51 through 70

051. GENERAL REQUIREMENTS FOR STRAY VOLTAGE MEASURING AND RECORDING EQUIPMENT (RULE 51).

Equipment used for the measurement or testing of stray voltage, current, and resistance shall meet the following criteria: ()

01. Resolution and Accuracy. The accuracy and resolution of any instrument used to measure or record cow contact voltage or current, shall limit the error to five percent (5%) or less at one volt (1 V) or two milliamperes (2 mA). ()

02. Voltage Measurement. Instruments used to measure cow contact voltage shall be capable of separating and independently measuring alternating current (AC) and direct current (DC) voltages. These instruments shall have a minimum internal impedance of ten thousand (10,000) ohms and shall be capable of measuring the true-rms voltage. ()

03. Current Measurement. A clamp-on ammeter, a digital multi-meter (DMM) with clamp-on device, or an in-line ammeter shall be used to measure current through a conductor or resistor connected between two (2) points. The meters shall be capable of separating and independently measuring alternating current (AC) and direct current (DC) and shall be capable of measuring the true-rms current. Care must be taken to assure that clamp-on ammeters used have the required resolution and accuracy. ()

04. Resistance Measurement. Resistance shall be measured using either a volt ohmmeter (VOM) or a DMM. Resolution shall be to the level of one (1) ohm or less when measuring a resistance of less than one thousand ()

(1,000) ohm. Accuracy shall be within plus or minus five (+/-5) ohm for a five hundred (500) ohm resistance. ()

05. Resistance-to-Earth Measurement. Grounding electrode resistance-to-earth measurements shall be made with a three- (3) point fall-of-potential instrument or a clamp-on resistance-to-earth tester. ()

052. CALIBRATION REQUIREMENTS (RULE 52).

01. Measuring Equipment Calibration. All measuring equipment shall be calibrated according to the manufacturer's recommended calibration schedule, but no less than annually, to meet the manufacturer's specifications for the accuracy and resolution of the equipment. Measuring equipment shall not be used after its next "calibration due" date for measurements or tests conducted during a stray voltage investigation. Calibration shall be performed by either: ()

a. The manufacturer of the equipment, who shall certify that the equipment meets the manufacturer's specifications for accuracy and resolution; or ()

b. A laboratory currently certified as meeting all applicable Institute of Electrical and Electronic Engineers (IEEE) and International Organization for Standards (ISO) standards. ()

02. Calibration Certificates. The service provider performing the tests and measurements shall maintain certificates from the manufacturer or the calibration laboratory demonstrating compliance with calibration requirements. ()

03. Field Check. Before voltage or current measurement or testing is performed, the instrument shall be field-checked by comparing measurements to those of other instruments or against a known source. ()

053. REQUIREMENTS FOR MONITORING AND RECORDING DEVICES (RULE 53).

Digital recording devices shall be used for the purpose of recording current and voltage for extended periods, such as the forty-eight (48) hour test. The recording devices shall have the same level of resolution and accuracy as the meters being used for the measurements. Monitoring systems, which combine measuring and recording functions in a single instrument, shall have the same level of resolution and accuracy as specified in Section 051. Recording devices and monitoring systems shall be capable of recording transient deviations of one-tenth (0.1) second or less in duration from the steady state. Digital recording devices, which have deviation settings, shall permit the deviation setting to be set "low" enough to meet the resolution and accuracy requirements in Subsection 051.01 of these rules. All recording devices shall be able to log the time and date of all data recorded and shall have their internal clocks synchronized. ()

054. REQUIREMENTS FOR LOAD BOXES (RULE 54).

01. Volts. A load box shall be a primarily non-inductive nominal two hundred forty (240) volt, resistance heating type load with a minimum nominal full load of eighteen (18) kilowatts (kW). ()

02. Split-Load. A load box shall be capable of operating at two (2) or more load settings, including approximately fifty percent (50%) and one hundred percent (100%) of the load box's rated total load. ()

055. -- 070. (RESERVED)

TESTING AND MEASUREMENT PROCEDURES

Rules 71 through 80

071. STRAY CURRENT OR VOLTAGE TESTS (RULE 71).

Subject to Subsection 071.02, there are six (6) tests used to detect and measure stray current or voltage. ()

01. Scheduling of Stray Voltage Tests. Efforts shall be made to perform the tests under conditions substantially similar to those conditions existing at the time(s) the dairy producer believes stray voltage to be a problem. ()

- a. Test 1 - Cow Contact Test; ()
- b. Test 2 - Forty-Eight (48) Hour Test; ()
- c. Test 3 - Primary Profile Test; ()
- d. Test 4 - Secondary Neutral Voltage Drop Test; ()
- e. Test 5 - Load Box Test; and ()
- f. Test 6 - Signature Test. ()

02. Testing Sequence. Test 1 shall be performed first. Tests 1 and 2 are used to determine the presence and level of stray voltage and shall be performed in all investigations, subject to the provisions of Subsection 071.03. Tests 3, 4, 5, and 6 may be performed in any order and may be performed without first determining that these tests are required under Paragraph 071.02.b. Tests 3, 4, 5, and 6 may be performed prior to starting the recording for Test 2 or while Test 2 is in progress. Test 2 may be interrupted as necessary to conduct Tests 4, 5, and 6, or for review and analysis of the data recorded up to that point. ()

a. If the results from Tests 1 and 2 indicate that stray voltage does not exceed the preventive action level (PAL), the utility has no further testing or remediation obligations under these rules during this test cycle. ()

b. If the PAL is exceeded, the utility shall perform the remaining four (4) tests except as provided in Subsection 071.03. The utility shall also perform analysis to determine whether the portion of the stray current or voltage attributable to an off-farm source exceeds fifty percent (50%) of the PAL. ()

c. If the PAL is exceeded, and the portion of the stray current or voltage attributable to an off-farm source does not exceed fifty percent (50%) of the PAL, the utility has no further testing or remediation obligations. ()

d. If the PAL is exceeded, and the portion of the stray current or voltage attributable to an off-farm source exceeds fifty percent (50%) of the PAL, the utility shall conduct remediation pursuant to Section 091. Under this condition, the forty-eight (48) hour recording of Test 2 may be reduced to no fewer than twenty-four (24) hours. ()

e. For all testing conducted under these rules, the utility shall have a qualified analyst prepare a report pursuant to Section 082. ()

03. Suspended or Limited Testing. The utility may suspend a stray voltage investigation or conduct a limited evaluation, as agreed between the utility and the dairy producer. ()

072. PREPARATION FOR TESTING (RULE 72).
The person performing the tests shall perform the following: ()

01. Remote Reference Grounding Rod. ()

a. Remote reference grounding rod(s) shall be installed and penetrate moist soil to a depth of thirty (30) inches. When practicable, remote reference rods shall be installed at least twenty-five (25) feet away from the nearest underground conductive electrical equipment of any type or at a distance equal to three (3) to four (4) times the buried depth of any metallic structure connected to the service entrance neutral. The reference ground rod shall be located not closer than twenty-five (25) feet from the centerline of a primary electrical conductor right-of-way. A reference rod shall be located not closer than one hundred (100) feet from the edge of a transmission line right-of-way. ()

b. All remote reference grounding rods shall be checked for “remoteness” prior to their use for tests or measurements and if found to be insufficiently “remote,” a new location for that reference ground rod shall be found

and retested for remoteness. Remoteness of the reference ground shall be determined by measuring the voltage from the transformer grounding electrode conductor to the remote reference ground. The resistance-to-earth of the transformer grounding electrode shall be measured. The grounding electrode current shall be measured. Remoteness is considered adequate if the measured voltage (transformer grounding conductor to reference ground, V_p) is within twenty percent (20%) of the voltage calculated by multiplying the grounding electrode current by the grounding electrode resistance-to-earth. ()

c. If the transformer grounding electrode is within twenty-five (25) feet of other primary or secondary grounding electrodes, this remoteness test shall be conducted at the first primary system grounding electrode upstream of the transformer that is greater than twenty-five (25) feet from other primary or secondary system grounding electrodes. ()

02. Inspecting the Transformer(s). Prior to testing, the utility transformer shall be inspected, grounding electrode resistance measured, and any repairs necessary for safety be made and recorded. In the case of a customer-owned transformer, qualified personnel shall inspect the installation, measure grounding electrode resistance, and make and record any repairs necessary for safety. Measurements that require contact with utility or customer-owned primary wires or equipment shall be made by the utility or other qualified personnel. ()

03. In-Line Ammeters. If in-line or series ammeters are used, they shall be installed under safe conditions in accordance with the NESC and the NEC with the entire dairy system or the specific circuit to be tested de-energized. ()

04. Pre-Test Documentation. ()

- a. All pre-test calibration requirements from Section 052 shall be completed and documented. ()
- b. A sketch or drawing of the dairy shall be prepared indicating: ()
 - i. The location of the buildings; ()
 - ii. Secondary electrical service panels and secondary feeder systems serving cow contact areas; ()
 - iii. Transformer(s) and central distribution point; ()
 - iv. Existing grounding electrodes (if known); ()
 - v. The location of all cow contact points to be tested; ()
 - vi. All remote reference grounding rods; and ()
 - vii. All primary and secondary neutral test points used in conjunction with the remote reference grounding rod(s). ()

c. A listing of planned test points shall be prepared using the applicable form prior to beginning each test. Each test shall be listed separately and specific reference numbers shall be given to each planned test point. ()

05. Safety. ()

a. If the service provider reasonably concludes that a dairy's noncompliance with the NEC poses a significant and immediate safety hazard which prevents completion of any test or measurement required by these rules, then the service provider's obligations to proceed under these rules shall be suspended until the hazard is eliminated. ()

b. At the discretion of the service provider conducting the test, livestock shall be removed from any

area where electrical equipment or wiring is examined or electrical measurements are taken. Testing may be suspended if the presence of cows or other animals creates a potential hazard to testing personnel. The locations of electric fences and other electrified cow control devices shall be noted and de-energized where practical. ()

073. TEST 1 -- COW CONTACT TEST (RULE 73).

01. Purpose. This test is to determine the location(s), if any, where stray current or voltage exceeds the PAL and to identify the location(s) at which the cow contact voltage will be recorded in the forty-eight (48) hour test. ()

02. Selection of Cow Contact Points. The selection of cow contact points to be tested shall include a sufficient number of locations reasonably likely to demonstrate the presence of stray voltage or current, if any. ()

03. Conducting the Test. The voltage across the shunt resistor or current through the shunt resistor shall be measured between cow contact points as shown in Figure 1. The source resistance shall be calculated during analysis for all cow contact points. ()

a. When using a voltmeter to measure voltage between contact points where one (1) of those points is the floor surface, the equipment shall be arranged as shown in Figures 1 and 2, using a metal plate, which shall make a high quality conductive contact with the ground or floor. If the service provider is unsure of having a high quality conductive contact with the floor or ground, then the procedure described in Paragraph 073.03.c. shall be followed. If necessary, corrosion shall be removed from the point(s) where test lead(s) make contact with metal equipment. ()

b. When using an in-line milliammeter or a clamp-around milliammeter to measure current between contact points and one (1) of those points is the floor surface or earth, the equipment shall be arranged as shown in Figure 3, using a metal plate which shall make high quality conductive contact with the ground or floor. If the service provider is unsure of having a high quality conductive contact with the floor or ground, then the procedures described in Paragraph 073.03.c. shall be followed. If necessary, corrosion shall be removed from the point(s) where test lead(s) make contact with metal equipment. ()

c. A metal plate used to make an electrical contact with the earth or floor shall be of regular shape (square, rectangular or round), and shall have a surface area equal to or greater than sixteen (16) square inches (4 inches x 4 inches or equivalent). Place a weight not less than twenty (20) pounds on the metal plate. This weight shall be applied evenly across the metal plate and not to the adjacent concrete or earth. Place the metal plate a minimum distance of twelve (12) inches from any metal equipment making contact with the floor or earth. ()

i. Where the metal plate is to be placed on a concrete floor, the surface shall be flat. Clean the floor surface with a stiff brush to remove debris that may add excess resistance. Use water to clean the floor surface at the point where the metal plate will be placed. Place a paper towel or similar material soaked in saltwater between the metal plate and the concrete floor. ()

ii. Where the metal plate is to be placed on the ground or earth surface, the surface shall be flat. Remove any debris and add water to the area, if necessary, to dampen the soil. The surface of the metal plate that will make contact with the earth shall be clean and free of corrosion before use. Remove any corrosion, if necessary. ()

04. Recording the Data. The person conducting this test shall record the location of, and measured values at, each test point. At each cow contact location, an open circuit voltage reading (Voc) and a voltage with five hundred (500) ohm nominal shunt resistor placed across the input to the meter (V_{shunt}) shall be taken. These readings shall be taken with ten (10) seconds or less time between each reading. Alternatively, a current measurement (I_{shunt}) may be taken in place of the voltage reading (V_{shunt}). Data for these test points shall be recorded on the form in Appendix 1. ()

05. Source Resistance Calculation. The source resistance (R_{source}) shall be calculated for each cow contact location measured and the value recorded in Appendix 1. The following formulas shall be used to calculate

source resistance.

$$R_{\text{source}} = \frac{V_{\text{oc}} - V_{\text{shunt}}}{V_{\text{shunt}}} \times R_{\text{shunt}}$$

$$R_{\text{source}} = \frac{V_{\text{oc}}}{I_{\text{shunt}}} - R_{\text{shunt}} \quad (\quad)$$

074. TEST 2 -- FORTY-EIGHT HOUR TEST (RULE 74).

01. Purpose. This test is to determine whether stray current or voltage exceeds the PAL at selected location(s) over a forty-eight (48) hour period, subject to Subsection 074.06 and Paragraph 071.02.d. The test also demonstrates whether the primary or secondary sides of the system have a specific impact on the recorded current or voltage at specific times of day. ()

02. Setup. A digitizing data recorder with averaging capability and capable of detecting and recording transient deviations of one-tenth (0.1) second or less in duration shall be used to record the following: ()

a. Voltage from primary neutral at the transformer to remote reference ground, V_p . ()

b. Voltage from secondary neutral in the service panel serving the area of the cow contact to remote reference ground, V_s . ()

c. Voltage drops (V_p s) from primary neutral at the location of connection for V_p to secondary neutral at the location of the connection for V_s . ()

d. Cow contact current through (I_{cc}) or voltage across a five hundred (500) ohm resistor at the high voltage point(s) found in Test 1, V_{cc} . ()

03. Measurement Interval. The results of the forty-eight (48) hour test may be highly indicative of the presence of stray voltage. A recording interval as high as ten (10) seconds may be used provided that transient deviations of voltage or current of one-tenth (0.1) second or less in duration of voltage or current are recorded to the maximum ability of the instrument. ()

04. Measurement at the Cow Contact Point(s). Measurements to the earth or concrete surface shall be to a metal plate as described in Paragraph 073.03.c. When making measurements to metal objects, corrosion shall be removed to obtain a low resistance connection. ()

05. Recording the Data. Data gathered by the recording equipment during the forty-eight (48) hour test including transients shall be downloaded and retained with the records of the investigation. In addition, the steady-state data shall be summarized in the investigation report. The recorded data shall be made available to the dairy producer or utility upon request. The person conducting this test shall record the location of, and measured values at, each test point. The identification of the cow contact point shall be recorded on the form in Appendix 2. Transient deviations shall be recorded on the supplemental data form, page 3 of 3 in Appendix 2. A plot of the voltage versus time may be substituted for the recording of measured values in Appendix 2. ()

06. Reduced Recording Period. If a qualified analyst concludes that remediation by the utility is required under Paragraph 071.02.d. prior to the completion of a forty-eight (48) hour recording period, the recording period may be reduced to no fewer than twenty-four (24) hours. ()

075. TEST 3 -- PRIMARY PROFILE TEST (RULE 75).

01. Purpose. This test is to measure or calculate neutral-to-earth voltage (NEV) for a multi-grounded distribution system. ()

02. Conducting the Test. The primary profile test requires concurrent measurement of the ground electrode resistance and current at all primary system ground points within three quarters (3/4) of a mile on either side of all primary service points serving the dairy, or to the end of the line if less than three quarters (3/4) of a mile. Alternatively, the voltage between a remote grounding rod and the primary ground point being tested may be measured. ()

a. This test shall be conducted starting at one (1) end of the distribution system and working toward the other end along the main primary distribution system. Figure 4 below illustrates the procedure. ()

i. Where the dairy is served by a dedicated tap of less than one-half (1/2) mile in length from a distribution line, the neutral-to-earth voltage shall be measured at each primary ground along the tap and along the distribution line to a distance of three-quarters (3/4) of a mile in each direction from the point of the tap; or ()

ii. Where a dairy is served by a dedicated tap that extends more than one-half (1/2) mile from the distribution line, the neutral-to-earth voltage shall be measured at each primary grounding electrode along the tap and along the distribution line to a distance of one-half (1/2) mile in each direction from the point of the tap. ()

03. Recording the Data. The person conducting this test shall record the location of, and measured values at, each test point. Data and calculation results for these test points shall be recorded on the form in Appendix 3. ()

076. TEST 4 -- SECONDARY NEUTRAL VOLTAGE DROP TEST (RULE 76).

01. Purpose. This test is used to determine the impact of each secondary service on the neutral-to-earth (NEV) and cow contact voltages on the dairy under controlled conditions. ()

02. Conducting the Test. This test shall be performed for all service entrances. A proxy load of known characteristics (such as a resistive load like a one hundred twenty (120) volt, fifteen hundred (1,500) watt hairdryer) is required for this test. The proxy load must create a known and stable current and subsequent voltage drop for each neutral serving a main panel, sub-panel or end-of-service area. All service entrances other than that being tested shall be turned “off” to perform this test. A diagram showing the connections and measurement points for this test is shown in Figure 5. ()

03. Data Collection. The following data shall be collected for each secondary neutral tested: ()

a. Gauge and type of neutral wire. ()

b. Length of neutral wire. ()

c. Neutral current, I_{sn} . ()

d. Voltage drop (V_{DropM}) between both ends of the secondary neutral being tested. ()

e. Cow contact voltage (V_{cc}) or current (I_{cc}) at the same points used in the forty-eight (48) hour test. ()

f. Primary neutral at the transformer to reference ground voltage, V_p . ()

g. Secondary neutral to reference ground voltage, V_s . ()

04. Measurements. The three (3) voltages (V_{cc} , V_p and V_s) shall be measured with the proxy load “off” and “on.” Calculated expected voltage drops (V_{DropC}) (see Appendix 4) shall be compared with measured voltage drops (V_{DropM}). If the measured and calculated voltage drops differ significantly, further investigation shall be undertaken to determine the source of additional voltage drop within the circuit. Neutral current shall be measured and recorded with the proxy load on (I_{sn}). ()

05. Recording the Data. Any person conducting this test shall record the location of, and measured

values at, each test point. Data and calculation results for these test points shall be recorded on the form in Appendix 4. ()

077. TEST 5 -- THE LOAD BOX TEST (RULE 77).

01. Purpose. To determine the extent to which the primary system contributes to stray current or voltage at cow contact points. For dairies with three (3) phase balanced primary service, the service provider shall perform Steps One and Two in Paragraph 077.02.b. below. ()

02. Conducting the Load Box Test. This test shall be performed at the same time of day as the time(s) of highest cow contact voltage found in the forty-eight (48) hour test. During this test, voltage and current shall be measured and recorded at the points indicated in Figure 6. ()

a. The load box test requires the recording of eight (8) data points during each of the five (5) test steps. The eight (8) data points that shall be measured or calculated and recorded for each step are: ()

- i. Primary line to neutral voltage, V_{pri} . ()
- ii. Load Box Current, I_{lb} . ()
- iii. Voltage at load box connection to secondary system, V_{lb} . ()
- iv. Calculate transformer current I_p using $I_p = \frac{I_{lb} \times V_{lb}}{V_{pri}}$. ()
- v. Voltage from primary neutral at the transformer to remote reference ground rod, V_p . ()
- vi. Voltage from secondary neutral in the service panel serving the area of the cow contact to remote reference ground rod, V_s . ()
- vii. Voltage from primary neutral at the transformer to secondary neutral at the service panel serving the area of cow contact, V_{ps} . ()
- viii. Cow contact voltage (V_{cc}) or current (I_{cc}) at the same point(s) used in the forty-eight (48) hour test. ()

b. Except for dairies with three (3) phase balanced primary service, the following five (5) test steps shall each be conducted for at least two (2) minutes: ()

- i. Step One: The load box shall be de-energized, the dairy shall remain “on.” ()
- ii. Step Two: The load box shall be de-energized, the dairy shut “off.” ()
- iii. Step Three: The load box shall be set to half load, the dairy shut “off.” ()
- iv. Step Four: The load box shall be set to full load, the dairy shut “off.” ()
- v. Step Five: The load box shall be set to full load, the dairy shall be turned “on.” ()

03. Calculating the K Factor. The K factor is a calculated ratio (V_{cc}/V_s). The K factor should be less than one (1) because V_{cc} (cow contact voltage) should be less than V_s (the dairy ground to reference ground voltage). If the K factor is greater than one (1), then there is contribution to V_{cc} from sources other than V_s . ()

04. Recording the Data. The person conducting this test shall record the location of, and measured values at, each test point. Data and calculation results for these test points shall be recorded on the form in Appendix 5. ()

078. TEST 6 -- SIGNATURE TEST (RULE 78).

01. Purpose. This test is used to determine the contribution to stray current or voltage of individual pieces of equipment operating on the dairy. The test is best performed when there is minimal farm electrical activity. ()

02. Conducting the Signature Test. During this test, individual pieces of major current drawing equipment shall be started and stopped. The effects of starting, operating, and stopping each piece of equipment shall be measured and recorded for a period of operation of at least fifteen (15) seconds. The person conducting the test shall identify and record the equipment being tested and record the specific times that the equipment was started and stopped. A digitizing data recorder with averaging capability shall be used to measure and record the required electrical data. These measurements shall be taken at the same locations at the dairy where measurements were taken for the purpose of the load box test and forty-eight (48) hour test. ()

- a.** Voltage from primary neutral at the transformer to remote reference ground rod, V_p . ()
- b.** Secondary neutral at the service panel serving the area of cow contact to remote reference ground voltage, V_s . ()
- c.** Primary neutral voltage drop (V_{ps}) from the location of connection for V_p to secondary neutral voltage at the location of the connection for V_s . ()
- d.** Cow contact voltage (V_{cc}) or current (I_{cc}) at the preselected point. ()

03. Recording the Data. All of the data gathered by the recording equipment during the signature test, including transients shall be downloaded and retained with the records of the investigation. In addition, the steady state data shall be summarized in the investigation report. The recorded data shall be made available to the dairy producer or utility upon request. The location of all test point(s) shall be recorded on the form in Appendix 6. A plot of the voltage versus time may be substituted for the recording of measured values on Appendix 6. ()

079. -- 080. (RESERVED)

ANALYSIS AND REPORTING THE DATA
Rules 81 through 90

081. ANALYZING THE COLLECTED DATA (RULE 81).

01. Cow Contact Points. Examine the data recorded for the forty-eight (48) hour test in Appendix 2 and determine the highest steady state value of cow contact voltage (V_{cc}) or current (I_{cc}). Determine the value of primary neutral to reference voltage (V_p) that was present for the highest cow contact value. Record these values on the data sheet of Appendix 7. These values shall be identified as “test cow contact voltage or current” (V_{cc} 48hr or I_{cc} 48hr) and “primary neutral to reference voltage at time of maximum cow contact voltage or current” (V_p 48hr). The three (3) data sets created from the values are: ()

- a.** The primary to reference ground voltage and the cow contact voltage or current measured during the load box test (Appendix 5) with the farm power “off” and the load box “off” shall be recorded on the data sheet of Appendix 7 as V_p OFF and either V_{cc} OFF or I_{cc} OFF. ()
- b.** The primary to reference ground voltage and the cow contact voltage or current measured with the load box set at one-half (1/2) load shall be recorded on the data sheet of Appendix 7 as V_p HALF LOAD and either V_{cc} HALF LOAD or I_{cc} HALF LOAD. ()
- c.** The primary to reference ground voltage and the cow contact voltage or current measured with the load box at maximum shall be recorded on the data sheet of Appendix 7 as V_p FULL LOAD and either V_{cc} FULL LOAD or I_{cc} FULL LOAD. ()

02. Contributions to Stray Voltage or Current for Single Phase Dairies. The utility contribution to

cow contact voltage or current shall be determined using the following formula. Compare the values determined to the preventive action level (PAL).

Utility contribution to
cow contact voltage =
$$\frac{V_{p48} - V_{pHALF}}{V_{pFULL} - V_{pHALF}} \times (V_{cc FULL} - V_{cc HALF}) + V_{cc HALF}$$

or

Utility contribution to
cow contact current =
$$\frac{V_{p48} - V_{pHALF}}{V_{pFULL} - V_{pHALF}} \times (I_{cc FULL} - I_{cc HALF}) + I_{cc HALF} \quad (\quad)$$

03. Contributions to Stray Voltage or Current for Three Phase Dairies. The utility contribution to cow contact voltage or current for dairies with three (3) phase balanced load service, shall be determined by directly using the results of the load box test results for Step 1 and Step 2 as specified in Paragraph 077.02.b. ()

a. The Vcc measured during Step 1 of the load box with the load box “off” and the dairy “on” will be the total Vcc. ()

b. The Vcc measured during Step 2 of the load box test with the load box “off” and the dairy “off” is the contribution to Vcc from the utility, Vccutility. ()

c. The contribution to Vcc by the dairy is the difference between Vcc and Vccutility, Vccdairy = Vcc - Vccutility. ()

082. REPORTING (RULE 82).

Within a reasonable period of time after completion of any tests required to be performed by the utility under these rules, a qualified analyst shall prepare a written report. The report shall include a summary of the tests performed, a copy of the sketch or drawing of the dairy prepared pursuant to Section 072, all of the data or results obtained from the tests, and an analysis of the data or results obtained from the tests. If remediation was required under these rules, the report shall specify the actions taken or to be taken. The utility shall provide a copy of the written report to the dairy producer. ()

083. -- 090. (RESERVED)

REMEDIAL ACTIONS AND COMMISSION PROCEEDINGS
Rules 91 through 999

091. REMEDIATION (RULE 91).

01. Utility System. If the utility is required to conduct remediation, it shall commence such remediation within five (5) business days. The utility shall diligently pursue to completion remedial procedures which shall reduce, and are reasonably likely to sustain, that portion of the stray current or voltage attributable to the utility’s distribution system to a level equal to or less than fifty percent (50%) of the PAL. This may include addressing other off-dairy sources. ()

02. Other Dairies, Farms and Industrial Sites. If a utility’s contribution to stray voltage exceeds fifty percent (50%) of the PAL and the utility determines that another customer is a significant contributing source of stray voltage, the utility shall notify both the dairy and the other customer in writing. ()

092. COMMISSION PROCEEDINGS (RULE 92).

01. Filing with the Commission. All petitions seeking relief under Section 61-805, Idaho Code, shall be filed with the Commission Secretary pursuant to Section 005. Petitions shall conform to IDAPA 31.01.01, Section

053. The petitioner shall file an original and five (5) copies of the petition. ()

093. FIGURES AND APPENDICES (RULE 93)

All figures and appendices to these rules can be found on the Commission website at www.puc.idaho.gov. ()

094. -- 999. (RESERVED)

IDAPA 31 – IDAHO PUBLIC UTILITIES COMMISSION

31.81.01 – ENERGY CONSUMPTION REPORTING RULES

DOCKET NO. 31-8101-2201 (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 Authority of the Electric and Natural or Manufacture Gas Consumption from Ground Water Pumping Act (hereinafter the Energy Consumption Act), Chapter 13, Title 62, Idaho Code, and the Public Records Act Section 74-107(13), Idaho Code and [Executive Order No. 2020-01](#).

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 20, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to 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 IDAPA 31.81.01 up for review in 2022.

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 April 6, 2022 – Administrative Bulletin, [Vol. 22-4 page 45-46](#).

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: None.

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 July 27, 2022.

DATED this May 17, 2022.

Jan Noriyuki
Commission Secretary
11331 West Chinden Blvd, Ste 201-A
Boise, ID 83714
(208) 334-0323
Secretary@puc.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 31-8101-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)

31.81.01 – ENERGY CONSUMPTION REPORTING RULES

GENERAL PROVISIONS

Rules 0 through 10

000. LEGAL AUTHORITY (RULE 0).

Chapter 13, Title 62, Idaho Code.

()

001. TITLE AND SCOPE (RULE 1).

These rules apply to all energy suppliers. These rules should be construed in connection with the Energy Consumption Act, the Public Utilities Law, the Public Records Law, and other applicable state laws.

()

002. -- 003. (RESERVED)

004. PUBLIC RECORD ACT COMPLIANCE (RULE 4).

The energy consumption reports required by these rules are exempt from public disclosure and copying under Section 74-107(13), Idaho Code.

()

01. Consumption Reports. The Department may release consumption reports to state entities including water districts and ground water districts to determine annual water usage or to other state and federal entities for research purposes provided the identity of individual customers or accounts is protected from public disclosure and cannot be ascertained from the reports.

()

005. DEFINITIONS (RULE 5).

The following terms used in these rules are defined:

()

01. Commission. The Idaho Public Utilities Commission.

()

02. Consumption Reports. The reports created by the energy suppliers as authorized by these rules and submitted to the Department.

()

03. Department. The Idaho Department of Water Resources.

()

04. Energy Suppliers. All suppliers of electric power and natural or manufactured gas including all public utilities, municipal, mutual nonprofit, and cooperative corporations providing energy to an irrigation customer.

()

05. Geographic Areas. Areas served by energy supplies as designated by the Commission.

()

06. Irrigation Customer. A customer pumping ground water that is:

()

a. Receiving service from an energy supplier under an irrigation service tariff or rate schedule; or

()

b. Irrigating three (3) or more acres if such information is known to the energy supplier.

()

07. Irrigation Season. As used in these rules means the calendar period from March 1 through October 31 or the energy supplier's billing cycles that include the calendar period.

()

08. Service Location. The geographic position of the irrigation customer's pumping location(s) by address, pole number, legal description, longitude-latitude designations, or other description of where the service is delivered, to the extent such information is readily available to the energy supplier. ()

006. -- 010. (RESERVED)

REPORTING RULES
Rules 11 through 20

011. REQUEST FOR REPORTS (RULE 11).

No later than July 1 of each year, the Department may request consumption reports from energy suppliers for the current irrigation season. ()

01. Notification by Department. The Department will notify energy suppliers serving specific geographic areas that consumption reports must be submitted. ()

02. Submission of Consumption Reports. Once the Department requests the consumption reports, the energy supplier will prepare and submit the report to the Department as soon as possible following the close of the irrigation season but no later than January 5 of the following year. ()

012. CONTENTS OF CONSUMPTION REPORT (RULE 12).

01. Content of Consumption Reports. Each consumption report will contain, to the extent available, the customer's full name, customer account number, service location, service location identification number, and the amount of energy consumed in kilowatt hours (KWH), or cubic feet of gas, or other applicable volume measurement for each service location. For each service location, the annual consumption report will state how much energy the customer consumed for each billing period during the irrigation season, and for the entire irrigation season. ()

013. REPORT FORMAT (RULE 13).

Consumption reports will be forwarded to the Department electronically unless otherwise agreed to. ()

014. -- 020. (RESERVED)

REIMBURSEMENT RULES
Rules 21 through 999

021. REIMBURSEMENT OF COSTS (RULE 21).

Energy suppliers are entitled to reimbursement by the Department of the costs for preparing and submitting the consumption reports. Energy suppliers seeking reimbursement will itemize in sufficient detail their actual costs in preparing and submitting the data. ()

022. RESOLUTION OF REIMBURSEMENT DISPUTES (RULE 22).

When an energy supplier and the Department are unable to resolve a reimbursement dispute, either party or both may seek informal dispute resolution with the Commission's staff. If the outcome of the informal proceeding is unsatisfactory to either party, the aggrieved party may file a formal complaint with the Commission under its Rules of Procedure. ()

023. -- 999. (RESERVED)

IDAPA 36 – IDAHO STATE BOARD OF TAX APPEALS

DOCKET NO. 36-0101-2200

NOTICE OF OMNIBUS RULEMAKING – TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule being adopted through this omnibus rulemaking as listed in the descriptive summary of this notice is July 1, 2022.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 63-3808, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code. If scheduled, the hearing site(s) will be accessible to persons with disabilities and requests for accommodation are made not later than five (5) days prior to the hearing, to the agency address below.

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

This temporary and proposed rulemaking adopts and publishes the following rule chapter previously submitted to and reviewed by the Idaho Legislature under IDAPA 36, rules of the Idaho State Board of Tax Appeals:

IDAPA 36

- 36.01.01, *Idaho Board of Tax Appeals Rules.*

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

This temporary rule is necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. The temporary rule chapter implements the duly enacted laws of the state of Idaho, provides citizens with the detailed rules and standards for complying with those laws, and assists in the orderly execution and enforcement of those laws. The expiration of this rule chapter without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by this rule.

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: 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 rule chapter being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

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 rule attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Cindy Pollock at 208-334-3354.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

DATED this July 1, 2022.

Cindy Pollock, Director
Idaho Board of Tax Appeals
1673 W. Shoreline Drive, Suite 120, Boise, ID 83702
P.O. Box 36, Boise, ID 83720-0088
Phone: 208-334-3354
Fax: 208-334-4060
Email: cindy.pollock@bta.idaho.gov

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF OMNIBUS RULEMAKING DOCKET NO. 36-0101-2200
(New Chapter)**

36.01.01 – IDAHO BOARD OF TAX APPEALS RULES

000. LEGAL AUTHORITY (RULE 0).

These rules are promulgated in accordance with Section 63-3808, Idaho Code. (7-1-22)T

001. TITLE AND SCOPE (RULE 1).

01. Title. These rules are titled IDAPA 36.01.01, “Idaho Board of Tax Appeals Rules.” (7-1-22)T

02. Scope. These rules govern procedures before the Idaho Board of Tax Appeals (hereinafter “Board”). (7-1-22)T

002. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

As used in this chapter: (7-1-22)T

01. Appellant. A party filing an appeal with the Board. (7-1-22)T

02. Board. The Idaho Board of Tax Appeals, board members, presiding officer, or hearing officer as the context may dictate whenever it occurs in this chapter. (7-1-22)T

03. Case File. The official record maintained by the Board regarding an appeal. (7-1-22)T

04. Comparable Sales. Recently sold properties that are similar in locational and physical characteristics to the property being appraised. “Recently sold property” is property with a sale date prior to the effective date of valuation. (7-1-22)T

05. De Novo. The Board decides questions of fact and of law based on the evidence and legal arguments presented before the Board. A de novo review means the parties must present anew any previously submitted evidence or argument they wish to have considered. New evidence and argument may also be presented. (7-1-22)T

- 06. Ex Parte.** A communication on behalf of one (1) party with the Board where the other side is not present or included. (7-1-22)T
- 07. Parcel.** Each separate property ownership as represented by the county assessment rolls. (7-1-22)T
- 08. Party.** A person or governmental subdivision or agency authorized to appear before the Board. (7-1-22)T
- 09. Presiding Officer or Hearing Officer.** A member of the Board or other person assigned to conduct a conference or hearing for the Board. (7-1-22)T
- 10. Respondent.** A party answering or otherwise responding to an appeal. (7-1-22)T
- 11. Subject Property.** The property under discussion. (7-1-22)T
- 12. Substantive Issue.** An issue where a right, interest or privilege of any party is involved that may be prejudiced as opposed to minor or mere procedural matter. (7-1-22)T

011. ABBREVIATIONS (RULE 11).

- 01. BTA.** Idaho Board of Tax Appeals. (7-1-22)T
- 02. BOE.** County Board of Equalization. (7-1-22)T
- 03. STC.** Idaho State Tax Commission. (7-1-22)T

012. ORGANIZATION (RULE 12).

The Chairman of the Board serves as the administrative officer. (7-1-22)T

01. Election. The Chairman will be elected annually by the board members in consideration of experience with the Board and the member’s availability to serve and support the Board’s administrative duties. (7-1-22)T

02. Power. The Chairman will oversee the issuance of acknowledgment letters and notices, and is authorized to perform all other procedural duties such as issuing orders on nonsubstantive rulings without a formal meeting of the Board. (7-1-22)T

013. -- 019. (RESERVED)

020. PROCEDURE GOVERNED (RULE 20).

01. Procedure. These rules govern all practice and procedure before the Board. Except as provided in Rules 800 through 860, these rules are affirmatively promulgated to supersede IDAPA 04.11.01, et seq., “Idaho Rules of Administrative Procedure of the Attorney General”. (7-1-22)T

02. Purpose. The purpose for the establishment of the Idaho Board of Tax Appeals is to provide a fully independent, fair, and less expensive opportunity for taxpayers and other parties to appeal from most tax related decisions of county boards of equalization and the State Tax Commission. (7-1-22)T

021. LIBERAL CONSTRUCTION (RULE 21).

These rules will be liberally construed to secure just, speedy, and economical determination of all issues presented to the Board. (7-1-22)T

022. -- 029. (RESERVED)

030. REPRESENTATION AND PRACTICE BEFORE THE BOARD (RULE 30).

To the extent authorized by law the right to appear and practice before the Board is limited as follows: (7-1-22)T

01. Natural Persons. A natural person may represent himself or herself or be represented by an attorney. (7-1-22)T

02. Corporations. Duly authorized directors or officers of corporations representing the corporations for which they are, respectively, directors or officers; (7-1-22)T

03. Limited Liability Company (LLC). A duly authorized member, or a manager of a manager-managed LLC, representing the LLC for which they are, respectively, a member or manager; (7-1-22)T

04. Partnerships, Joint Ventures and Trusts. Duly authorized partners, joint venturers, or trustees representing their respective partnerships, joint ventures or trusts; (7-1-22)T

05. Authorized Attorneys. Attorneys duly authorized and qualified to practice in the courts of the state of Idaho; (7-1-22)T

06. Public Officers. Public officers or designated representatives when representing the governmental agency; (7-1-22)T

031. INITIAL PLEADING -- LISTING OF REPRESENTATIVES (RULE 31).

The initial pleading of each party must name the party's qualified representative for service of documents and include the representative's address for receiving documents. Service of documents on the named representative is valid service upon the party. If no person is explicitly named as representative, the person signing the initial pleading will be considered the representative. (7-1-22)T

032. SUBSTITUTION OF REPRESENTATIVE (RULE 32).

A party's representative may be changed by notice to the Board and to all other parties when the proceedings are not unreasonably delayed. The presiding officer may permit substitution of a representative at hearing. (7-1-22)T

033. PARTICIPATION BY TAXING AUTHORITY (RULE 33).

In proceedings where a taxing authority may participate, or in any instance where a report or recommendation of the taxing authority may be considered in reaching a decision, at the timely request of a party or upon the Board's motion, an informed representative of the taxing authority shall appear at hearing and be available for examination. When such a representative is summoned, the taxing authority may further participate in the hearing as a party. (7-1-22)T

034. (RESERVED)

035. CONDUCT (RULE 35).

A party, representative or witness shall conduct themselves in all Board proceedings in an ethical, respectful, and courteous manner. (7-1-22)T

036. ENFORCEMENT (RULE 36).

The Board and each party to an appeal are responsible for the efficient, just, and speedy conduct of the formal hearing and other proceedings before the Board. Board members or the assigned hearing officer may impose sanctions on a party for delays, the failure to comply with a subpoena or discovery order, for discovery procedure abuses, and for any other matter regarding conduct of the appeal. Board sanctions include, but are not limited to, dismissal of an appeal or the granting of default judgment. (7-1-22)T

037. EX PARTE COMMUNICATIONS (RULE 37).

01. Prohibited Ex Parte. Unless permitted by law, the Board shall not communicate regarding any substantive issue with any party, except upon notice and opportunity for all parties to participate in the communication. (7-1-22)T

02. Permitted Ex Parte. The Board may communicate ex parte with a party concerning a procedural or administrative matter. (7-1-22)T

038. -- 044. (RESERVED)

045. NOTICE OF APPEAL: CONTENTS (RULE 45).

01. **Basic Contents.** An appeal must be in writing and contain clear and concise statements of the matters that lay foundation for the relief claim that may be granted by the Board. (7-1-22)T

02. **Additional Contents.** The appeal shall further contain: (7-1-22)T

a. Appellant's full name, mailing address and telephone number; (7-1-22)T

b. The tax year(s) associated with the appeal; and (7-1-22)T

c. A signed statement by a natural person/appellant or by a qualified representative that the notice of appeal contents are correct. (7-1-22)T

03. **Appeal Filed by an Attorney or Representative.** An appeal filed by a qualified representative shall contain: (7-1-22)T

a. The representative's name, official title, mailing and street addresses, telephone number; and (7-1-22)T

b. If the representative is an attorney, the Idaho State Bar License number. (7-1-22)T

04. **Change in Address or Phone Number.** A party or representative must provide written notice to the Board and other parties of any change in contact information. (7-1-22)T

046. NOTICE OF APPEAL: BOE APPEALS (RULE 46).

01. **Separate Notice.** Each parcel assessment appealed must use a separate Board Appeal Form or separate notice of appeal. (7-1-22)T

02. **BOE Appeal.** An appeal brought under Section 63-511, Idaho Code, the notice of appeal shall contain: (7-1-22)T

a. A legal description of the property relating to the appeal; (7-1-22)T

b. A copy of the county board of equalization's final decision, and when available, the decision's postmarked mailing envelope or any accompanying certificate of service; (7-1-22)T

c. For a valuation appeal, a clear declaration of the alleged market value for the subject property. For a property tax exemption claim, the Idaho Code section(s) associated with the claim and a summary of the factual basis supporting why exempt status should be granted or denied; and (7-1-22)T

d. A copy of the final tax assessment notice for the assessment appealed. (7-1-22)T

03. **Filing Place.** A BOE appeal must be filed with the county auditor in the county in which the property assessment originated. (7-1-22)T

047. NOTICE OF APPEAL: STC APPEALS (RULE 47).

An appeal brought under Section 63-3049 or 63-707, Idaho Code, shall contain: (7-1-22)T

01. **Attachment.** A copy of the written decision being appealed; (7-1-22)T

02. **Objections.** A list of objections to the STC's decision and the basis for said objections; (7-1-22)T

03. Amount in Dispute. A statement of the amount in dispute for each applicable tax year or period;
and (7-1-22)T

04. Security Deposit. When applicable, proof of compliance with the deposit requirements in Section 63-3049(b), Idaho Code, in the form of a receipt or documented acknowledgment from the STC. (7-1-22)T

048. ACKNOWLEDGMENT (RULE 48).

01. Acknowledgment Letter. An acknowledgment letter will be mailed within fourteen (14) days of the receipt of an appeal in the Board’s office. The Board may acknowledge multiple appeals by the same party with a single letter. Such acknowledgment does not constitute a formal consolidation of the appeals. (7-1-22)T

02. Defective Appeal. If an appeal is found to be materially defective, untimely, or not substantially in compliance with the requirements of this chapter the Board may dismiss such appeal. (7-1-22)T

049. (RESERVED)

050. ANSWER TO APPEAL (RULE 50).

A respondent or intervenor may file with the Board an answer to a notice of appeal. The answer shall be filed at least fifteen (15) days prior to hearing. (7-1-22)T

051. (RESERVED)

052. COUNTY AUDITOR REQUIREMENT (RULE 52).

01. Contents. Upon receiving a notice of appeal to the Board under Section 63-511, Idaho Code, the county auditor shall transmit to the Board: (7-1-22)T

a. A copy of the notice of appeal including the date of receipt, and if received by mail, a copy of the mailing envelope; (7-1-22)T

b. The exhibits or other evidence considered by the BOE; (7-1-22)T

c. A copy of the initial appeal to the BOE; (7-1-22)T

d. A copy of any decision made or action taken by the BOE together with the mailing date of the notice of decision or other proof of service; (7-1-22)T

e. A copy of the certified minutes for related BOE proceedings, or a verbatim record provided on its own distinct storage device; and (7-1-22)T

f. When applicable, a certificate that the BOE failed to act on the appeal in the time required. (7-1-22)T

02. Minutes. The minutes should include at a minimum: (7-1-22)T

a. The full name of persons appearing before the BOE in the appeal; (7-1-22)T

b. Clear identification of the parcel number associated with the assessment appealed; and (7-1-22)T

c. The decision made by the BOE specifying the value determined or exempt status decided for each parcel. (7-1-22)T

053. -- 054. (RESERVED)

055. CONSOLIDATION (RULE 55).

Whenever two (2) or more ad valorem cases from the same county or different counties involve the same or

substantially similar issues and the same or similar property, or where the same or similar issues exist in other tax type cases, the Board may issue a written or verbal order consolidating the cases. There shall be no consolidation of cases where the rights of any party would be prejudiced. Parties may also request a consolidation. Prior to issuing a consolidation order, the Board will consider whether the parcels are contiguous, any response given to a consolidation request, and any other matters deemed appropriate in judging whether consolidation would likely be beneficial. (7-1-22)T

056. -- 059. (RESERVED)

060. FORM OF PLEADINGS (RULE 60).

01. Form. Pleadings, except those filed on Board forms, submitted by a party and intended to be part of the record should be double-spaced: (7-1-22)T

a. State the title of the pleading and the appeal number at the top of the cover page; (7-1-22)T

b. Include the name, mailing and street address, and if available, the telephone and FAX number of the person filing the document; and (7-1-22)T

c. Be signed by a qualified representative. (7-1-22)T

061. SERVICE OF DOCUMENTS (RULE 61).

01. Service. A notice, motion, brief, or other document submitted to the Board will be served upon all other parties' representatives of record. Service by regular mail is adequate service. A Board notice, order, or final decision is served upon a party's representative of record. The Board may direct documents be served on persons who are not parties. (7-1-22)T

02. Proof of Service. Every document filed with the Board must be accompanied by a certificate of service. The following is an example:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of _____, 20XX I caused to be served a true copy of the foregoing attached document by the method indicated below and addressed to each of the following:

(representative's name) _____ U.S. Mail, Postage Prepaid

(mailing address) _____ Hand Delivered

_____ Overnight Mail

_____ Certified Mail

(Signature) _____

(printed name of person signing)

(7-1-22)T

062. DEFECTIVE, INSUFFICIENT OR LATE PLEADING (RULE 62).

A defective, insufficient, or untimely pleading may be returned, denied, or dismissed. (7-1-22)T

063. AMENDMENTS TO PLEADINGS -- WITHDRAWAL OF PLEADINGS (RULE 63).

The presiding officer may allow any pleading to be amended or corrected or any omission to be supplied. Pleadings

will be liberally construed, and defects that do not affect substantial rights of the parties will be disregarded. A party desiring to withdraw an appeal should file a notice of withdrawal and serve all parties with a copy. (7-1-22)T

064. (RESERVED)

065. COMPUTATION OF TIME (RULE 65).

In computing any period of time prescribed or allowed by these rules or by any applicable statute, the day of the act, event or default from which the designated period begins to run shall not be included. The last day of the period so computed shall be included in the count unless it is a weekend or legal holiday, in which event the period runs until the end of the next business day. (7-1-22)T

066. FILING (RULE 66).

01. Document Filing Place. A document filed with the Board shall be filed at the Board's mailing address or street address. (7-1-22)T

02. Number of Copies. Unless otherwise indicated by the Board, one (1) copy shall be filed. (7-1-22)T

03. Fax Filing. A filing by facsimile (fax) transmission is permitted for a notice of withdrawal or settlement, and for a notice or motion requiring an immediate response by the Board. Except for a notice of withdrawal, an original must be mailed to the Board and served on all other parties the same day. (7-1-22)T

a. The transmission must be legible and received in its entirety during office hours for it to be considered filed on the transmission date. (7-1-22)T

b. When making a filing by fax, if another party to the case is equipped with fax facilities, the service on that party should include fax service. (7-1-22)T

c. The originating party shall assume the risk in fax filing and retain proof of filing by fax. (7-1-22)T

067. -- 069. (RESERVED)

070. PREHEARING CONFERENCE (RULE 70).

01. Subject of Conference. The Board may direct parties to appear before it to consider: (7-1-22)T

a. Any and all matters that can be agreed upon. (7-1-22)T

b. Formulating or simplifying the issues. (7-1-22)T

c. Stipulations which will avoid unnecessary proof. (7-1-22)T

d. Preliminary motions to be made prior to the hearing. (7-1-22)T

e. Requiring respondent and appellant to furnish to each other and the Board a list of all witnesses to be called by the parties at the hearing. (7-1-22)T

f. The limitation of the number of expert or lay witnesses and the disclosure of the identity of persons having knowledge of relevant facts and who may be called as a witness. (7-1-22)T

g. The scheduling of discovery, hearings, or other time sensitive matters. (7-1-22)T

h. Discussing settlement. (7-1-22)T

i. Fair hearing procedures. (7-1-22)T

j. Such other matters that may expedite orderly and speedy conduct as will aid in the disposition of the controversy. (7-1-22)T

02. Notice of Prehearing Conference. Notice of the place, date and hour of a prehearing conference will be served at least fourteen (14) days before the time set for the conference, unless the presiding officer finds it necessary or appropriate for the conference to be held earlier. Notices for prehearing conference contain the same information as notices of hearing regarding the Board’s obligations under the American with Disabilities Act. (7-1-22)T

03. Failure to Appear. Failure of either party to appear at the time and place appointed by the Board under Rule 70 may result in a dismissal of the appeal or the granting of said appeal. (7-1-22)T

04. Prehearing Order. The Board or its designate may prepare or require the preparation of an order reciting the findings and action taken at such conference. A prehearing order will control the course of subsequent proceedings unless modified by the Board for good cause. (7-1-22)T

05. Determination Upon Results of Conference. If, after the prehearing conference provided for in Rule 70, and after appropriate notice to the parties, the Board determines that there is sufficient evidence and stipulation upon which it can make a decision, it may determine the appeal without conducting a hearing. (7-1-22)T

071. (RESERVED)

072. MOTIONS (RULE 72).

01. Form and Contents. A motion should: (7-1-22)T

a. Fully state the facts upon which it is based; (7-1-22)T

b. Refer to the particular provision of statute, rule, order, notice, or other controlling law upon which it is based; and (7-1-22)T

c. State the relief sought. (7-1-22)T

02. Oral Argument. If the moving party desires oral argument on the motion it must state so in the motion. (7-1-22)T

03. Prehearing Motions. Unless otherwise provided in these rules, a prehearing motion must be filed at least fifteen (15) days prior to a scheduled hearing to be considered by the Board. (7-1-22)T

04. Answer to Motion. An answer to a motion, or a request for additional time to respond, may be filed within ten (10) days after the filing of the motion. (7-1-22)T

073. (RESERVED)

074. BRIEFS (RULE 74).

The Board may order briefs from the parties prior to the hearing of the evidence or after said hearing. (7-1-22)T

075. DISCOVERY (RULE 75).

01. Written Permission. A party to a pending appeal may engage in discovery limited to a single discovery request upon the written order of the Board. The following procedures govern discovery: (7-1-22)T

a. The request for discovery must be filed within twenty (20) days of the mailing date of the Board's appeal acknowledgment letter. (7-1-22)T

b. The request should contain a statement covering the reasons the discovery is useful to the preparation of the appeal. (7-1-22)T

- c. The request must include a complete copy of the discovery request. (7-1-22)T
 - d. Discovery must be completed at least ten (10) days prior to the scheduled hearing, unless otherwise ordered by the Board. (7-1-22)T
 - e. The Board may deny a discovery request that does not comply with the requirements of this chapter. (7-1-22)T
 - f. Discovery responses shall be served simultaneously on all other parties. At the same time, the responding party shall file with the Board a notice stating when and on whom the response was served. The actual contents of discovery responses will not be filed with the Board unless the order so directs. Discovery responses shall be signed by a qualified representative, and in the instance of interrogatory answers, the response shall also be signed by the person answering. Such signatures constitute a certification that the signer has reviewed the responses or answers and attests to their completeness and accuracy. (7-1-22)T
 - g. The discovery order may provide that voluminous answers need not be served so long as the documents are made available for inspection and copying under reasonable terms. (7-1-22)T
- 02. Scope and Method of Discovery: BOE Appeals.** The method of discovery is limited to production requests and written interrogatories. The scope of discovery must pertain to the subject property, comparable sale, or a comparable rental. (7-1-22)T
- a. The scope of discovery also includes: (7-1-22)T
 - i. Information or records concerning an appraisal, assessment, financial statement or related schedule, a completed study or report, and contracts including a sale agreement; (7-1-22)T
 - ii. The identity of individuals who will be called to testify as witnesses and a summary of their expected testimony; and (7-1-22)T
 - iii. For an exemption appeal, information or documents relating to the claimed exemption. (7-1-22)T
 - b. In a valuation case the request for production of documents or written interrogatories is limited to information from the last three (3) years preceding the assessment date unless otherwise specified by the Board. (7-1-22)T
 - c. The request for production of documents shall specifically identify each document requested. The request for inspection of land or other property shall be in accordance with the Idaho Rules of Civil Procedure. (7-1-22)T
 - d. The Board may limit or expand the above scope and method of discovery when it deems such action is appropriate. (7-1-22)T
- 03. Scope and Method of Discovery: STC Appeals.** (7-1-22)T
- a. Production requests, requests for admissions and written interrogatories are permissible methods of discovery. The Board may limit the scope and method of discovery when it deems such action appropriate. (7-1-22)T
 - b. A deposition may be taken when allowed by the Board. (7-1-22)T
- 04. Supplementation of Response.** The party responding to a discovery order is under a continuing duty to promptly supplement an earlier response upon the availability of new information. (7-1-22)T
- 05. Special Case.** The Board may order additional or reciprocal discovery not provided by this rule. (7-1-22)T

06. Sanctions. Failure to substantially comply with Board ordered discovery in a good faith attempt at full compliance, may result in one or more sanctions up to and including a dismissal or default judgment of the appeals. (7-1-22)T

076. -- 084. (RESERVED)

085. INTERVENTION (RULE 85).

01. Intervention of Right. Upon written application received fifteen (15) days prior to the hearing of an appeal, anyone shall be permitted to intervene in an appeal when: (7-1-22)T

a. The applicant demonstrates in writing an interest relating to the property or transaction which is the subject of the action that is not adequately represented by existing parties; and (7-1-22)T

b. The Idaho State Tax Commission may intervene as a matter of right. (7-1-22)T

02. Permissive Intervention. Upon written application received at least fifteen (15) days prior to the hearing of an appeal a person may be permitted to intervene: (7-1-22)T

a. In an appeal brought under Section 63-511, Idaho Code, when an applicant can show in writing that he is a person aggrieved by the BOE decision; (7-1-22)T

b. When an applicant's claim or defense and the main action have a question of law or fact in common; or (7-1-22)T

c. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or a state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency may be permitted to intervene in the action. (7-1-22)T

d. The Board may deny or conditionally grant a petition to intervene for untimely filing that fails to state good cause for the late filing, to prevent disruption or undue delay, due to prejudice to existing parties or undue broadening of the issues, or for other reasons. An intervener who does not file a timely petition is bound by orders and notices earlier entered as a condition of granting the untimely petition. (7-1-22)T

086. -- 099. (RESERVED)

100. FAIR HEARING (RULE 100).

01. Hearing Opportunity. All parties shall be afforded an opportunity for a fair hearing to present evidence and argument. (7-1-22)T

02. Purpose of Hearing. The Board's goal in conducting hearings is the acquisition of sufficient, accurate evidence to support a fair and just determination of the issues on appeal. (7-1-22)T

03. Notice of Hearing -- Mailing. A notice of hearing shall be mailed at least twenty (20) days before the date set for hearing. (7-1-22)T

04. Setting of Hearing. The Board will schedule a reasonably convenient time and place where each party may appear and offer evidence and argument in support of their position. (7-1-22)T

05. Telephonic Hearing. The Board may conduct a telephonic hearing wherein each participant has an opportunity to participate in the entire hearing. (7-1-22)T

06. Notice of Hearing -- Contents. The notice of hearing shall include: (7-1-22)T

- a. A statement of the place, date, and time of the hearing; (7-1-22)T
- b. A statement of the legal authority under which the hearing is to be held; (7-1-22)T
- c. A reference to the sections of statute or rule concerning the conduct of the hearing; (7-1-22)T
- d. The name of the hearing officer who is scheduled to conduct the hearing; and (7-1-22)T
- e. A short and simple statement of the matters asserted or the issues involved. (7-1-22)T

07. Conference or Recess. The presiding officer may convene the parties before hearing or recess the hearing to discuss formulation of issues, admissions of fact or identification of documents to avoid unnecessary proof, exchange of documents, exhibits or prepared testimony, limitation of witnesses, establishment of order of procedure, and other matters that may expedite an orderly hearing. (7-1-22)T

101. FAILURE TO APPEAR (RULE 101).

01. Default or Dismissal. Failure of either party to appear at the time and place appointed by the Board may result in a dismissal of that appeal or of the granting of the appeal. (7-1-22)T

02. Waiver of Appearance. Upon written stipulation of parties that no facts are at issue, an appeal may be submitted to the Board without oral argument. However, the Board may require appearance for argument or presentation of evidence. (7-1-22)T

102. WITHDRAWAL (RULE 102).

An appellant may withdraw the notice of appeal in writing, by electronic filing, or on the record at hearing. (7-1-22)T

103. -- 104. (RESERVED)

105. INFORMAL DISPOSITION -- SETTLEMENT (RULE 105).

Any appeal may be dismissed by the Board by stipulation, agreed settlement, consent order, or default. For good cause shown and upon written motion made within ten (10) days of entry of a Board order, the Board may set aside such order. (7-1-22)T

01. Formalizing Agreements. An agreement by the parties may be put on the record or may be reduced to writing and filed with the Board. (7-1-22)T

02. Confidentiality. Settlement negotiations in 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 settlement negotiations are not part of the record. (7-1-22)T

03. Consideration of Settlement. The Board may convene an evidentiary hearing to consider the reasonableness of the settlement and whether acceptance of the settlement is consistent with the Board's charge under the law. (7-1-22)T

04. Burden of Proof. Proponents of a proposed settlement carry the burden of showing that the settlement is in accordance with the law. (7-1-22)T

106. PRESIDING OFFICER (RULE 106).

Any member of the Board or assigned hearing officer may preside at the hearing and shall have power to: (7-1-22)T

01. Oath or Affirmation. Administer oaths or affirmations, call a party or other person present at hearing as a witness, examine witnesses and receive evidence; (7-1-22)T

02. Hearing. Regulate the course of the hearing and maintain an orderly proceeding; (7-1-22)T

- 03. Motions.** Dispose of procedural requests, motions or similar matters; (7-1-22)T
- 04. Certification by Board.** Make decisions or proposals for decisions subject to certification by a majority of the Board; (7-1-22)T
- 05. Official Record.** Develop a full and accurate record and certify the record of said appeal on behalf of the Board; and (7-1-22)T
- 06. Other Action.** Take any other appropriate action reasonable under the circumstances. (7-1-22)T

107. PROCEDURE AND TESTIMONY (RULE 107).

01. Preliminary Procedure. The presiding officer shall call the proceeding for hearing and proceed to take the appearances and act upon any pending motion. Parties may then make opening statements. (7-1-22)T

02. Testimony. All testimony, except matters noticed officially or entered by stipulation at hearings or prehearing conference, shall be taken only on oath or affirmation. (7-1-22)T

03. Order of Procedure. The appellant shall present first with the respondent and any intervenor then presenting. Parties may then make closing statements. The presiding officer may require the submission of briefs in addition to, or in lieu of, closing arguments. A maximum of two (2) weeks is normally allowed to submit these briefs. The presiding officer may prescribe a different procedure than herein provided. (7-1-22)T

04. Presentation of Evidence. Evidence may be presented in the following order: (7-1-22)T

a. Evidence is presented by appellant. (7-1-22)T

b. Evidence is presented by any intervening or opposing party. (7-1-22)T

c. Rebuttal evidence is presented by appellant. (7-1-22)T

d. Surrebuttal evidence is presented by any intervening or opposing party. (7-1-22)T

05. Examination of Witness. Regarding any witness who testifies, the following examination may be conducted: (7-1-22)T

a. Direct examination by the party who called the witness. (7-1-22)T

b. Cross-examination by any intervening or opposing party. (7-1-22)T

c. Redirect examination by the party who called the witness. (7-1-22)T

d. Recross-examination by any intervening or opposing party. (7-1-22)T

e. Examination by the presiding officer. (7-1-22)T

108. -- 109. (RESERVED)

110. STIPULATIONS (RULE 110).

With the approval of the presiding officer the parties may stipulate as to any fact at issue. The stipulation may be filed, or offered through an exhibit or by oral statement shown upon the hearing record. Any such stipulation shall be binding upon all parties so stipulating and may be regarded by the Board as evidence. The Board, however, may require evidence of the facts stipulated, notwithstanding the stipulation. (7-1-22)T

111. CONTINUANCE (RULE 111).

01. Continuances. A continuance may be ordered by the Board upon filing of a timely and written

motion containing the stipulated agreement and signature of all parties. Timely means at least fifteen (15) days prior to a noticed hearing date. The motion shall show a detailed good cause and contain the specific time extension requested. (7-1-22)T

02. Consideration. Continuances are disfavored by the Board. The Board may grant a single continuance only when unusual and highly pressing circumstances are present. In no instance shall an extension cause a delay in proceedings for more than three (3) months. In no instance may a second continuance be granted. (7-1-22)T

112. -- 114. (RESERVED)

115. OFFICIAL NOTICE (RULE 115).

The Board may take official notice of judicially cognizable facts. In addition, the Board may take notice of general, technical, financial, or scientific facts within the Board's specialized knowledge. Parties shall be notified either before or during the hearing of the material noticed. Parties shall be given a reasonable opportunity to object, review, examine, and rebut or contest the information sought to be noticed. (7-1-22)T

116. OPEN HEARINGS AND CLOSED DELIBERATIONS (RULE 116).

01. Public Hearings. Hearings conducted by the Board are open to the public except where confidential evidence is being taken under a protective order. (7-1-22)T

02. Closed Deliberations. The Board may recess to closed deliberations for the limited purpose of deciding the matter before it. (7-1-22)T

117. RULES OF EVIDENCE (RULE 117).

01. Evidence, Admissibility and Evaluation. Evidence should be taken by the Board to assist the parties' development of the record. The presiding officer is not bound by the Idaho Rules of Evidence. No informality in any proceeding or in the manner of taking testimony invalidates evidence. The presiding officer may exclude evidence that is irrelevant, immaterial, unduly repetitious, or inadmissible on constitutional or statutory grounds, or on the basis of any privilege recognized in Idaho. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of serious affairs. When proceedings will be expedited and the parties' interests not substantially prejudiced, evidence may be received in written form. The Board's experience, technical competence and specialized knowledge may be used in the evaluation of evidence. (7-1-22)T

02. Documentary Evidence. Upon request, parties shall be given an opportunity to compare the copy with the whole of the original document. Filing of a document does not signify its receipt in evidence, and only those documents which have been received in evidence shall be considered as evidence in the official record of the case. (7-1-22)T

03. Prepared Testimony. The presiding officer may order a witness's prepared testimony previously distributed to all parties be included in the record of hearing as if read. Admissibility of prepared testimony is subject to the standards expressed in this rule. (7-1-22)T

04. Objections. Where objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly at the time of objection and before the start of closing statements. (7-1-22)T

05. Evidentiary Rulings. The presiding officer shall rule on the admissibility of all evidence and may grant exceptions to the requirements of this rule in the interest of justice. Such rulings may be reviewed by the Board. An evidence ruling may be deferred to the entire Board by the presiding officer or taken under advisement. The presiding officer may receive evidence subject to a motion to strike at the conclusion of the hearing. (7-1-22)T

06. Offer of Proof. An Offer of Proof for the record consists of a statement of the substance of the evidence to which objection has been sustained. Where the presiding officer rules evidence inadmissible, the party seeking to introduce such evidence makes an Offer of Proof to have such evidence considered by the Board. (7-1-22)T

07. Failure to Produce Evidence -- Adverse Inference. The Board may draw an adverse inference when a party or witness fails to produce requested evidence which is reasonably in the party or witness's control.

(7-1-22)T

08. Post-Hearing Evidence. Unless allowed by the presiding officer, no post-hearing evidence will be accepted.

(7-1-22)T

118. EXHIBIT (RULE 118).

01. Custody. The Board shall keep all original exhibits unless otherwise provided by law. (7-1-22)T

02. Marking. Exhibits will be marked to indicate the sponsoring and offering party. (7-1-22)T

03. Form. An exhibit prepared for hearing should be typed or printed on eight and one-half inch (8 1/2") by eleven inch (11") white paper, except a map, chart, photograph or non-documentary exhibit may be introduced on the size or kind of medium customarily used for them. (7-1-22)T

04. Copies. 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. Copies must be of good quality. (7-1-22)T

05. Objection. An exhibit identified at hearing is subject to appropriate and timely objection before the start of closing statements. A presented exhibit to which no objection is made is automatically admitted into evidence without motion. (7-1-22)T

119. -- 124. (RESERVED)

125. CONFIDENTIALITY -- PROTECTIVE ORDERS (RULE 125).

The decisions and official records in appeals before the Board are public records and are subject to disclosure unless otherwise provided by Title 74, Chapter 1, Idaho Code, or when a protective order, consistent with Title 74, Chapter 1, Idaho Code, is issued. A party may file a motion for a protective order showing good cause why specific information should remain confidential. The motion must include an affidavit as to the truthfulness of the contents. If another party opposes the request, that party must file a written objection within ten (10) days. (7-1-22)T

126. -- 138. (RESERVED)

139. SCOPE OF APPEAL IN AD VALOREM CASE (RULE 139).

In an appeal brought under Section 63-511, Idaho Code, where the appellant challenges only the value or exempt status upon either the land or the improvements on the land, the Board shall have jurisdiction to determine the value or exempt status over the entire property. The Board shall have the power to increase or decrease the value of property in a market value appeal. If the Board finds that a property classification is in error, it shall determine the correct classification. (7-1-22)T

140. DECISIONS AND ORDERS (RULE 140).

01. Submission for a Decision. The proceeding will stand submitted for decision after the record is closed by the presiding officer or as otherwise prescribed by the Board. (7-1-22)T

02. Proposed Orders. Prior to a final decision on the merits the Board may request proposed findings of fact and conclusions of law from each party. (7-1-22)T

03. Notice. Parties' representatives shall be notified by mail of any final decision or order. (7-1-22)T

04. Decisions. A decision of the Board will be based on the official record for the case. The Board shall hear and determine appeals as de novo proceedings. Decisions shall contain factual findings and conclusions of law upon which the Board's determination is based. (7-1-22)T

141. -- 144. (RESERVED)

145. RECONSIDERATION -- REHEARING (RULE 145).

01. Time for Filing and Service. A party adversely affected by a final decision may move for reconsideration or rehearing within ten (10) days of the time the decision is mailed. Service on other parties is required. The petitioner must file a supporting brief making a strong showing of good cause why reconsideration or rehearing should be granted. Where the presentation of additional evidence is sought, the motion shall include the reason why such evidence was not presented previously. (7-1-22)T

02. Consideration. Reconsideration or rehearing may be granted if, in reaching the decision the Board has overlooked or misconceived some material fact or statement of law; misconceived a material question in the case; found insufficient evidence in the record; or a party is found to have been denied the opportunity for a fair hearing. (7-1-22)T

03. Answer. Within ten (10) days after a motion for reconsideration or rehearing is filed, another party may file a response in support of or in opposition to said motion. (7-1-22)T

04. Disposition. A motion for reconsideration or rehearing shall be deemed denied if, within thirty (30) days from the date the petition is received by the Board, no response is made by the Board. (7-1-22)T

146. -- 150. (RESERVED)

151. OFFICIAL RECORD (RULE 151).

- 01. Content.** The record shall include: (7-1-22)T
- a. All notices of proceedings; (7-1-22)T
 - b. All appeals, petitions, complaints, protests, motions, and answers filed in the proceeding; (7-1-22)T
 - c. All intermediate or interlocutory rulings; (7-1-22)T
 - d. All evidence received; (7-1-22)T
 - e. All offers of proof, however made; (7-1-22)T
 - f. All briefs, memoranda, proposed orders of the parties, statements of position or support, and objections, but not discovery responses; (7-1-22)T
 - g. All evidentiary rulings on testimony, exhibits, or offers of proof; (7-1-22)T
 - h. All taxing authority data submitted in connection with the consideration of the proceeding; (7-1-22)T
 - i. A statement of matters officially noticed; (7-1-22)T
 - j. All preliminary orders, final orders, and orders on reconsideration or rehearing; and (7-1-22)T
 - k. The recording or transcript specified in Rule 151.02. (7-1-22)T

02. Verbatim Record. The official recording of hearings will be taken by means of a recorder. A party requesting a court reporter shall bear the expense of the reporter's fees. If the reporter's transcript is deemed by the Board to be the official transcript, the party requesting the reporter shall furnish the Board a transcript free of charge. (7-1-22)T

152. -- 154. (RESERVED)

155. SUBPOENA (RULE 155).

01. Issuance of Subpoena. Upon a motion in writing, or upon the Board's own initiative without motion, the Board may issue a subpoena requiring: (7-1-22)T

a. The attendance of a witness from any place in Idaho; (7-1-22)T

b. The production of documents from any place in Idaho; or (7-1-22)T

c. The production of any book, paper, document, or tangible thing kept within or without Idaho to any designated place of deposition or hearing for the purpose of taking testimony or examining a document before the Board. (7-1-22)T

02. Motion Contents and Timing. The motion shall be in writing and include a showing of relevance and the reasonable scope of the testimony or specific items sought. The motion for subpoena shall be filed at least fifteen (15) days before the date and time set forth in the subpoena, exceptions may be granted upon a showing of good cause. (7-1-22)T

03. Service. Service, and the filing of the proof of such service with the Board, shall be the responsibility of the requesting party. (7-1-22)T

04. Fees. A witness summoned pursuant to subpoena shall be paid by the party at whose instance they appear the same fees and mileage allowed by law to a witness in civil cases in the district court. (7-1-22)T

05. Motion to Quash. The Board, upon motion to quash may: (7-1-22)T

a. Quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue; or (7-1-22)T

b. Condition denial of the motion upon reasonable conditions. (7-1-22)T

156. REQUEST FOR TRANSCRIPT (RULE 156).

The party requesting a written transcript shall make the arrangements for preparation of transcript and payment of the fee directly with the transcriber. (7-1-22)T

157. -- 999. (RESERVED)

IDAPA 38 – DEPARTMENT OF ADMINISTRATION

38.05.01 – RULES OF THE DIVISION OF PURCHASING

DOCKET NO. 38-0501-2201

**NOTICE OF INTENT TO PROMULGATE RULES –
ZERO-BASED REGULATION NEGOTIATED RULEMAKING**

AUTHORITY: In compliance with Section 67-5220, 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 67-9204, 67-9205, 67-9206, 67-9215, 67-9219, 67-9226, Idaho Code.

MEETING SCHEDULE: Negotiated meetings have been scheduled and all scheduled meetings shall be posted and made accessible on the following agency website address: Welcome to Department of Administration (idaho.gov)

STATE AGENCY MEETING

Monday, July 11, 2022

10:00 a.m. (MT)

In-person participation is available at:
**Joe R. Williams Building
First Floor, West Conference Room
700 W. State Street
Boise, ID 83702**

Join by phone at: 1-720-279-0023
When prompted, please enter guest code: 973512

STATE VENDOR MEETING

Tuesday, July 12, 2022

10:00 a.m. (MT)

In-person participation is available at:
**Joe R. Williams Building
First Floor, East Conference Room
700 W. State Street
Boise, ID 83702**

Join by phone at: 1-720-279-0023
When prompted, please enter guest code: 973512

GENERAL PUBLIC MEETING
Thursday, July 14, 2022
10:00 a.m. (MT)

In-person participation is available at:
Joe R. Williams Building
First Floor, West Conference Room
700 W. State Street
Boise, ID 83702

Join by phone at: 1-720-279-0023
When prompted, please enter guest code: 973512

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

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

- Attend the negotiated rulemaking meeting(s), in person or through teleconference, and participate in the negotiation process;
- Submit written comments to the address below.

Upon conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusion reached during the negotiated rulemaking will be addressed in a written summary. 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: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Department of Administration will perform a critical and comprehensive review of the statutes and existing rules chapter. The Department will rewrite this chapter under the premise of zero-based rulemaking, as per [Executive Order 2020-01: Zero-Based Regulation](#)

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steve Bailey, (208) 332-1825.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2022.

DATED this June 3, 2022.

Steve Bailey, Deputy Director
Department of Administration
650 W. State Street
Room 100
Boise, Idaho 83720
steven.bailey@adm.idaho.gov
(208) 332-1825

IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

39.03.43 – RULES GOVERNING UTILITIES ON STATE HIGHWAY RIGHT-OF-WAY

DOCKET NO. 39-0343-2201

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

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections 40-312 and 67-5229 Idaho Code.

MEETING SCHEDULE: Public meetings on the negotiated rulemaking will be held as follows:

Monday, July 11, 2022 – 3:30pm to 5:00pm (MT)

&

If needed: Tuesday, July 26, 2022 – 3:30pm to 5:00pm (MT)

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

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

Participation in-person, via phone, or Webex is available at the following:

<p>Monday, July 11, 2022 3:30 p.m. to 5:00 p.m. (MT)</p>
<p><i>In-person participation is available at:</i> ITD Headquarters @ Idaho Chinden Campus 11311 Chinden Boulevard, Building 8 Boise, ID 83714 (Enter through the west entrance: American Falls Conference Room)</p> <p><i>Phone or virtual participation via Webex is available at:</i> Join WebEx Meeting Meeting Number (Access Code): 2454 176 8977 Meeting Password: 1234</p> <p><i>Join by phone at: 1-844-740-1264 (USA Toll Free)</i></p>

If needed: Tuesday, July 26, 2022
3:30 p.m. to 5:00 p.m. (MT)

In-person participation is available at:
ITD Headquarters @ Idaho Chinden Campus
11311 Chinden Boulevard, Building 8
Boise, ID 83714
(Enter through the west entrance: American Falls Conference Room)

Phone or virtual participation via Webex is available at:
[Join WebEx Meeting](#)
Meeting Number (Access Code): 2460 790 9271
Meeting Password: 1234

Join by phone at: 1-844-740-1264 (USA Toll Free)

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:

Per the Idaho Legislature's passage of [HB640aaS-2022](#), the Idaho Transportation Department (ITD) is initiating the negotiated rulemaking process to update the policies and procedures impacted by the State's new Dig Once Policy.

ITD continues its efforts to address utility accommodation of fixed broadband facilities seeking access to the state's ROW, while also meeting federal requirements and supporting Governor Little's initiative to improve broadband access in Idaho.

ITD incorporates by reference the 2022 edition of the Utility Accommodation Policy (UAP) in IDAPA Title 39: [39.03.43 – Rules Governing Utilities on State Highway Right-of-Way](#).

Although the UAP referenced in IDAPA 39.03.43 addresses all utilities, the focus of this rulemaking is to update portions of the UAP that directly relate to broadband permitting, accommodation, criteria, standards and policy.

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), please contact Robert Beachler, Broadband Program Manager, at 208-772-1216. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the Idaho Transportation Department's website at the following web address: <https://itd.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 Thursday, July 28, 2022.

DATED this 3rd Day of June, 2022.

Ramón S. Hobdey-Sánchez, J.D.
Office of Governmental Affairs
Idaho Transportation Department
3311 W. State St.
Boise, ID 83707-1129
Phone: 208-334-8810
ramon.hobdey-sanchez@itd.idaho.gov

IDAPA 47 – IDAHO DIVISION OF VOCATION REHABILITATION

DOCKET NO. 47-0101-2200

NOTICE OF OMNIBUS RULEMAKING – TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule being adopted through this omnibus rulemaking as listed in the descriptive summary of this notice is July 1, 2022.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Article IX, Section 2 of the Idaho Constitution, Sections 33-101, 33-105, 33-2303, Idaho Code, and the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act (WIOA).

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code. If scheduled, the hearing site(s) will be accessible to persons with disabilities and requests for accommodation are made not later than five (5) days prior to the hearing, to the agency address below.

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

This temporary and proposed rulemaking adopts and publishes the following rule chapter previously submitted to and reviewed by the Idaho Legislature under IDAPA 47, rules of the Idaho Division of Vocation Rehabilitation:

IDAPA 47

- 47.01.01, *Rules Governing Vocational Rehabilitation Services.*

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

This temporary rule is necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. The temporary rule chapter implements the duly enacted laws of the state of Idaho, provides citizens with the detailed rules and standards for complying with those laws, and assists in the orderly execution and enforcement of those laws. The expiration of this rule chapter without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by this rule.

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: 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 rule chapter(s) being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

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 rule attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Teresa Pitt, Planning and Evaluation Manager at (208)287-6466 or teresa.pitt@vr.idaho.gov; or Tracie Bent, Chief Planning and Policy Officer at (208)332-1582 or tracie.bent@osbe.idaho.gov.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

DATED this July 6, 2022.

Tracie Bent
Chief Planning and Policy Officer
Idaho State Board of Education
650 W State Street
PO Box 83720
Boise, Idaho 83720-0037
(208)332-1582

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF OMNIBUS RULEMAKING DOCKET NO. 47-0101-2200
(New Chapter)**

47.01.01 – RULES GOVERNING VOCATIONAL REHABILITATION SERVICES

000. LEGAL AUTHORITY.

Article IX, Section 2 of the Idaho Constitution, Section 33-2303, Idaho Code and the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act (WIOA). (Public Law 113-128). (7-1-22)T

001. SCOPE.

The provision of these rules is to establish the procedures, program requirements and to implement program changes necessitated by the Rehabilitation Act of 1973, as amended, which address the provision of vocational rehabilitation services to the disability population of Idaho. (7-1-22)T

002. CONFIDENTIAL RECORDS.

All personal information concerning the Division's customers is confidential. The information is used only for purposes directly connected to the administration of Vocational Rehabilitation services, and may not be released without the informed, written consent of the customer, except as otherwise provided by law. (7-1-22)T

003. – 009. (RESERVED)

010. DEFINITIONS.

01. Customer. Any individual who has applied for or is eligible for vocational rehabilitation services. (7-1-22)T

02. Division. The Idaho Division of Vocational Rehabilitation. (7-1-22)T

03. Informed Choice. To make an informed choice, customers need accurate, clear, and useful information to make decisions regarding their vocational goal, necessary services and options for selecting approved service providers to reach their goal. (7-1-22)T

04. Vocational Rehabilitation Counselor. A professional staff member of the Division who determines customer eligibility and the provision of vocational rehabilitation services. (7-1-22)T

011. ABBREVIATIONS.

- 01. IPE.** Individualized Plan for Employment. (7-1-22)T

012. – 099. (RESERVED)

100. CUSTOMER APPEALS.

In accordance with 34 CFR 361.57, the customer appeals process is governed by Sections 101-103 of these rules. (7-1-22)T

101. INFORMAL REVIEW PROCESS.

An informal review process is an optional informal process to resolve disagreements or dissatisfaction with services. An individual may request an informal review within twenty-one (21) calendar days of the agency's notice regarding the provision or denial of services. The request must be in writing to the regional manager and describe the complaint. The regional manager will function as the administrative review officer in this process. At the customer's written request another regional manager may be substituted. The reviewer will be responsible for: (7-1-22)T

01. Advising the Customer. Inform the customer of their right to representation and services available through the client assistance program. (7-1-22)T

02. Conducting the Review. The review will be conducted within twenty-one (21) calendar days following receipt of a written request, unless both parties agree to an extension. (7-1-22)T

03. Documented Effort. The Division may extend the informal review period when the customer makes a documented effort to utilize the client assistance program or another advocate to resolve the dissatisfaction. (7-1-22)T

04. Review Location. The review will be held at a time and location convenient to the customer, generally at a Division office. (7-1-22)T

05. Communication Method. Communication will be provided in the most appropriate method for the customer. (7-1-22)T

06. Transportation. Transportation will be provided to and from the review site, if practicable. (7-1-22)T

07. Informal Review Decision. The regional manager or designee will provide a written decision after conducting the informal review. The customer may request mediation or fair hearing within twenty-one (21) calendar days of the informal review written decision. (7-1-22)T

102. MEDIATION.

Mediation is an alternate dispute resolution method available to applicants and eligible customers who initiate the formal appeals process or when the informal review did not resolve the customer's concern. (7-1-22)T

01. Timeline. A customer may request mediation as long as the request is made within twenty-one (21) calendar days of the original or informal review decision. (7-1-22)T

02. Written Request. Requests for mediation must be made in writing to the field services chief and state the reason for dissatisfaction with the decision. The field services chief will represent the Division or assign a management level staff member who was not involved in the decision. (7-1-22)T

03. Participation. Mediation is voluntary, either party may reject mediation. Once mediation has been accepted, either party may terminate the mediation process. (7-1-22)T

04. Right to Fair Hearing. Mediation may not be used to deny or delay the customer's right to pursue a fair hearing. Should the customer and/or designated representative select mediation in lieu of a fair hearing, the option for a fair hearing will be extended to allow the results of mediation to be established. Once the final mediation

results are determined, the customer retains the right to request a fair hearing. (7-1-22)T

05. Mediator. All mediation is conducted by a qualified and impartial mediator who is selected randomly from a list maintained by the Division. (7-1-22)T

06. Confidentiality. Mediation discussions are confidential and may not be used as evidence in a fair hearing. Both parties will sign a confidentiality agreement. (7-1-22)T

07. Mediation Agreement. The mediator will develop a written mediation agreement if an agreement between the parties is reached. The agreement must be signed by all parties involved in the mediation. (7-1-22)T

08. Cost. Cost of mediation is paid by the Division, except for customer representation. (7-1-22)T

103. FAIR HEARING PROCESS.

An option available to any customer who is dissatisfied with any determination made by Division personnel that affects the provision of vocational rehabilitation services. A customer may request a fair hearing immediately without going through any other appeal steps. A customer or if appropriate their representative may request a timely review of the determination. Such requests must be made within twenty-one (21) calendar days of the Division's decision resulting in the initial disagreement or within twenty-one (21) calendar days of the conclusion of the informal review or mediation process, whichever is later. The fair hearing will be conducted by a fair hearing officer. (7-1-22)T

01. Written Request. Requests for a fair hearing must be submitted in writing to the field services chief and state the customer's dissatisfaction with the agency's decision. (7-1-22)T

02. Timeline. The hearing will be conducted within sixty (60) calendar days of receipt of the individual's request, unless resolution is achieved prior to the 60th day, or both parties agree to a specific extension of time. (7-1-22)T

03. Fair Hearing Officers. The Division Administrator, or designee, and the State Rehabilitation Council will jointly maintain a list of fair hearing officers. The Administrator and the customer will select the fair hearing officer from the list. (7-1-22)T

04. Written Report. The fair hearing officer will issue a written report of the decision within thirty (30) calendar days of the completion of the hearing. (7-1-22)T

05. Decision. The decision of the fair hearing officer will be considered final by the Division. (7-1-22)T

06. Dispute. Any party who disagrees with the decisions of a fair hearing officer will have the right to bring a civil action with respect to the matter in dispute. The action may be brought in any state court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy. (7-1-22)T

104. – 199. (RESERVED)

200. REFERRAL AND APPLICATION FOR SERVICES.

01. Referral. The Division will attempt contact within seven (7) business days after receipt of a referral request and will make a minimum of three (3) attempts to contact the individual before closing the referral. (7-1-22)T

02. Application for Services. The application process includes the following; an individual must sign and date an application or make a request for alternate application, provide necessary information to begin an assessment of eligibility, including information gathered in the intake interview, and the customer is determined to be available and free of restrictions to complete the assessment process for determining eligibility for Division services. (7-1-22)T

a. Residency Requirement. There is no duration of residency required to apply for Division services. Individuals must be present in the state of Idaho and legally able to work in the United States (i.e., non-U.S. citizens must show they are legally able to work within the United States). (7-1-22)T

b. Other Requirements. Customers must be available to participate in the eligibility determination process and will be informed of their rights and responsibilities as a customer of the program. (7-1-22)T

201. ELIGIBILITY REQUIREMENTS.

Eligibility for vocational rehabilitation services is based upon the following criteria: (7-1-22)T

01. Documentation of Impairment. The customer has a physical or mental impairment documented by qualified; (7-1-22)T

02. Documentation of Impediment. A determination by qualified personnel that the customer's physical or mental impairment constitutes a substantial impediment to employment; (7-1-22)T

03. Determination of Need for Services. A determination by qualified personnel employed by the Division, that the customer requires vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. (7-1-22)T

04. Presumption of Benefit. The Division presumes that a customer who meets the eligibility requirements, can benefit in terms of an employment outcome, unless the severity of disability places this presumption of benefit in question, pursuant CFR 361.42(e). (7-1-22)T

202. PRESUMPTIVE ELIGIBILITY.

Individuals eligible for Social Security benefits under Title II or Title XVI of the Social Security Act, based upon their disability, are presumed to meet the eligibility requirements for vocational rehabilitation services, unless the vocational rehabilitation counselor questions the individual's ability to benefit from vocational rehabilitation services due to the severity of the individual's disability. (7-1-22)T

203. SEVERITY OF DISABILITY.

At the time a customer is determined eligible for vocational rehabilitation services, a determination of the severity of disability, as it relates to employment, will also be determined. A priority category assignment will be determined for all eligible individuals, in one (1) of the following categories: (7-1-22)T

01. Priority Category 1 - Eligible Individuals with the Most Significant Disabilities (MSD). (7-1-22)T

a. Meets criteria established for a customer with a significant disability; and (7-1-22)T

b. Experiences a severe physical and/or mental impairment that seriously limits three (3) or more functional categories (such as mobility, work skills, self-care, interpersonal skills, communication, self-direction or work tolerance) in terms of an employment outcome; and (7-1-22)T

c. Requires multiple primary Individualized Plan for Employment (IPE) services over an extended period of time. (7-1-22)T

02. Priority Category 2 - Eligible Individuals with Significant Disabilities (SD). (7-1-22)T

a. Meets the criteria for a customer with no significant disability; and (7-1-22)T

b. Experiences a severe physical and/or mental impairment that seriously limits one (1) or more functional categories (such as mobility, work skills, self-care, interpersonal skills, communication, self-direction or work tolerance) in terms of an employment outcome; and (7-1-22)T

c. Requires multiple primary IPE services over an extended period of time. (7-1-22)T

- 03. Priority Category 3 - All other Eligible Individuals with Disabilities (D).** (7-1-22)T
- a.** Has a physical or mental impairment; and (7-1-22)T
 - b.** Impairment constitutes or results in a substantial impediment to employment; and (7-1-22)T
 - c.** Who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services. (7-1-22)T

204. INDIVIDUALIZED PLAN FOR EMPLOYMENT.

01. IPE Requirements. An eligible customer, or their representative, may develop all or part of their IPE, with or without assistance from the Division, however the IPE must be agreed to by a qualified rehabilitation professional. The Division will not pay for IPE development services from other providers. The customer is given a copy of the signed IPE and any subsequent IPEs. There will be only one (1) active IPE at any given time. The Division supports vocational goals in competitive integrated employment, including supported employment and self-employment. The IPE will contain the mandatory components per 34 CFR 361.46. (7-1-22)T

02. Annual IPE Review. IPEs will be reviewed at least once annually. (7-1-22)T

205. CASE CLOSURE.

The Division may close a customer's case at any time in the vocational rehabilitation process for various reasons, in compliance with federal regulations as stated in 34 CFR 361.43, 44, and 56 and federal reporting guidelines. General reasons for case closure may occur when the vocational rehabilitation counselor determines that a customer is either not eligible or no longer eligible for vocational rehabilitation services; is unavailable to participate in the vocational rehabilitation program; declines to participate in the vocational rehabilitation program; or the customer achieves an employment outcome. Regardless of when in the process the record of service is closed, the vocational rehabilitation counselor must make reasonable attempts to contact the individual, or as appropriate their representative, prior to case closure to discuss the pending case closure. A closure letter or appropriate form of communication will be sent to individuals whose case is being closed. (7-1-22)T

206. ORDER OF SELECTION.

01. Order of Selection. When the Division cannot provide the full range of vocational rehabilitation services to all eligible customers because of fiscal or personnel capacity constraints, the agency will enter an order of selection. The order of selection will be based on the following requirements: (7-1-22)T

a. Students with disabilities, as defined by 34 CFR 361.5(c)(51), who received pre-employment transition services prior to eligibility determination and assignment to a disability priority category will continue to receive such services. (7-1-22)T

b. All customers who have an Individualized Plan for Employment will continue to be served. (7-1-22)T

02. Priority Status. Priority will be given to eligible individuals with the most significant disabilities, followed by those with significant disabilities, and finally those eligible individuals with disabilities. All eligible customers will be assigned to one (1) of the priority categories as outlined in Section 203 of these rules. (7-1-22)T

03. When Unable to Serve Eligible Individuals. If the Division cannot serve all eligible individuals within a given priority category, individuals will be released from the statewide waitlist based on disability priority category and date of application. (7-1-22)T

04. Employment Maintenance. The Division will serve individuals who are in immediate jeopardy of losing their employment and who require specific services or equipment to maintain employment, regardless of severity of disability category assignment, in accordance with 34 CFR 361.36.a(3)(v). (7-1-22)T

207. – 299. (RESERVED)

300. FINANCIAL PARTICIPATION REQUIREMENTS.

The Division will consider the financial participation of an eligible customer for the purposes of determining the extent of their participation in the costs of vocational rehabilitation services in accordance with 34 CFR 361.54. Financial participation will not be a consideration in the determination of eligibility for vocational rehabilitation services but will be a consideration in allocating the cost of vocational rehabilitation services, except those services described in 34 CFR 361.54(b)(3). (7-1-22)T

01. Financial Participation Assessment. Financial participation will be assessed after eligibility and prior to IPE implementation, prior to a plan amendment, on an annual basis or if a customer's financial circumstances change significantly, whichever occurs sooner. (7-1-22)T

301. COMPARABLE BENEFITS.

Eligible customers will identify and use all comparable benefits that may be available during the development of the IPE, including, but not limited to, accommodations and auxiliary aids and services, which may meet, in whole or in part, the cost of vocational rehabilitation services. Comparable benefits and services must be utilized before agency funds are used. (7-1-22)T

01. Exempt Services. Services exempt from the requirement to utilize comparable services and benefits include; medical, psychological or other examinations to determine eligibility, vocational counseling and guidance, information and referral, job related services to include job search, job supports, job placement and retention services, evaluation of vocational rehabilitation potential, and rehabilitation technology (not including personally prescribed devices). (7-1-22)T

02. Availability of Comparable Benefits. If comparable services or benefits are not available at the time needed to ensure progress toward achieving the employment outcome, the Division may provide such services until comparable services and benefits become available. (7-1-22)T

302. – 399. (RESERVED)

400. PURCHASING REQUIREMENTS.

All services and purchases will follow federal, state, and Idaho Division of Purchasing guidelines. Purchases require written authorization prior to the initiation of the purchased service. Authorizations are issued on or before the beginning date of service. If services are provided without an approved authorization, the Division reserves the right to deny the vendor's invoice. The method of procurement is determined in partnership with the customer; however the Division prefers that an authorization for purchase be used over other methods, with an invoice from the vendor documenting the service provision. The Division will pay for pre-employment transition services and other services that contribute to the determination of eligibility or that are necessary to achieve an employment outcome. (7-1-22)T

401. PURCHASING STANDARDS.

The Division pays usual, customary, and reasonable charges for services. The Division has established hierarchical levels of purchasing authority to balance process efficiency with the Division's internal controls. The majority of service negotiation is at the counselor level. When necessary, varying levels of exceptions to purchasing authority are available by appropriate management staff. Decisions on case expenditures are determined on an individualized basis. The customer may choose their preferred vendor, however, if the cost of a service exceeds a control threshold, the customer will be responsible for the excess amount, absent an exception. Services that will meet the customer's need at the least cost to the Division will be the service cost considered for planning purposes. Services available in the State of Idaho are preferred over more costly out-of-state options, where applicable. (7-1-22)T

402. PROVISION OF COMMUNITY REHABILITATION PROGRAM SERVICES.

The Division will purchase vocational services from the community rehabilitation programs that are accredited by the Commission on Accreditation of Rehabilitation Facilities, the Rehabilitation Services Accreditation System or from individuals who have employment related certificates from the Association of Community Rehabilitation Educators or who are Certified Employment Support Professional. (7-1-22)T

403. – 999. (RESERVED)

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 – WATER QUALITY STANDARDS

DOCKET NO. 58-0102-2201

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Idaho Board of Environmental Quality (Board) and is now pending review by the 2023 Idaho State Legislature for final approval. The pending rule will become final and effective upon the adjournment sine die of the First Regular Session of the Sixty-seventh Idaho Legislature unless the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, March 2, 2022, [Vol. 22-3, pages 28 through 46](#).

After consideration of public comments, Subsection 210.01.b., Footnote k, and Subsection 210.03.e. have been revised. The remainder of the rule has been adopted as initially proposed. The board meeting documents are available at <https://www.deq.idaho.gov/water-quality-docket-no-58-0102-2201/> or by contacting the undersigned.

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning the rulemaking, contact the undersigned.

Dated this 6th day of July, 2022

Caroline Moores
Operations Senior Analyst
Department of Environmental Quality
1410 N. Hilton Street
Boise, Idaho 83706
Phone: (208)373-0149
caroline.moores@deq.idaho.gov

DOCKET NO. 58-0102-2201 – ADOPTION OF PENDING RULE

Substantive changes have been made to the pending rule.
Italicized red text *double underscored* indicates changes between the text of the proposed rule as adopted in the pending rule.

The text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 22-3, March 2, 2022, pages 28 through 46](#).

This rule has been adopted as a pending rule by the Agency and is now awaiting review and final approval by the 2023 Idaho State Legislature.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE FOR DOCKET NO. 58-0102-2201

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

210. NUMERIC CRITERIA FOR TOXIC SUBSTANCES FOR WATERS DESIGNATED FOR AQUATIC LIFE, RECREATION, OR DOMESTIC WATER SUPPLY USE.

01. **Criteria for Toxic Substances.** The criteria of Section 210 apply to surface waters of the state as provided in Tables 1 and 2 Criteria for metals (arsenic through zinc) listed in Tables 1 and 2 are expressed as a dissolved fraction (i.e., passes through a forty-five hundredths (0.45) micron filter) unless otherwise noted.

(3-31-22)()

Subsections 210.01 and 210.01.a. are not effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-2201 have been approved.

[Paragraph 210.01.b. (Table 2 footnote k.)]

b. Table 2 contains criteria set for to protection of human health. The Water & Fish criteria apply to waters designated for domestic water supply use. The Fish Only criteria apply to waters designated for primary or secondary contact recreation use.

(3-31-22)()

Table 2. Criteria for Protection of Human Health (based on consumption of:)						
Compound	a CAS Number	Carcinogen?	Water & Fish (µg/L <u>unless otherwise specified</u>)		Fish Only (µg/L <u>unless otherwise specified</u>)	
Inorganic Compounds/Metals						
Antimony	7440360		5.2	b	190	b
Arsenic ¹	7440382	Y	10	cdj	10	cdj
<p>Note: In 2008, Idaho adopted 10 µg/L as its CWA arsenic criterion for both exposure through fish consumption only and exposure through drinking water+fish consumption, choosing the SDWA MCL due to concerns about background levels that exceed EPA’s 304(a) criteria (docket 58-0102-0801). EPA approved this action in 2010. In June 2015, Northwest Environmental Advocates challenged EPA’s 2010 approval. Court remanded action back to EPA. On September 15, 2016, EPA disapproved Idaho’s adoption of 10 µg/L. Neither EPA nor the state of Idaho has promulgated replacement criteria. For more information, go to http://www.deq.idaho.gov/epa-actions-on-proposed-standards.</p>						
<p>¹Effective for CWA purposes. Water & Fish value, Fish Only value, and footnotes continue to be effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-2201 have been approved. See Arsenic² immediately below.</p>						
Arsenic ²	7440382	Y	10	cdj	4.3 8.0 µg/kg fish tissue	cdj k

Table 2. Criteria for Protection of Human Health (based on consumption of:)

Compound	^a CAS Number	Carcinogen?	Water & Fish (µg/L <u>unless otherwise specified</u>)	Fish Only (µg/L <u>unless otherwise specified</u>)		
<i>Note: In 2008, Idaho adopted 10 µg/L as its CWA arsenic criterion for both exposure through fish consumption only and exposure through drinking water + fish consumption, choosing the SDWA MCL due to concerns about background levels that exceed EPA's 304(a) criteria (docket 58-0102-0801). EPA approved this action in 2010. In June 2015, Northwest Environmental Advocates challenged EPA's 2010 approval. Court remanded action back to EPA. On September 15, 2016, EPA disapproved Idaho's adoption of 10 µg/L. Neither EPA nor the state of Idaho has promulgated replacement criteria. For more information, go to http://www.deq.idaho.gov/epa_actions_on_proposed_standards.</i>						
² Not yet effective for CWA purposes. Fish Only value and footnote k are not effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-2201 have been approved.						
Beryllium	7440417			e		e
Cadmium	7440439			e		e
Chromium III	16065831			e		e
Chromium VI	18540299			e		e
Copper	7440508		1300	j		
Lead	7439921			e		e
Methylmercury	22967926				0.3mg/kg	i
Nickel	7440020		58	b	100	b
Selenium	7782492		29	b	250	b
Thallium	7440280		0.017	b	0.023	b
Zinc	7440666		870	b	1,500	b
Inorganic Compounds/Non-Metals						
Cyanide	57125		3.9	b	140	b
Asbestos	1332214		7,000,000 Fibers/L	j		
Organic Compounds						
Acenaphthene	83329		26	b	28	b
Acenaphthylene	208968			e		e
Acrolein	107028		3.2	b	120	b
Acrylonitrile	107131	Y	0.60	bf	22	bf
Aldrin	309002	Y	2.5E-06	bf	2.5E-06	bf
Anthracene	120127		110	b	120	b
alpha-BHC	319846	Y	0.0012	bf	0.0013	bf
beta-BHC	319857	Y	0.036	bf	0.045	bf

Table 2. Criteria for Protection of Human Health (based on consumption of:)

Compound	a CAS Number	Carcinogen?	Water & Fish		Fish Only	
			(µg/L <u>unless otherwise specified</u>)		(µg/L <u>unless otherwise specified</u>)	
gamma-BHC (Lindane)	58899		1.4	b	1.4	b
delta-BHC	319868			e		e
Benzene	71432		3.0	bf	28	b
Benidine	92875	Y	0.0014	bf	0.033	bf
Benzo(a)Anthracene	56553	Y	0.0042	bf	0.0042	bf
Benzo(b)Fluoranthene	205992	Y	0.0042	bf	0.0042	bf
Benzo(k)Fluoranthene	207089	Y	0.042	bf	0.042	bf
Benzo(ghi)Perylene	191242			e		e
Benzo(a)Pyrene	50328	Y	0.00042	bf	0.00042	bf
Bis(2-Chloroethoxy) Methane	111911			e		e
Bis(2-Chloroethyl) Ether	111444	Y	0.29	bf	6.8	bf
Bis(2-Chloroisopropyl) Ether	108601		220	b	1,200	b
Bis(Chloromethyl) Ether	542881	Y	0.0015	bf	0.055	bf
Bis(2-Ethylhexyl) Phthalate	117817	Y	1.2	bf	1.2	bf
Bromoform	75252	Y	62	bf	380	bf
4-Bromophenyl Phenyl Ether	101553			e		e
Butylbenzyl Phthalate	85687		0.33	b	0.33	b
Carbon Tetrachloride	56235	Y	3.6	bf	15	bf
Chlorobenzene	108907		89	b	270	b
Chlordane	57749	Y	0.0010	bf	0.0010	bf
Chlorodibromomethane	124481	Y	7.4	bf	67	bf
Chloroethane	75003			e		e
2-Chloroethylvinyl Ether	110758			e		e
Chloroform	67663		61	b	730	b
2-Chloronaphthalene	91587		330	b	380	b
2-Chlorophenol	95578		30	b	260	b
Chlorophenoxy Herbicide (2,4-D)	94757		1,000	b	3,900	b

Table 2. Criteria for Protection of Human Health (based on consumption of:)

Compound	a CAS Number	Carcinogen?	Water & Fish (µg/L <u>unless otherwise specified</u>)		Fish Only (µg/L <u>unless otherwise specified</u>)	
Chlorophenoxy Herbicide (2,4,5-TP) [Silvex]	93721		82	b	130	b
4-Chlorophenyl Phenyl Ether	7005723			e		e
Chrysene	218019	Y	0.42	bf	0.42	bf
4,4'-DDD	72548	Y	0.00042	bf	0.00042	bf
4,4'-DDE	72559	Y	5.5E-05	bf	5.5E-05	bf
4,4'-DDT	50293	Y	9.8E-05	bf	9.8E-05	bf
Di-n-Butyl Phthalate	84742		8.2	b	8.3	b
Di-n-Octyl Phthalate	117840			e		e
Dibenzo (a,h) Anthracene	53703	Y	0.00042	bf	0.00042	bf
1,2-Dichlorobenzene	95501		700	b	1,100	b
1,3-Dichlorobenzene	541731		3.5	b	4.8	b
1,4-Dichlorobenzene	106467		180	b	300	b
3,3'-Dichlorobenzidine	91941	Y	0.29	bf	0.48	bf
Dichlorobromomethane	75274	Y	8.8	bf	86	bf
1,1-Dichloroethane	75343			e		e
1,2-Dichloroethane	107062	Y	96	bf	2,000	bf
1,1-Dichloroethylene	75354		310	b	5,200	b
2,4-Dichlorophenol	120832		9.6	b	19	b
1,2-Dichloropropane	78875	Y	8.5	bf	98	bf
1,3-Dichloropropene	542756	Y	2.5	bf	38	bf
Dieldrin	60571	Y	4.2E-06	bf	4.2E-06	bf
Diethyl Phthalate	84662		200	b	210	b
2,4-Dimethylphenol	105679		110	b	820	b
Dimethyl Phthalate	131113		600	b	600	b
Dinitrophenols	25550587		13	b	320	b
2,4-Dinitrophenol	51285		12	b	110	b
2,4-Dinitrotoluene	121142	Y	0.46	bf	5.5	bf
2,6-Dinitrotoluene	606202			e		e
1,2-Diphenylhydrazine	122667	Y	0.25	bf	0.65	bf
2, 3, 7, 8-TCDD Dioxin	1746016	Y	1.8E-08	bf	1.9E-08	bf

Table 2. Criteria for Protection of Human Health (based on consumption of:)

Compound	a CAS Number	Carcinogen?	Water & Fish		Fish Only	
			(µg/L <u>unless otherwise specified</u>)		(µg/L <u>unless otherwise specified</u>)	
alpha-Endosulfan	959988		7.0	b	8.5	b
beta-Endosulfan	33213659		11	b	14	b
Endosulfan Sulfate	1031078		9.9	b	13	b
Endrin	72208		0.011	b	0.011	b
Endrin Aldehyde	7421934		0.38	b	0.40	b
Ethylbenzene	100414		32	b	41	b
Fluoranthene	206440		6.3	b	6.4	b
Fluorene	86737		21	b	22	b
Heptachlor	76448	Y	2.0E-05	bf	2.0E-05	bf
Heptachlor Epoxide	1024573	Y	0.00010	bf	0.00010	bf
Hexachlorobenzene	118741	Y	0.00026	bf	0.00026	bf
Hexachlorobutadiene	87683	Y	0.031	bf	0.031	bf
Hexachlorocyclohexane (HCH)-Technical	608731	Y	0.027	bf	0.032	bf
Hexachloro-cyclopentadiene	77474		1.3	b	1.3	b
Hexachloroethane	67721		0.23	b	0.24	b
Ideno (1,2,3-cd) Pyrene	193395	Y	0.0042	bf	0.0042	bf
Isophorone	78591	Y	330	bf	6,000	bf
Methoxychlor	72435		0.0054	b	0.0055	b
Methyl Bromide	74839		130	b	3,700	b
Methyl Chloride	74873			e		e
3-Methyl-4-Chlorophenol	59507		350	b	750	b
2-Methyl-4,6-Dinitrophenol	534521		1.6	b	8.6	b
Methylene Chloride	75092		38	b	960	b
Naphthalene	91203			e		e
Nitrobenzene	98953		12	b	180	b
2-Nitrophenol	88755			e		e
4-Nitrophenol	100027			e		e
N-Nitrosodimethylamine	62759	Y	0.0065	bf	9.1	bf
N-Nitrosodi-n-Propylamine	621647	Y	0.046	bf	1.5	bf
N-Nitrosodiphenylamine	86306	Y	3.14	bf	18	bf

Table 2. Criteria for Protection of Human Health (based on consumption of:)

Compound	a CAS Number	Carcinogen?	Water & Fish		Fish Only	
			(µg/L <u>unless otherwise specified</u>)		(µg/L <u>unless otherwise specified</u>)	
Pentachlorobenzene	608935		0.035	b	0.036	b
Pentachlorophenol	87865	Y	0.11	bf	0.12	bf
Phenanthrene	85018			e		e
Phenol	108952		3,800	b	85,000	b
Polychlorinated Biphenyls PCBs	g	Y	0.00019	b ^{fh}	0.00019	b ^{fh}
Pyrene	129000		8.1	b	8.4	b
1,2,4,5-Tetrachlorobenzene	95943		0.0093	b	0.0094	b
1,1,2,2-Tetrachloroethane	79345	Y	1.4	bf	8.6	bf
Tetrachloroethylene	127184		15	b	23	b
Toluene	108883		47	b	170	b
Toxaphene	8001352	Y	0.0023	bf	0.0023	bf
1,2-Trans-Dichloroethylene	156605		120	b	1,200	b
1,2,4-Trichlorobenzene	120821		0.24	b	0.24	b
1,1,1-Trichloroethane	71556		11,000	b	56,000	b
1,1,2-Trichloroethane	79005	Y	4.9	bf	29	bf
Trichloroethylene	79016		2.6	b	11	b
2,4,5-Trichlorophenol	95954		140	b	190	b
2,4,6-Trichlorophenol	88062		1.5	b	2.0	b
Vinyl Chloride	75014	Y	0.21	bf	5.0	bf

Footnotes for Table 2. Criteria for Protection of Human Health

a. Chemical Abstracts Service (CAS) registry numbers which provide a unique identification for each chemical.

b. This criterion is based on input values to human health criteria calculation specified in [Idaho's Technical Support Document \(TSD\) for Human Health Criteria Calculations - 2015](#). Criteria for non-carcinogens are calculated using the formula:

Table 2. Criteria for Protection of Human Health (based on consumption of:)				
Compound	^a CAS Number	Carcinogen?	Water & Fish (µg/L <u>unless otherwise specified</u>)	Fish Only (µg/L <u>unless otherwise specified</u>)
$AWQC = RfD * RSC * \left(\frac{BW}{DI + (FI * BAF)} \right)$ <p>and criteria for carcinogens are calculated using the formula:</p> $AWQC = RSD * \left(\frac{BW}{DI + (FI * BAF)} \right)$ <p>Where: AWQC = Ambient water quality criterion (mg/L) BW = Human Body Weight (kg), 80 is used in these criteria DI = Drinking Water Intake, (L/day), 2.4 is used in these criteria FI = Fish Intake, (kg/day), 0.0665 is used in these criteria BAF = Bioaccumulation Factor, L/kg, chemical specific value, see TSD RfD = Reference dose (mg/kg-day), chemical specific value, see TSD</p> <p style="text-align: center;">Target Incremental Cancer Risk RSD = ----- (mg/kg-day), chemical specific value, see TSD Cancer Potency Factor</p> RSC = Relative Source Contribution, chemical specific value, see TSD				
c. Inorganic forms only.				
d. Criterion expressed as total recoverable (unfiltered) concentrations.				
e. No numeric human health criteria has been established for this contaminant. However, permit authorities should address this contaminant in NPDES permit actions using the narrative criteria for toxics from Section 200 of these rules.				
f. EPA guidance allows states to choose from a range of 10 ⁻⁴ to 10 ⁻⁶ for the incremental increase in cancer risk used in human health criteria calculation. Idaho has chosen to base this criterion on carcinogenicity of 10 ⁻⁵ risk.				
g. PCBs are a class of chemicals which include Aroclors, 1242, 1254, 1221, 1232, 1248, 1260, and 1016, CAS numbers 53469219, 11097691, 11104282, 11141165, 12672296, 11096825 and 12674112 respectively. The aquatic life criteria apply to this set of PCBs.				
h. This criterion applies to total PCBs, (e.g. the sum of all congener, isomer, or Aroclor analyses).				

Table 2. Criteria for Protection of Human Health (based on consumption of:)				
Compound	^a CAS Number	Carcinogen?	Water & Fish (µg/L <u>unless otherwise specified</u>)	Fish Only (µg/L <u>unless otherwise specified</u>)
<p>i. This fish tissue residue criterion (TRC) for methylmercury is based on a human health reference dose (RfD) of 0.0001 mg/kg body weight-day; a relative source contribution (RSC) estimated to be 27% of the RfD; a human body weight (BW) of 70 kg (for adults); and a total fish consumption rate of 0.0175 kg/day for the general population, summed from trophic level (TL) breakdown of TL2 = 0.0038 kg fish/day + TL3 = 0.0080 kg fish/day + TL4 = 0.0057 kg fish/day. This is a criterion that is protective of the general population. A site-specific criterion or a criterion for a particular subpopulation may be calculated by using local or regional data, rather than the above default values, in the formula: $TRC = [BW \times \{RfD - (RSC \times RfD)\}] / TL$. In waters inhabited by species listed as threatened or endangered under the Endangered Species Act or designated as their critical habitat, the Department will apply the human health fish tissue residue criterion for methylmercury to the highest trophic level available for sampling and analysis.</p>				
<p>j. This criterion is based on the drinking water Maximum Containment Contaminant Level (MCL).</p>				
<p><u>k. For Fish Only exposure to inorganic arsenic, the human health criterion is:</u></p>				
<u>Fish Tissue (µg/kg wet-weight)</u>		<u>Water Column (µg/L)</u>		
<u>8.0¹</u>		<u>4.3²</u>		
<p>¹<u>Fish tissue element is based on total recoverable inorganic arsenic in muscle or fillet. The fish tissue element supersedes the water column element provided at least ninety (90) days have passed since any new activity or discharge has occurred within the water body. Fish tissue element will be applied in accordance with Subsection 210.03.e.</u></p>				
<p>²<u>Water column element is based on dissolved inorganic arsenic in water.</u></p>				
<p><u>Footnote k is not effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-2201 have been approved.</u></p>				

(3-31-22)()

(BREAK IN CONTINUITY OF SUBSECTIONS)

03. Applicability. The criteria established in Section 210 are subject to the general rules of applicability in the same way and to the same extent as are the other numeric chemical criteria when applied to the same use classifications. Mixing zones may be applied to toxic substance criteria subject to the limitations set forth in Section 060 and set out below. (3-31-22)

[Paragraph 210.03.e.]

- e. Application of the fish tissue element of the arsenic criterion for human health. ()
- i. The fish tissue element for total recoverable inorganic arsenic is based on a single measurement using sufficiently sensitive methods. ()
- ii. The single measurement must be made on a sample that is an average or composite of a minimum of five (5) individual fish of the same species collected from the same water body within the same calendar year.

When available, game fish species representative of the size and species that may be legally harvested within the waterbody are preferred. Results from multiple sample events may be averaged or composited provided they represent the same species collected from the same water body within the same calendar year. ()

iii. Not to be exceeded; the Department will evaluate all representative fish tissue data to determine compliance with this criterion element. ()

iv. For purposes of determining water column targets for the development of effluent limits, TMDL targets, or water column targets for fishless waters, the fish tissue element may be translated to a water column value using a site-specific bioaccumulation factor (BAF) based on the ratio of total recoverable inorganic arsenic in fish muscle or fillet tissue to dissolved inorganic arsenic in the water column using the following equation:

$$WC_T (\mu g/L) = \frac{8.00 \mu g/kg}{BAF_{SS} L/kg}$$

Where:

$WC_T (\mu g/L)$ is the translated water column value; and

$BAF_{SS} L/kg$ is the site specific BAF calculated consistent with 210.03.e.v.

In fishless waters, surface water and fish tissue from the immediate downstream waters may be used for bioaccumulation modeling. In the absence of sufficient fish tissue data, the water column element is the applicable criterion element in fishless waters. ()

v. When translating the fish tissue element to a water column value, the following procedures will be followed. ()

(1) Data used to translate the fish tissue element must be based on current conditions and consistent with Subsections 210.03.e.i. and ii. ()

(2) Whenever practical, fish tissue samples must be representative of the game fish species present within the waterbody and include game fish of legally harvestable size. In the absence of suitable game fish species, other resident fish species may be used. ()

(3) Water column samples must be representative of the annual average concentration of dissolved inorganic arsenic at the site. ()

(4) BAFs are calculated as a trophic-level weighted BAF or other scientifically defensible method for deriving protective BAF. ()

Subsection 210.03.e. is not effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-2201 have been approved.

IDAPA 61 – IDAHO STATE PUBLIC DEFENSE COMMISSION

DOCKET NO. 61-0000-2200

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule being adopted through this omnibus rulemaking as listed in the descriptive summary of this notice is July 1, 2022.

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 Section 19-850(1)(a), Idaho Code

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

This temporary rulemaking adopts and republishes the following rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 61, rules of the Idaho State Public Defense Commission:

IDAPA 61

- 61.01.01, *General Provisions and Definitions*;
- 61.01.02, *Requirements and Procedures for Representing Indigent Persons*;
- 61.01.03, *Records, Reporting, and Review*; and
- 61.01.04, *Financial Assistance and Training Resources*.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 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:

This temporary rule is necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These temporary rule chapters implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules.

FEE SUMMARY: This rulemaking does not impose a fee or charge.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Kathleen Elliott at (208) 332-1735.

DATED this 1st day of July, 2022.

Kathleen J. Elliott, Executive Director
Idaho State Public Defense Commission
816 W. Bannock, Suite 201
Boise, Idaho 83702
Phone: (208) 332-1735
Fax: (208) 364-6147
Email: Kathleen.Elliott@pdc.idaho.gov

**THE FOLLOWING IS THE TEMPORARY RULE TEXT FOR OMNIBUS DOCKET NO. 61-0000-2200
(New Chapters)**

61.01.01 – GENERAL PROVISIONS AND DEFINITIONS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 19-850(1)(a), Idaho Code. (7-1-22)T

001. TITLE AND SCOPE.

This chapter is titled “General Provisions and Definitions,” and contains general provisions and definitions applicable to IDAPA 61. (7-1-22)T

002. ADMINISTRATIVE APPEALS.

01. Intermediate Administrative Appeal Procedure. Except as set forth herein, IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General,” shall apply to IDAPA 61. (7-1-22)T

02. Confidential Information Exempt From Public Records. Documents containing confidential information and submitted in any administrative proceeding must be redacted or filed under seal. (7-1-22)T

003. FILING OF DOCUMENTS.

Unless otherwise set forth in a Notice of Rulemaking or Order of the Commission or Executive Director, all written communications and documents that are intended to be part of an official record for decision in a rulemaking or contested case must be filed with the Executive Director. No copies in addition to the original document need be filed with the agency unless requested by the Executive Director or Commission. (7-1-22)T

004. – 009. (RESERVED)

010. DEFINITIONS.

01. Active Case. A Capital Case is active when it is not stayed. All other Cases are active when there is an appointment, appearance, filing or investigation in the reporting period or it is not stayed. (7-1-22)T

02. Annual Report. The Defending Attorney report required by Section 19-864, Idaho Code, including CLEs, Caseloads, Workloads and other information requested for the October 1 through September 30 reporting period to complete the Annual Report form provided by PDC Staff. (7-1-22)T

03. Capital Case. A case in which the state has given notice it will seek the death penalty or is legally entitled to seek the death penalty under Section 18-4004A, Idaho Code. (7-1-22)T

04. Capital Defending Attorney. A Defending Attorney who meets the qualifications for and is on the Capital Defending Attorney Roster. (7-1-22)T

05. Capital Defending Attorney Roster. The PDC’s list of Defending Attorneys eligible for appointment by a court to represent an Indigent Person at public expense in a Capital Case. (7-1-22)T

06. Case. All related charges against an individual from a single incident, transaction or occurrence filed within a single case number. A probation violation or motion for contempt is counted as a separate Case. (7-1-22)T

07. Caseload. A Defending Attorney’s total number of Active Cases during the applicable reporting period as counted under IDAPA 61.01.02, “Requirements and Procedures for Representing Indigent Persons,” Paragraph 060.05.c. A county’s total Caseload to determine compliance with Workload rules is calculated as the mean of the Felony Case Equivalent calculation for each of the preceding three (3) years. (7-1-22)T

08. Compliance Plan. A county’s plan for meeting Public Defense Rules and curing any Deficiencies including detailed action items and completion dates. (7-1-22)T

09. Cost Analysis. A detailed explanation of the expected expenses for the county to complete its Compliance Plan and how the county is proposing to pay for those expenses. (7-1-22)T

10. Defending Attorney. Any attorney employed by a county or under contract with a county as an institutional Defending Attorney or a contract Defending Attorney or otherwise appointed by a Court to represent adults or juveniles at public expense. (7-1-22)T

11. Defending Attorney Roster. The PDC’s list of Defending Attorneys eligible for appointment by a

court to represent an Indigent Person at public expense in a non-capital Case. (7-1-22)T

12. Deficiency. The noncompliance with any Public Defense Rule by a county, Defending Attorney, employee, contractor, representative or other agent. (7-1-22)T

13. Executive Director. PDC employee appointed by the Commission under Section 19-850(2)(a), Idaho Code. (7-1-22)T

14. Felony Case Equivalent (FCE). The calculation after all Case types are converted to their felony equivalent to determine compliance with Caseload rules. (7-1-22)T

15. Financial Assistance. The state funding a county may request and may be awarded under Section 19-862A, Idaho Code. (7-1-22)T

16. Indigent Person. A person who, at the time his need is determined under Section 19-854, Idaho Code, is unable to provide for the full payment of a Defending Attorney and all other necessary expenses of representation. (7-1-22)T

17. Initial Appearance. The first appearance of the defendant before any judge. In the event a defendant appears before more than one judge, the first appearance before the first judge constitutes the Initial Appearance. (7-1-22)T

18. Material. An action or failure to act that could have an immediate and significant negative impact on the effective representation of Indigent Persons or result in the misuse of state funds. (7-1-22)T

19. PDC. The Idaho State Public Defense Commission including PDC Staff and the Commission. Information reported to the PDC will be reported using available PDC forms. (7-1-22)T

20. PDC Staff. Employees of the Commission who report to the Executive Director. References to PDC Staff include the Executive Director unless otherwise specified. (7-1-22)T

21. Public Defense Rules. Any rule promulgated by the Commission under Section 19- 850(1)(a), Idaho Code. (7-1-22)T

22. Vertical Representation. A Defending Attorney is responsible for the continuous and personal representation and oversight of an Indigent Person's case, to the extent reasonably practicable, through trial proceedings and preservation of right to appeal. For purposes of this definition reasonably practicable means a Defending Attorney will make efforts to personally represent the client during all substantive proceedings where the facts of the case are discussed by counsel or the Court, provide unavailable dates at the time of setting, and seek continuances in the case of unforeseen absences. The Indigent Person may consent to have another Defending Attorney appear at a hearing. Each county is responsible to support and provide resources as necessary to ensure Vertical Representation. (7-1-22)T

23. Willful. An action or failure to act that is deliberate and with knowledge. (7-1-22)T

24. Workload. A Defending Attorney's Caseload adjusted to account for available support staff, Case complexity, and distribution through the reporting year and other duties such as supervision. (7-1-22)T

011. – 999. (RESERVED)

61.01.02 – REQUIREMENTS AND PROCEDURES FOR REPRESENTING INDIGENT PERSONS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 19-850(1)(a), Idaho Code. (7-1-22)T

001. TITLE AND SCOPE.

This chapter is titled “Requirements and Procedures for Representing Indigent Persons” and contains the minimum requirements for representation of Indigent Persons. (7-1-22)T

002. – 009. (RESERVED)

010. DEFINITIONS.

For the purposes of this chapter, the definitions in IDAPA 61.01.01, “General Provisions and Definitions,” apply. (7-1-22)T

011. – 019. (RESERVED)

020. COUNTIES TO ADEQUATELY RESOURCE PUBLIC DEFENSE TO ENSURE EFFECTIVE REPRESENTATION IS PROVIDED TO INDIGENT PERSONS AS PROVIDED IN SECTIONS 19-860(2), 19-861(2)-(3), 19-862(1) AND 19-862A(1), (2) AND (8), IDAHO CODE.

Counties shall ensure effective representation is provided to Indigent Persons by adequately resourcing public defense as follows: (7-1-22)T

01. Supported Defense Model. Annually appropriate enough money to fund the public defense model selected under Section 19-859, Idaho Code: (7-1-22)T

a. Employ or contract with attorneys to provide public defense services from the Defending Attorney Roster or, if the attorney is not yet on the Defending Attorney Roster, have the attorney complete and submit to the PDC the Roster form within thirty (30) days from the date of their employment or contract under Section 070 of these rules; (7-1-22)T

b. Employ or contract with qualified staff and contractors with professional certificates, licenses and permissions as required by applicable rules and laws; and (7-1-22)T

c. Provide resources for compliance with Public Defense Rules. (7-1-22)T

02. Defending Attorney Resources. Provide Defending Attorneys with resources for carrying out the Defending Attorney’s responsibilities, including: (7-1-22)T

a. Confidential office, jail and courthouse meeting rooms to protect client confidentiality; (7-1-22)T

b. Confidential servers and systems to protect client confidentiality; (7-1-22)T

c. Sufficient equipment, technology, supplies; and (7-1-22)T

d. Other resources needed to provide constitutional representation. (7-1-22)T

03. Contracting. Counties and contract Defending Attorneys will enter into a contract for public defense services as required by Section 19-859, Idaho Code, which must include the following core terms: (7-1-22)T

a. All parties will comply with Public Defense Rules; (7-1-22)T

b. Description of services and Case types included in the contract; (7-1-22)T

c. Prohibition of a single fixed fee for services and expenses; (7-1-22)T

d. Fee structure and amount for services; (7-1-22)T

e. The county will pay client related expenses and costs; (7-1-22)T

f. Defending Attorney will safeguard and retain case files and records as necessary to protect Indigent Persons, and, at termination of their contract, transfer files to the successor contract Defending Attorney; proper safeguards will be put in place to ensure no file is transferred to an attorney who may have a conflict; (7-1-22)T

- g.** All parties keep detailed records of their public defense services and expenditures; (7-1-22)T
- h.** Defending Attorney will notify the county and the lead institutional or primary contracting Defending Attorney, as applicable, if the Idaho State Bar or other licensing organization files formal charges against a Defending Attorney or non-attorney staff; and (7-1-22)T
- i.** Authorization for and disclosure of the contract to the PDC. (7-1-22)T
- 04. Communication.** The County will frequently meet with the lead institutional or primary contracting Defending Attorneys who are the main providers of public defense services about the following: (7-1-22)T
- a.** Review compliance with Public Defense Rules, including monitoring Workloads and Vertical Representation; and (7-1-22)T
- b.** Review county budget and expenditures for sufficient allocation of public defense resources and assess need for Financial Assistance. (7-1-22)T
- 021. – 029. (RESERVED)**
- 030. PUBLIC DEFENSE INDEPENDENT OF POLITICAL AND JUDICIAL INFLUENCE.** Counties will ensure public defense is independent of political and to the extent possible, judicial influence, provided however, the judiciary is encouraged to contribute information and advice concerning the delivery of public defense services. (7-1-22)T
- 01. No Judicial, Political or Conflict Influences.** The county’s selection and retention of Defending Attorneys will not involve conflicts of interest. (7-1-22)T
- 02. Independent Committees.** (7-1-22)T
- a.** Selection Recommendation Committee. The county will use an independent committee from within the county or region for recommendations to the Board of County Commissioners for the selection of the lead institutional Defending Attorney or primary contracting Defending Attorneys as the main providers of public defense services as set forth in Sections 19-859 and 19-860(2), Idaho Code; and (7-1-22)T
- b.** Independence Working Group. Each judicial district may establish an independent working group of one (1) attorney for each county who practices public defense in or who is familiar or will become familiar with public defense in the county and who is not a Defending Attorney for the appointing county and who is not a prosecutor, to act as a liaison in independence issues between Defending Attorneys and county stakeholders. The Administrative District Judge (ADJ) or Trial Court Administrator (TCA) will identify the members of the working group for their District, and if the ADJ or TCA does not, the Commission will identify group members. (7-1-22)T
- c.** Information about an attorney’s fitness to represent Indigent Persons is confidential and exempt from Public Records Act under Section 74-105(18)(a), Idaho Code. (7-1-22)T
- 03. Independent Advocate.** A Defending Attorney exercising their professional or ethical obligations or advocating for policies supporting constitutional representation of Indigent Persons is not cause for discipline or termination. Nothing in this Subsection 030.03 is intended to prohibit the discipline or termination of a Defending Attorney who has violated county employment policy or Idaho Rules of Professional Conduct. (7-1-22)T
- 04. Independence.** The county will limit prosecutor involvement in public defense matters that may jeopardize the independence of any Defending Attorney or undermine the delivery of public defense. (7-1-22)T
- 05. Independent Contract Negotiation.** The county should consider engaging independent legal counsel to negotiate Defending Attorney Contracts. (7-1-22)T

031. – 039. (RESERVED)

040. COUNTIES TO PROVIDE CONSISTENT RESOURCES FOR PUBLIC DEFENSE.

Counties will provide adequate and equitable resources for public defense consistent with a properly funded prosecutor as provided in Sections 19-860(1), 19-861(3) and 19-850(1)(a)(vii)7, Idaho Code. (7-1-22)T

01. Staff and Facilities. Defending Attorneys and prosecutors will have equal access to quality staff and facilities. (7-1-22)T

02. Pay. So far as is possible, Defending Attorneys and their staff will not be compensated less than a properly funded prosecutor and staff with similar experience and performing similar duties. (7-1-22)T

03. Other Resources. Defending Attorneys and the prosecutor will have equal access to resources necessary for legal representation. This includes but is not limited to the independent investigation and evaluation of evidence. (7-1-22)T

04. Equity Review. The county will frequently review and assess equity between, and resource needs of, Defending Attorneys and prosecutors. (7-1-22)T

05. Budget for Equity. The county will frequently review resource needs with Defending Attorney and adequately budget to meet those needs. (7-1-22)T

041. – 049. (RESERVED)

050. COURT APPOINTMENT OF COMPETENT DEFENDING ATTORNEYS.

Courts will appoint Defending Attorneys who are competent to represent Indigent Persons as provided in Sections 19-855 and 19-850(1)(a)(vi), Idaho Code, and Subsection 060 of these rules. (7-1-22)T

01. Appointment in Non-Capital Cases. (7-1-22)T

a. Courts will appoint a Defending Attorney from the Defending Attorney Roster except in extraordinary circumstances where the Court: (7-1-22)T

i. Finds there is good cause to appoint an attorney at public expense who is not on the Roster; (7-1-22)T

ii. Finds the attorney is competent to represent the Indigent Person in the particular case; and (7-1-22)T

iii. Directs the appointed attorney to notify the PDC of the appointment. (7-1-22)T

b. Every attorney appointed under this Subsection 050.01 to represent an Indigent Person at public expense must comply with Subsection 060 of these rules. (7-1-22)T

02. Appointment in Capital Cases. (7-1-22)T

a. In Capital Cases, Courts will: (7-1-22)T

i. Appoint a Defending Attorney from the Capital Defending Attorney Roster to represent an Indigent Person at public expense; (7-1-22)T

ii. Inquire about the Defending Attorney's Workload to ensure compliance with the Public Defense Rules; (7-1-22)T

b. At or before the Initial Appearance in a Capital Case, appoint no less than two (2) qualified Capital Defending Attorneys, one (1) designated lead and the other(s) as co-counsel. (7-1-22)T

03. Conflicts of Interest. A Court shall not appoint a Defending Attorney to any case with a conflict of interest in that case. (7-1-22)T

04. Eligibility. Except as provided in Subsection 050.01.a. of these rules, attorneys who are not approved for inclusion on the applicable Roster are not eligible to represent Indigent Persons at public expense. (7-1-22)T

051. – 059. (RESERVED)

060. DEFENDING ATTORNEY MINIMUM REQUIREMENTS.

Defending Attorneys shall meet the following minimum requirements for providing effective representation to Indigent Persons as provided in Sections 19-855, 19-860(2), 19-850(1)(a)(vi) and 19-850(1)(a)(v)(ii)5 and 8, Idaho Code. (7-1-22)T

01. Idaho State License, Defending Attorney Roster, and County Employment or Contract Requirements: (7-1-22)T

- a.** Licensed to practice law in Idaho and in compliance with Idaho State Bar rules; (7-1-22)T
- b.** Member of the Defending Attorney Roster, except as provided in Subsection 050 of these rules; (7-1-22)T
- c.** Employed or under contract to provide public defense services to a county; and (7-1-22)T
- d.** If a Court attempts to appoint an attorney to represent an Indigent Person at public expense and the attorney does not meet one or more of the requirements in this Subsection 060.01, the attorney will immediately notify the Court. (7-1-22)T

02. Public Defense Competency. Be competent to counsel and represent Indigent Persons. (7-1-22)T

03. Qualifications. Have the ability, training, experience, and understanding necessary for their appointed Cases to do the following: (7-1-22)T

- a.** Apply laws, rules, procedures, and practices to the Case and perform thorough legal research and analysis; (7-1-22)T
- b.** Protect client confidentiality, and if breached, notify the client and any other entities when necessary to preserve the client’s constitutional and statutory rights; (7-1-22)T
- c.** Ensure Vertical Representation from the time a Defending Attorney is appointed in each Case. Nothing in this rule is intended to prohibit a different Defending Attorney from representing the client at Initial Appearance. Defending Attorneys who are unable to comply with this rule will notify their supervisor, Board of County Commissioners, or the Court and request appropriate resources; (7-1-22)T
- d.** Dedicate sufficient time to each Case; (7-1-22)T
- e.** Promptly and independently investigate the Case; (7-1-22)T
- f.** Request funds as needed to retain an investigator; (7-1-22)T
- g.** Request the assistance of experts where it is reasonably necessary to prepare the defense and rebut the prosecution’s case; (7-1-22)T
- h.** Continually evaluate the Case for defense investigations or expert assistance; (7-1-22)T
- i.** Be present at the Initial Appearance and available to the Indigent Person in person or via technology, and: (7-1-22)T

- i. Preserve the client’s constitutional and statutory rights; (7-1-22)T
 - ii. Discuss the charges, case and potential and collateral consequences with the client; (7-1-22)T
 - iii. Obtain information relevant to Idaho Criminal Rule 46 (bail or release on own recognizance) and if appropriate, seek release; (7-1-22)T
 - iv. Encourage the entry of a not guilty plea at Initial Appearance except in circumstances where a guilty plea is constitutionally appropriate; (7-1-22)T
 - j. Work within Caseload or Workload limits, defined in Subsection 060.05 of these rules. If a Defending Attorney’s Caseload exceeds the numeric standard, the attorney must disclose this in the Annual Report. The Report must include the reasons for the excessive Caseload or Workload, and if and how the representation met constitutional standards; (7-1-22)T
 - k. Have sufficient time and private space to confidentially meet with Indigent Persons; (7-1-22)T
 - l. Have confidential and secure information systems for Indigent Person’s confidential information; (7-1-22)T
 - m. Identify and resolve conflicts of interests in compliance with Idaho Rules of Professional Conduct (IRCP) and other applicable laws and rules; (7-1-22)T
 - n. Be familiar with and competent to identify or use: (7-1-22)T
 - i. Forensic and scientific methods used in prosecution and defense; (7-1-22)T
 - ii. Mental, psychological, medical, environmental issues and impacts; (7-1-22)T
 - iii. Written and oral advocacy; (7-1-22)T
 - iv. Motions practice to exhaust good faith procedural and substantive defenses; (7-1-22)T
 - v. Evidence presentation and direct and cross examination; (7-1-22)T
 - vi. Experts as consultants and witnesses and expert evidence; (7-1-22)T
 - vii. Forensic investigations and evidence; (7-1-22)T
 - viii. Mitigating factors and evidence; (7-1-22)T
 - ix. Jury selection methods and procedures; (7-1-22)T
 - x. Electronic filing, discovery and evidence and systems; (7-1-22)T
 - xi. Constitutional representation; and (7-1-22)T
 - xii. When a Defending Attorney’s abilities do not match the nature and complexity of the Case, they will seek the advice of experienced attorneys, seek training, or decline appointments. (7-1-22)T
- 04. Additional Qualifications for Capital Cases.** Capital Defending Attorneys must meet the following additional requirements: (7-1-22)T
- a. Have advanced familiarity and demonstrated competence with the above minimum requirements for Defending Attorneys; and (7-1-22)T

- b.** Have knowledge and experience in the following: (7-1-22)T

 - i. Capital laws, rules, procedures and practices; (7-1-22)T
 - ii. Capital mitigation; (7-1-22)T
 - iii. Use of mental health evaluations and evidence; (7-1-22)T
 - iv. Managing and litigating complex cases; (7-1-22)T
 - v. Assembling and leading a trial team; (7-1-22)T
 - vi. Capital jury selection methods and procedures; and (7-1-22)T
 - vii. Qualifications meeting or exceeding the American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases to extent they do not conflict with Idaho law; (7-1-22)T
- c.** Lead trial Defending Attorney in Capital Cases will meet or exceed the following experience levels: (7-1-22)T

 - i. Active trial practitioner with no less than ten (10) years in criminal defense litigation; (7-1-22)T
 - ii. Lead counsel in no less than ten (10) felony jury trial tried to verdict; and (7-1-22)T
 - iii. Lead or co-counsel in no less than one (1) Capital Case tried to verdict or capital sentencing; (7-1-22)T
- d.** Trial co-counsel Defending Attorney in Capital Cases who are not qualified as lead trial counsel will meet or exceed the following experience levels: (7-1-22)T

 - i. Active trial practitioner with no less than five (5) years in criminal defense litigation and one (1) of the following: (7-1-22)T
 - ii. Lead counsel in no less than five (5) felony jury trial tried to verdict; or (7-1-22)T
 - iii. Lead or co-counsel in no less than one (1) Capital Case tried to verdict or capital sentencing; (7-1-22)T
- e.** Lead appellate/post-conviction Defending Attorney in Capital Cases will meet or exceed the following experience levels: (7-1-22)T

 - i. Active appellate/post-conviction attorney with no less than ten (10) years in criminal defense litigation; and (7-1-22)T
 - ii. Lead counsel in no less than one (1) Capital or federal capital habeas corpus Case; (7-1-22)T
- f.** Appellate/post-conviction co-counsel in Capital Cases who are not qualified as lead appellate or lead post-conviction counsel will meet or exceed the following experience levels: (7-1-22)T

 - i. Active appellate and post-conviction practitioner with no less than five (5) years in criminal defense litigation; and (7-1-22)T
 - ii. Attorney in no less than one (1) felony appeal with appellate argument, or if tried to evidentiary hearing either a post-conviction or federal habeas corpus Case; (7-1-22)T
- g.** Lead trial or appellate/post-conviction counsel who do not meet the numeric years of practice or numeric number of trials/cases will meet the following alternate requirements: (7-1-22)T

- i. Meet all the other minimum requirements to ensure their abilities, training, and experience are appropriate given the nature and complexity of a Capital Case, and (7-1-22)T
- ii. Demonstrate they are qualified to provide lead trial representation or appellate and post-conviction representation in a Capital Case, as applicable, despite their years in practice and trials/cases handled; (7-1-22)T
- h. Minimum requirements for Capital Case defense teams: (7-1-22)T
 - i. At least two (2) qualified Capital Defending Attorneys, one (1) designated lead and the other or others as co-counsel, appointed at or before the Initial Appearance; (7-1-22)T
 - ii. Immediate assembly of a team by Capital Defending Attorneys consisting of no less than the following: (7-1-22)T
 - (1) Fact investigator; (7-1-22)T
 - (2) Mitigation specialist; (7-1-22)T
 - (3) Person trained and professionally qualified to screen for mental and psychological screenings; and (7-1-22)T
 - (4) Other persons needed to provide effective and zealous representation; and (7-1-22)T
 - (5) Require ongoing training and compliance with standards. (7-1-22)T
- 05. Caseloads and Workloads.** Defending Attorneys will have Caseloads and Workloads that are appropriately sized to permit effective representation as follows: (7-1-22)T
 - a. Caseload standard. Maximum Caseloads by Active Case type shall not during the reporting period exceed: (7-1-22)T
 - i. Two (2) Capital Cases at a time; (7-1-22)T
 - ii. Two hundred ten (210) non-capital felony Cases; (7-1-22)T
 - iii. Five hundred twenty (520) misdemeanor Cases; (7-1-22)T
 - iv. Two hundred thirty-two (232) juvenile Cases; (7-1-22)T
 - v. One hundred five (105) child protection or parent representation Cases; (7-1-22)T
 - vi. Six hundred eight (608) civil contempt or mental health Cases; and (7-1-22)T
 - vii. Thirty-five (35) non-capital substantive appeal Cases. (7-1-22)T
 - viii. To determine maximum Caseloads for mixed Case types, add the percentage of the maximum Caseload for each category and the sum of those percentages is not to exceed one hundred percent (100%); and adjust the Caseload downward when the Case assignments are weighted toward more serious offenses, complex Cases, or those requiring significant expenditure of time and resources. (7-1-22)T
 - b. Maximum Caseloads will remain in effect until April 30, 2023, unless otherwise addressed by the Commission prior to that date. In the absence of a numerical Caseload rule, Defending Attorneys and counties should use the National Advisory Commission (NAC) Caseload limits recognized by the American Bar Association as a guideline for assessment. (7-1-22)T
 - c. Case Counting. (7-1-22)T

- i. A felony Case is counted as follows: (7-1-22)T
 - (1) A Case filed as a felony is counted as one (1) felony, whether it is dismissed, remanded, pled, or tried to completion; (7-1-22)T
 - (2) A Case filed as a misdemeanor that is later amended to a felony is counted as a felony; (7-1-22)T
- ii. A probation violation or motion for contempt is counted as a separate Case; (7-1-22)T
- iii. A Case that is conflicted or consolidated is counted by the Defending Attorney assigned to the conflicted or consolidated Case and not counted by the initial Defending Attorney; (7-1-22)T
- iv. A Case sent to a problem-solving court is counted once as initially filed as a felony, misdemeanor, or juvenile Case; (7-1-22)T
- v. A Case is counted as a Capital Case if, in any part of the reporting period, the state is legally entitled to seek the death penalty under Section 18-4004A, Idaho Code; (7-1-22)T
- vi. Post-judgment motions are not counted as a Case; (7-1-22)T
- d. Defending Attorneys who are unable to comply with the Caseload rules will notify their supervisor, Board of County Commissioners or the Court and request appropriate resources. (7-1-22)T
- e. Workloads. Caseloads maximums are based on the following considerations: (7-1-22)T
 - i. Adequate support staff; (7-1-22)T
 - ii. Cases of average complexity; (7-1-22)T
 - iii. Reasonable distribution of Cases throughout the year; and (7-1-22)T
 - iv. No supervisory duties; (7-1-22)T
- f. Defending Attorneys unable to comply with the Workload rules will notify their supervisor, Board of County Commissioners or the Court and request appropriate resources. (7-1-22)T

061. – 069. (RESERVED)

070. ATTORNEY ROSTERS REQUIREMENTS AND PROCEDURES.

- 01. Defending Attorney Roster.** (7-1-22)T
 - a. Attorneys who complete the PDC form verifying they meet the items in this Subsection 070.01 will be automatically included and remain on the Defending Attorney Roster until they request removal or are removed for failing to comply with Public Defense Rules. Attorneys who are unable to verify the items in this Subsection 070.01 may submit a new verification form at any time. (7-1-22)T
 - i. Have an active license to practice law in Idaho; (7-1-22)T
 - ii. Attest they are in compliance with the Public Defense Rules or will comply with the Rules when appointed and representing an Indigent Person; (7-1-22)T
 - iii. New attorneys admitted to the Idaho State Bar within the previous year will name and be mentored by an experienced Defending Attorney on the Defending Attorney Roster; (7-1-22)T
 - iv. Have completed the minimum continuing legal education (“CLE”) requirements in Paragraph

090.03 of these rules within the previous year or within the next ninety (90) days of being placed on the Roster; (7-1-22)T

v. Attorneys on the Defending Attorney Roster will complete Annual Reports as set forth in IDAPA 61.01.03, “Records, Reporting and Review,” Paragraph 020.01.a. Attorneys who at the time of inclusion on the Defending Attorney Roster are not under contract with a county will promptly provide PDC Staff notice and copy of any county contracts entered after inclusion. (7-1-22)T

b. Continuing Eligibility. (7-1-22)T

i. To remain on the Defending Attorney Roster attorneys must: (7-1-22)T

(1) Comply with the Public Defense Rules; (7-1-22)T

(2) Have completed the minimum CLE requirements under Subsection 090.03 of these rules; and (7-1-22)T

(3) Have completed an Annual Report. (7-1-22)T

ii. To address Defending Attorney Deficiencies: (7-1-22)T

(1) PDC Staff will review reported Defending Attorney Deficiencies and work directly with the Defending Attorney, and the county when appropriate, to resolve them. (7-1-22)T

(2) If the Deficiency cannot be resolved at the review, PDC Staff may ask the Defending Attorney to submit a plan to cure the Deficiency with proposed detailed action items and completion dates. (7-1-22)T

(3) If a plan is requested and is not submitted or completed, or if the Defending Attorney Deficiency is not cured, it will be referred to the Commission with the Executive Director’s order of removal, which the Defending Attorney may appeal as set forth in Subsection 080.04 of these rules. County Deficiencies, which are not Defending Attorney Deficiencies, are the responsibility of the county and not the Defending Attorney. County responsibilities are set forth in these rules including without limitation Section 020 of these rules and subject to the county Deficiency process set forth in IDAPA 61.01.03, “Records, Reporting and Review,” Sections 050 through 060. (7-1-22)T

02. Capital Defending Attorney Roster. (7-1-22)T

a. For Inclusion on the Capital Defending Attorney Roster, a Defending Attorney must: (7-1-22)T

i. Meet minimum qualifications under Subsection 060.04 of these rules; and (7-1-22)T

ii. Have completed minimum CLE requirements under Paragraph 090.03.b. of these rules within two (2) years; (7-1-22)T

iii. Have completed Capital Defending Attorney Roster forms. (7-1-22)T

b. PDC Staff or contractor investigates an applicant for initial inclusion on the Capital Defending Attorney Roster. The Commission appointed subcommittee reviews applications and PDC Staff reports and makes recommendations to the Commission. The Commission makes the final decision. (7-1-22)T

c. Continuing Eligibility. To remain on the Capital Defending Attorney Roster Defending Attorneys must comply with the Public Defense Rules and: (7-1-22)T

i. Have completed the minimum CLE requirements under Subsection 090.03 of these rules; and (7-1-22)T

ii. Have completed Capital Case reporting and authorization forms by November 1 every other year. (7-1-22)T

d. PDC Staff or contractor investigates continuing eligibility to remain on the Capital Defending Attorney Roster. The Commission appointed subcommittee reviews continuing eligibility and PDC Staff reports and makes recommendations to the Commission. The Commission makes the final decision. The Commission will remove attorneys who do not meet continuing eligibility requirements from the Capital Defense Roster. (7-1-22)T

03. Confidentiality. Information about an attorney’s fitness to represent Indigent Persons is confidential and exempt from the Public Records Act under Section 74-105(18)(a), Idaho Code. (7-1-22)T

071. – 079. (RESERVED)

080. REVIEW OF ROSTER DECISIONS.

01. Denial of Initial Inclusion on the Defending Attorney Roster. (7-1-22)T

a. An attorney may appeal a denial of initial inclusion on the Defending Attorney Roster by submitting a notice of appeal within fourteen (14) days of the date of the notice of denial. (7-1-22)T

b. The Commission will review a timely appeal and issue a final agency order affirming or reversing the denial, or take other action deemed appropriate by the Commission. (7-1-22)T

02. Denial of Initial Inclusion on the Capital Defending Attorney Roster. (7-1-22)T

a. A Defending Attorney may appeal a denial of initial inclusion on the Capital Defending Attorney Roster by submitting a notice of appeal within fourteen (14) days of the date of the notice of denial. (7-1-22)T

b. A hearing officer appointed by the Commission will review a timely appeal and issue a recommended order to the Commission. (7-1-22)T

c. The Commission will issue a final agency order adopting or rejecting the hearing officer’s recommended order, or take other action deemed appropriate by the Commission. (7-1-22)T

03. Emergency Removal of an Attorney from the Defending Attorney Roster or Capital Defending Attorney Roster. (7-1-22)T

a. To prevent or avoid immediate danger when: (7-1-22)T

i. An attorney’s Idaho license to practice law is suspended; (7-1-22)T

ii. An attorney is disbarred in Idaho; or (7-1-22)T

iii. An attorney’s Idaho license status is inactive. (7-1-22)T

b. The attorney will be removed by the Executive Director who will notify the attorney and Commission upon issuance of the notice of removal which will include a statement of the immediate danger and is effective immediately. (7-1-22)T

c. An appeal of the removal under Subsection 080.03 of these rules, will be reviewed by the Commission in an emergency proceeding under Section 67-5247, Idaho Code; (7-1-22)T

d. An attorney may appeal their emergency removal by submitting a notice of appeal and all supporting documentation within fourteen (14) days of the date of the Executive Director’s notice of removal. (7-1-22)T

e. The Commission will review a timely appeal and issue a decision within twenty-eight (28) days of receipt of timely filed notice and materials. (7-1-22)T

f. The Commission may base its decision on a written record or elect to hold a hearing. (7-1-22)T

04. Removal of an Attorney from the Defending Attorney Roster or Capital Defending Attorney Roster for Other Reasons. (7-1-22)T

a. An attorney removed from a Roster for reasons other than set forth in Subsection 080.03 of these rules, may appeal their removal by submitting a notice of appeal and all supporting documentation within fourteen (14) days of the Executive Director's order of removal. A Defending Attorney will remain on the Roster pending resolution of the appeal. A Defending Attorney who fails to file a notice of appeal within fourteen (14) days will be immediately removed from the Roster. (7-1-22)T

b. The Commission will review a timely appeal and issue a final agency order affirming or reversing the Executive Director's decision, or take other action deemed appropriate by the Commission. (7-1-22)T

05. Confidentiality. Information about an attorney's fitness to represent Indigent Persons is confidential and exempt from Public Records Act under Section 74-105(18)(a), Idaho Code. (7-1-22)T

081. – 089. (RESERVED)

090. CONTINUING LEGAL EDUCATION.

Roster members must complete the minimum continuing public defense legal education requirements as provided in Sections 19-850(1)(a)(vii)⁵ and 8, Idaho Code, as follows. (7-1-22)T

01. Approval. CLE credits that meet the requirements in Subsection 090.02 of these rules will count toward minimum requirements. Roster members have the option to request advance approval of a CLE course to confirm the course meets minimum requirements. Courses that are not pre-approved by PDC Staff will not be approved if they do not meet these requirements. (7-1-22)T

02. Idaho Law. Legal education must directly relate to Idaho substantive or procedural law and the Defending Attorney's public defense practice to count toward minimum requirements, and will not be approved if not substantially related. (7-1-22)T

03. Minimum Number and Type of CLEs Required for Each Roster. (7-1-22)T

a. Defending Attorney Roster – Minimum of seven (7) CLE credits each county fiscal year (October 1 – September 30); (7-1-22)T

b. Capital Defending Attorney Roster – Minimum of twelve (12) CLE credits with at least ten (10) from a nationally recognized and well-established capital trial training program, every other county fiscal year. Attorneys on both Rosters may count capital CLE credits toward the seven (7) CLE credits. (7-1-22)T

c. Defending Attorneys with supervisory or management duties – Minimum of two (2) CLE credits each county fiscal year in leadership skills, attorney management, or mentoring, which count toward the seven (7) CLE credits. (7-1-22)T

091. – 999. (RESERVED)

61.01.03 – RECORDS, REPORTING, AND REVIEW

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 19-850(1)(a), Idaho Code. (7-1-22)T

001. SCOPE.

This chapter contains minimum public defense recordkeeping and reporting requirements and PDC’s review of this information. (7-1-22)T

002. – 009. (RESERVED)

010. DEFINITIONS.

For the purposes of this chapter, the definitions in IDAPA 61.01.01, “General Provisions and Definitions,” apply. (7-1-22)T

011. – 019. (RESERVED)

020. ROSTER MEMBER INFORMATION RETENTION AND REPORTING.

Roster members must keep and report information about representation of Indigent Persons and their eligibility to remain on the roster as provided in Sections 19-850(1)(c) and 19-862A(1), Idaho Code. (7-1-22)T

01. Compliance. (7-1-22)T

a. All information regarding compliance with Public Defense Rules; (7-1-22)T

b. Annual Report; (7-1-22)T

c. Public defense contracts; (7-1-22)T

d. Line item public defense expenditures of county funds and Financial Assistance; and (7-1-22)T

e. Resource and Financial Assistance needs; (7-1-22)T

02. Changes to Information. Notify the PDC of any change in address, employer or county contracts for public defense services within thirty (30) days of the change. (7-1-22)T

03. Confidential Information. (7-1-22)T

a. Information reported to the PDC, the county, or administrative district judge must not include any records containing information protected or exempted from disclosure under the rules adopted by the Idaho Supreme Court, attorney work product, attorney-client privileged communication, or other confidential information. (7-1-22)T

b. Requests for and expenditures of Extraordinary Litigation Fund shall only be disclosed to the PDC. (7-1-22)T

021. – 029. (RESERVED)

030. COUNTY INFORMATION RETENTION AND REPORTING.

Counties must keep and report information about how the county provides public defense as provided in Sections 19-850(1)(c), 19-851(8), 19-862(1), 19-862A(1)–(2) and (6)(c), Idaho Code. (7-1-22)T

01. Compliance. (7-1-22)T

a. All information regarding a county’s compliance with Public Defense Rules; (7-1-22)T

b. Public defense contracts; (7-1-22)T

02. Changes to Public Defense Model or Defending Attorneys. Notify the PDC of any change to the county’s public defense model or the attorneys employed or contracted by the county within thirty (30) days of the change. (7-1-22)T

03. Financial Information. (7-1-22)T

- a. Line item budgets and expenditures of county funds and all Financial Assistance for Public Defense. (7-1-22)T
- b. Extraordinary Litigation Fund reimbursements. (7-1-22)T
- c. Annual financial reporting to the Commission. (7-1-22)T
- i. Appropriation, budget, and expenditures for the immediately preceding county fiscal year identifying county funds, Financial Assistance, and other funds used or available to be used for public defense. (7-1-22)T
- ii. The County's annual financial report to the PDC is due by December 31 each year. (7-1-22)T

031. – 039. (RESERVED)

040. DETERMINATION OF COMPLIANCE.

PDC staff may request, review, and audit county the following records to determine compliance with Public Defense Rules and Financial Assistance as provided in Sections 19-850(1)(c), 19-851(8), 19-862(1), 19-862A(1)–(2) and (6)(c), Idaho Code. (7-1-22)T

- 01. Financial.** County budget and expenditures related to Public Defense Rules or Financial Assistance. (7-1-22)T
- 02. Contracts.** Public defense contracts. (7-1-22)T
- 03. Records.** Public defense records including Case names and numbers. (7-1-22)T
- 04. Annual Reports.** Information reported in Annual Reports. (7-1-22)T
- 05. Other.** Other information requested by PDC Staff or the Commission related to Public Defense Rules or Financial Assistance. (7-1-22)T

041. – 049. (RESERVED)

050. DEFICIENCY REPORTING, REVIEW, AND RESPONSE AS PROVIDED IN SECTIONS 19-850(1)(C), 19-862A(1, (11)–(12) AND 19-850(1)(A)(VI), IDAHO CODE.

- 01. Reporting.** (7-1-22)T
 - a. Counties and Defending Attorneys have a duty to report Deficiencies to PDC Staff. (7-1-22)T
 - b. Deficiencies may be reported by Indigent Persons, PDC Staff, or others. (7-1-22)T
- 02. Review and Response.** PDC Staff will review reported Deficiencies and may work directly with a county and Defending Attorney to resolve, make a report to the Commission, or both. (7-1-22)T
- 03. Non-Material Deficiencies.** If a Deficiency may be readily resolved with the assistance of PDC Staff, the Executive Director may ask the county to submit a plan to cure the Deficiency with proposed detailed action items and completion dates. If the plan is not submitted or not completed, or the Deficiency not cured according to the deadlines set by the Executive Director, the Non-Material Deficiency will be deemed Material. (7-1-22)T
- 04. Material but Non-Willful Deficiencies.** If the Commission determines a Deficiency is Material following review by PDC Staff and recommendation of the Executive Director or if a non-material Deficiency is not cured by the set deadline: (7-1-22)T
 - a. The county must consult with PDC Staff on a Compliance Plan and timely apply for Financial Assistance, if necessary; (7-1-22)T

b. The Compliance Plan must include timeframe to become compliant and progress reports from the county to PDC Staff; (7-1-22)T

c. If compliance is not achieved by the deadline set by the Executive Director, the Commission may designate the Material Deficiency as Willful. (7-1-22)T

05. Material and Willful Non-Compliance. (7-1-22)T

a. If the Commission determines a Deficiency is Material and Willful following review by PDC Staff and recommendation of the Executive Director, and (7-1-22)T

b. The Commission gives notice of its intent to remedy specific Deficiencies to the extent necessary to comply with Public Defense Rules at the county's expense: (7-1-22)T

i. Within fourteen (14) days of the date of said notice, the Commission and the county or their designees shall meet to attempt resolve the issues of the Material and Willful Deficiency or agree on a schedule for further meetings; (7-1-22)T

ii. If the Commission and the county are unable to resolve the Deficiency by meeting, and (7-1-22)T

iii. The Commission determines it must take immediate action under Subsection 060.01 of these rules, the Commission may contract with contract Defending Attorneys or other resources as deemed appropriate to remediate at the county's expense; or (7-1-22)T

iv. If the Commission does not proceed under Subsection 060.01 of these rules, the Commission and the county or their designees must agree on a mediator and a date for mediation within twenty-eight (28) days, with the cost of mediation to be paid equally by the parties; (7-1-22)T

v. If after mediation the Commission and the county are unable to come to a resolution, the Commission shall provide written notice of its decision to remedy specific Deficiencies and may contract with Defending Attorneys or other resources as deemed appropriate to remediate at the county's expense; (7-1-22)T

06. Application to Resume Public Defense. If the Commission remedies specific Deficiencies to the extent necessary to comply with Public Defense Rules at the county's expense, the county may make application to resume public defense upon showing the county is able to do so in compliance with Public Defense Rules. (7-1-22)T

051. – 059. (RESERVED)

060. REVIEW OF WILLFUL AND MATERIAL DEFICIENCY DECISIONS.

01. Emergency Action. The Commission will take immediate action and contract with appropriate resources to remedy Willful and Material Deficiencies to avoid immediate danger and may act through an emergency proceeding under Section 67-5247, Idaho Code, when: (7-1-22)T

a. A county is using a Defending Attorney who has been removed from the applicable PDC Roster for the reasons set forth in IDAPA 61.01.02, "Requirements and Procedures for Representing Indigent Persons," Subsection 080.03; or (7-1-22)T

b. A county has not complied with or responded to a notice of Deficiency within thirty (30) days of the date of such notice; (7-1-22)T

c. If the Commission issues an emergency order to remedy Willful and Material Deficiencies, the Commission will notify the county of its order. The Commission's order will include a statement of the immediate danger and is effective immediately; (7-1-22)T

d. A county may challenge the Commission's emergency order to remedy Willful and Material

Deficiencies hereunder by submitting a notice of appeal and all supporting documentation within fourteen (14) days of the date of the Commission's order; (7-1-22)T

e. The Commission will review any timely challenge and issue an emergency decision within twenty-eight (28) days of receipt of timely filed notice and materials. The Commission may base its decision on a written record or elect to hold a hearing. (7-1-22)T

02. Action for Other Reasons. (7-1-22)T

a. If the county is subject to a Commission order to remedy Willful and Material Deficiencies for reasons other than set forth in Subsection 060.01 of these rules, the county may appeal the order by submitting a notice of appeal and all supporting documentation within twenty-one (21) days of the Commission's order. (7-1-22)T

b. A hearing officer appointed by the Commission will review a timely appeal and issue a recommended order to the Commission. (7-1-22)T

c. The Commission will issue a final agency order adopting or rejecting the recommended order, or take other action deemed appropriate by the Commission. (7-1-22)T

061. – 999. (RESERVED)

61.01.04 – FINANCIAL ASSISTANCE AND TRAINING RESOURCES

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 19-850(1)(a), Idaho Code. (7-1-22)T

001. SCOPE.

This chapter contains requirements for public defense financial assistance and trainings offered through the PDC. (7-1-22)T

002. – 009. (RESERVED)

010. DEFINITIONS.

For the purposes of this chapter, the definitions in IDAPA 61.01.01, “General Provisions and Definitions,” apply. (7-1-22)T

011. – 019. (RESERVED)

020. FINANCIAL ASSISTANCE FOR COUNTIES TO PROVIDE PUBLIC DEFENSE IN COMPLIANCE WITH PUBLIC DEFENSE RULES AS PROVIDED IN SECTION 19-862A, IDAHO CODE.

01. Information for Application. Counties making application for Financial Assistance to continue complying with Public Defense Rules or cure any Deficiency must provide the following information: (7-1-22)T

- a. Compliance Plan and Cost Analysis; (7-1-22)T
- b. Compliance attestation required by Section 19-862A, Idaho Code; (7-1-22)T
- c. Itemization of the County’s public defense: (7-1-22)T
 - i. Expenditures for the prior county fiscal year; (7-1-22)T
 - ii. Budget for the current county fiscal year; and (7-1-22)T
 - iii. Anticipated budget for the upcoming county fiscal year; (7-1-22)T
- d. Information from Defending Attorneys necessary for the Compliance Plan and application; and (7-1-22)T

e. Other information requested by PDC Staff or the Commission related to Public Defense Rules or Financial Assistance. (7-1-22)T

02. Preference. Financial Assistance is subject to the availability of funds, with preference given: (7-1-22)T

- a. First, to counties that need assistance to cure Deficiencies; (7-1-22)T
- b. Second, to counties that need assistance to continue complying with Public Defense Rules; and (7-1-22)T
- c. Third, to counties for other improvements to public defense. (7-1-22)T

03. Financial Assistance for Workload. The Commission may award Financial Assistance for counties to pay for resources needed to meet the Workload rules in IDAPA 61.01.02, “Requirements and Procedures for Representing Indigent Persons,” Subsection 060.05 (“Workload Financial Assistance”) of these rules, which is subject to the following additional requirements: (7-1-22)T

a. Workload Financial Assistance can only be used for attorneys, staff, and other resources to comply with the Workload rules; (7-1-22)T

b. A county must specifically state in the Financial Assistance application all proposed designated uses for Workload Financial Assistance; (7-1-22)T

c. A county can only use Workload Financial Assistance for the designated uses approved by the

Commission; (7-1-22)T

d. County responsibility for compliance with the maximum caseload standard is contingent upon the appropriation of state funds as provided in Section 19-862A, Idaho Code, at a level necessary to implement the numeric standard. If Caseload or Workload maximums are being exceeded and the county has timely requested and not received Financial Assistance to pay for resources needed to comply with Caseload or Workload rules, the county's failure to comply with Caseload or Workload rules will not be deemed a Deficiency. (7-1-22)T

04. Financial Assistance for Joint Offices. The Commission may award additional Financial Assistance to counties that have established a joint office of public defender under Section 19-859(2), Idaho Code. (7-1-22)T

05. Review. PDC Staff will review county applications for Financial Assistance. The Executive Director or appointed subcommittee of the Commission will make recommendations to the Commission. The Commission will determine the type, terms, and amount of Financial Assistance. (7-1-22)T

06. Extraordinary Litigation Fund ("ELF"). The Executive Director or the Commission may award Financial Assistance for extraordinary litigation costs necessary for representation in a public defense case when such costs are a financial hardship on the county or when requesting from the court or the county may undermine an Indigent Person's case. (7-1-22)T

a. Defending Attorney applicants may apply exclusively for prospective litigation costs and any request seeking reimbursement for services already rendered or expenses already paid will be rejected. (7-1-22)T

b. Counties may request ELF Financial Assistance for reimbursement of extraordinary litigation costs paid and the application may only seek reimbursement for services rendered within the same state fiscal year. (7-1-22)T

c. Information provided in support of an ELF application is confidential and exempt from the Public Records Act under Section 74-105(18)(b), Idaho Code. (7-1-22)T

d. The Executive Director will approve or disapprove and will determine the amount of ELF assistance for costs other than attorney fees. The Commission will approve or disapprove and determine the amount of ELF assistance for attorney fees. (7-1-22)T

07. Independence. Counties applying for Financial Assistance must limit prosecutor involvement in the Financial Assistance process if the involvement may jeopardize the independence of any Defending Attorney or undermine the delivery of public defense. (7-1-22)T

021. – 029. (RESERVED)

030. TRAINING RESOURCES FOR ATTORNEYS ON THE PDC ROSTERS, AND THEIR STAFF WHO DIRECTLY SUPPORT PUBLIC DEFENSE PRACTICE.

01. PDC Training. The PDC may partner with outside organizations to present free or reduced cost training. (7-1-22)T

02. Scholarships. The PDC may award training scholarships for approved non-PDC training. (7-1-22)T

03. Non-Roster Attorneys. Attorneys not on a Roster and their staff are not eligible for PDC training or scholarships but may participate through a partner organization, if applicable. (7-1-22)T

04. Preference and Conditions. Training and scholarship funds are limited and subject to the following: (7-1-22)T

a. Preference is given to qualified applicants whose experience levels and compliance needs best fit

the particular training program, and who did not attend a free or discounted training within the previous year;
(7-1-22)T

b. Approved applicants must immediately notify PDC Staff if they cannot attend or fully participate in any training; and (7-1-22)T

c. Approved applicants who, without timely notifying PDC Staff, were absent from or failed to fully participate in a previous training, will not get preference and may not be eligible for training and scholarship benefits for the next twelve (12) months. (7-1-22)T

031. – 999. (RESERVED)

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Docket No. 61-0000-2200

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LEGAL NOTICE

Summary of Proposed Rulemakings

PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

*The proposed rule public hearing request deadline is July 20, 2022, unless otherwise posted.
The proposed rule written comment submission deadline is July 27, 2022, unless otherwise posted.
(Temp & Prop) indicates the rulemaking is both Temporary and Proposed.
(*PH) indicates that a public hearing has been scheduled.*

IDAPA 02 – DEPARTMENT OF AGRICULTURE PO Box 7249, Boise, ID 83707

02-0104-2201, Rules Governing the Voluntary Idaho Preferred® Promotion Program. (Temp & Prop) Zero Based Regulation (ZBR) Chapter Rewrite defines terms, establishes fees, and sets product selection criteria for participation in the voluntary Idaho Preferred® program.

02-0202-2201, Rules Governing Apple Grading and Storage. ZBR Chapter Rewrite governs grading regulations for and controlled atmospheric storage of Idaho-grown apples.

02-0404-2201, Rules for Artificial Dairy Products. ZBR Chapter Rewrite authorizes issue of written stop sale order on artificial dairy products.

02-0415-2201, Rules Governing Beef Cattle Animal Feeding Operations. ZBR Chapter Rewrite governs the design, function, and management practices of waste systems on beef cattle animal feeding operations.

02-0417-2201, Rules Governing Dead Animal Movement and Disposal. ZBR Chapter Rewrite manages the movement and disposal of dead animals; provides establishment exclusions and extraordinary methods for emergencies.

02-0429-2201, Rules Governing Trichomoniasis. ZBR Chapter Rewrite provides regulatory framework to prevent the spread of trichomoniasis in cattle by testing and through control, identification, and eradication programs.

02-0602-2201, Rules Governing Registrations and Licenses. ZBR Chapter Rewrite specifies product registration and label requirements for commercial feed, fertilizer, and soil and plant amendments; also to prevent or spread bee diseases and establish registration and collect fees.

02-0605-2201, Rules Governing Plant Disease and Quarantines. ZBR Chapter Rewrite provides regional consistency for plant pest quarantines to prevent the spread of disease/pests and verify eligibility of crops for export.

02-0633-2201, Organic Food Products Rules. (Temp & Prop) Restructures fee schedules to enhance program services for voluntary certifiers.

02-0801-2201, Sheep and Goat Rules of the Idaho Sheep and Goat Health Board. (Temp & Prop) New Chapter reauthorizes previous rule that governs prevention, control, and eradication of diseases among sheep and goats; and assesses fees.

IDAPA 05 – IDAHO DEPARTMENT OF JUVENILE CORRECTIONS PO Box 83720, Boise, ID 83720-0285

***05-0103-2201, Rules of the Custody Review Board.** (*PH) ZBR Chapter Rewrite defines powers, duties, composition, and determinations of the Custody Review Board for the juvenile corrections system in Idaho.

IDAPA 15.06 – OFFICE OF THE GOVERNOR / Idaho Military Division 4040 W Guard, Bldg 600, Boise, ID 83705

***15-0601-2201, Rules Governing the Idaho Public Safety Communications Commission.** (*PH) ZBR Chapter Rewrite outlines Commission processes for dispute resolution mediation and grant application, criteria, and awardment.

IDAPA 15.10 – OFFICE OF THE GOVERNOR / Idaho State Liquor Division

1349 E Beechcraft Ct, Boise, ID 83716

**15-1001-2201, Rules of the Idaho State Liquor Division.* (*PH) 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

16-0103-2201, Emergency Medical Services (EMS) – Agency Licensing Requirements. Rulemaking incorporates provisions from a rule chapter being repealed to include EMS data collection standards and response records.

16-0106-2201, Emergency Medical Services (EMS) – Data Collection and Submission Requirements. Chapter repealed by agency determination; necessary provisions moved into IDAPA 16.01.03.

16-0208-2201, Vital Statistics Rules. Changes due to legislative action waive fee for a birth certificate for individuals experiencing homelessness to obtain an identification card; and allows adult adoptees access to their birth records upon turning age 18.

16-0309-2201, Medicaid Basic Plan Benefits. Updates requirements for fitting prosthetic and orthotic devices due to stakeholder concerns.

16-0324-2201, The Medically Indigent Program. Chapter repealed from passage of H0735 by the 2022 legislature.

16-0325-2201, Idaho Medicaid Promoting Interoperability (PI) Program. Chapter repealed due to program completion and closing of funds.

IDAPA 17 – INDUSTRIAL COMMISSION

11321 W Chinden Blvd, Boise, Idaho 83714

17-0101-2201, Administrative Rules Under the Worker's Compensation Law. (Temp & Prop) Aligning with statute, changes no longer require claimants to specify how unpaid medical bills will be treated at time of settlement.

IDAPA 18 – DEPARTMENT OF INSURANCE

PO Box 83720, Boise, ID, 83720-0043

**18-0202-2201, Automobile Insurance Policies.* (*PH) ZBR Chapter Rewrite assists implementation of state statute regarding insurance cancellation, non-renewal, and under/uninsured motorists.

**18-0203-2201, Certificate of Liability Insurance for Motor Vehicles.* (*PH) ZBR Chapter Rewrite identifies the certificate of liability insurance for motor vehicles required in state law.

**18-0701-2201, Rules for Acquiring Control, Insurance Holding Company Systems and Mutual Insurance Holding Companies.* (*PH) ZBR Chapter Rewrite sets forth procedural requirements necessary to administer governing law, to include mutual holding companies.

**18-0702-2201, Reserve Liabilities and Minimum Valuations for Annuities and Pure Endowment Contracts.* (*PH) ZBR Chapter Rewrite recognizes mortality tables for use in determining minimum standard valuations for annuity and pure endowment contracts.

**18-0703-2201, Valuation of Life Insurance Policies Including the Use of Select Mortality Factors.* (*PH) ZBR Chapter Rewrite provides tables and rules for use of select mortality factors; and standards for plan valuations with nonlevel premiums or benefits, or secondary guarantees.

**18-0708-2201, Property and Casualty Actuarial Opinion Rule.* (*PH) ZBR Chapter Rewrite applies to annual statements filed by property/casualty companies; provides Director the means to monitor an insurer's loss reserves.

**18-0709-2201, Life and Health Actuarial Opinion and Memorandum Rule.* (*PH) ZBR Chapter Rewrite allows use of professional judgement and opinion by appointed actuary in asset analysis and communication. Director may specify methods deemed necessary to render adequacy.

**18-0802-2201, Fire Protection Sprinkler Contractors.* (*PH) ZBR Chapter Rewrite ensures only qualified personnel and organizations install and maintain approved fire sprinkler systems; establishes fees and bonding requirements.

IDAPA 31 – IDAHO PUBLIC UTILITIES COMMISSION

11331 W Chinden Blvd, Ste 201-A, Boise, ID 83714

31-6101-2201, Rules for the Measurement of Stray Current or Voltage (Stray Voltage Rules). ZBR Chapter Rewrite outlines process for all persons or entities involved in any way in the measurement or remediation of stray current or voltage within Idaho.

31-8101-2201, Energy Consumption Reporting Rules. ZBR Chapter Rewrite implements state laws applicable to all energy suppliers required to submit consumption reports; and reimbursement entitlement for reporting.

IDAPA 36 – IDAHO STATE BOARD OF TAX APPEALS
PO Box 36, Boise, ID 83720-0088

36-0101-2200 – (Temp & Prop) Omnibus rulemaking reauthorizes rule chapter previously submitted to and reviewed by the legislature.

IDAPA 47 – IDAHO DIVISION OF VOCATIONAL REHABILITATION
PO Box 83720, Boise, ID 83720-0037

47-0101-2200 – (Temp & Prop) Omnibus rulemaking reauthorizes rule chapter previously submitted to and reviewed by the legislature.

NOTICES OF ADOPTION OF TEMPORARY RULE ONLY

IDAPA 24 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES / Outfitters and Guides Licensing Board

24-3501-2200, Omnibus rulemaking reauthorizes Title 35, Chapter 01.

IDAPA 61 – IDAHO STATE PUBLIC DEFENSE COMMISSION

61-0000-2200, Omnibus rulemaking reauthorizes Title 01, Chapters 01-04.

NOTICES OF INTENT TO PROMULGATE RULES – NEGOTIATED RULEMAKING

(Please see the Administrative Bulletin for dates and times of meetings and other participant information)

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08-0113-2201, Rules Governing the Opportunity Scholarship Program

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Please refer to the Idaho Administrative Bulletin **July 6, 2022, Volume 22-7**, 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.

Issues of the Idaho Administrative Bulletin can be viewed at www.adminrules.idaho.gov/

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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.

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

March 31, 2022 – July 6, 2022

(PLR 2023) – Final Effective Date Is Pending Legislative Review in 2023

(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)

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