

# IDAHO ADMINISTRATIVE BULLETIN

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November 4, 1998

Volume 98-11

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# Preface

*The Idaho Administrative Bulletin is published once each month by the Department of Administration, Office of the Administrative Rules Coordinator, pursuant to Section 67-5203, Idaho Code. The Bulletin is a compilation of all administrative rule-making documents in Idaho. The Bulletin publishes the official text notice and full text of such actions.*

*The state of Idaho administrative rule-making process comprises five distinct activities; Proposed, Negotiated, Temporary, Pending, and Final rule-making. In the majority of cases, the process begins with proposed rule-making and ends with final rule-making.*

*State agencies are required to provide public notice of rule-making activity and invite public input. The public receives notice of a rule-making activity through the Idaho Administrative Bulletin and the Legal Notice published monthly in local newspapers. The Legal Notice provides reasonable opportunity for public input, either oral or written, which may be presented to the agency within the time and manner specified in the Legal Notice. After the comment period closes, the agency considers fully all information submitted in regard to the rule. Comment periods are not provided in temporary or final rule-making activities.*

## **CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN**

*The Bulletin is cited by year and issue number. For example, Bulletin 97-1 refers to the first Bulletin issued in calendar year 1997, Bulletin 96-1 refers to the first Bulletin issued in calendar year 1996, etc. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. 1 refers to January; Volume No. 2 refers to February; and so forth. Example: The Bulletin published in January of 1998 is cited as Volume 98-1. The December 1997 Bulletin is cited as Volume 97-12.*

## **RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE**

*The Idaho Administrative Code is published once a year and is a compilation or supplemental compilation of all final and enforceable administrative rules in effect in Idaho. In an effort to provide the reader with current, enforceable rules, temporary rules are also published in the Administrative Code. Temporary rules and final rules that have been approved by the legislature during the legislative session, and published in the monthly Idaho Administrative Bulletin, supplement the Administrative Code. Negotiated, proposed, and pending rules are not printed in the Administrative Code and are published only in the Bulletin.*

*To determine if a particular rule remains in effect, or to determine if a change has occurred, the reader should refer to the **Cumulative Index of Administrative Rule-Making**, printed in each Bulletin.*

## **AVAILABILITY OF THE ADMINISTRATIVE CODE AND BULLETIN**

*The Idaho Administrative Code and all monthly Bulletins are available for viewing and use by the public in all 44 county law libraries, state university and college and community college libraries, the state law library, the state library, the Public Libraries in Boise, Pocatello, Idaho Falls and Twin Falls, the Lewiston City Library, East Bonner County Library, Eastern Idaho Technical College Library, Ricks College Library, and Northwest Nazarene College Library.*

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## SUBSCRIPTIONS AND DISTRIBUTION

For subscription information and costs of publications, please contact the Department of Administration, Office of the Administrative Rules Coordinator, 650 W. State Street, Room 100, Boise, Idaho 83720-0004, telephone (208) 334-3577.

The Administrative Bulletin is an official monthly publication of the State of Idaho. Yearly subscriptions or individual copies are available for purchase.

**The Administrative Code**, is an annual compilation or supplemental compilation of all final and enforceable temporary administrative rules and includes tables of contents, reference guides, and a subject index.

**Individual Rule Chapters and Individual Rule-Making Dockets**, are specific portions of the Bulletin and Administrative Code produced on demand.

**Internet Access** - The Administrative Code and Administrative Bulletin are available on the Internet at the following address:

<http://www2.state.id.us/> - from Idaho Home Page select the Administrative Rules link.

**EDITOR'S NOTE:** All rules are subject to frequent change. Users should reference all current issues of the Administrative Bulletin for negotiated, temporary, proposed, pending, and final changes to all rules, or call the Office of the Administrative Rules at (208) 334-3577.

## HOW TO USE THE IDAHO ADMINISTRATIVE BULLETIN

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

### **IDAPA 16.07.01.010.01.a.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.

"**IDAPA 16**" refers to the Idaho Department of Health and Welfare.

"**07.**" refers to Title 07, Division of Veterans Services within the Department.

"**01.**" refers to Chapter 01 of Title 07, "Rules Governing Eligibility For Admission into the Veterans Home for Domiciliary Care."

"**010.**" refers to Major Section 010, "Definitions."

"**01.**" refers to Subsection 010.01.

"**a.**" refers to Subsection 010.01.a.

"**ii.**" refers to Subsection 010.01.a.ii.

## DOCKET NUMBERING SYSTEM

Internally, the Bulletin is organized sequentially using a rule docketing system. All rule-making actions (documents) are assigned a "DOCKET NUMBER." The "Docket Number" is a series of numbers separated by a hyphen "-", (16-0701-9601). The docket numbers are published sequentially by IDAPA designation (e.g. the two-digit agency code). The following example is a breakdown of a typical rule docket:

### "DOCKET NO. 16-0701-9601"

"16-" denotes the agency's IDAPA number; in this case the Department of Health and Welfare.

"0701-" refers to the TITLE AND CHAPTER numbers of the agency rule being changed; in this case the Division of Veteran's Services (TITLE 07), Rules Governing Eligibility For Admission into the Veterans Home for Domiciliary Care (Chapter 01).

"9601" denotes the year and sequential order of the docket received during the year; in this case the first rule-making action in calendar year 1996.

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)"

A typical citation to a rule or a Section or Subsection of a rule that are found with the text of a rule appear as follows:

### "IDAPA 16.07.01.200"

"16." denotes the IDAPA number of the agency.

"07.01." denotes the TITLE and Chapter number of the agency rule.

"200" reference the main section number of the rule that is being amended or added.

Citations made within a rule to another rule should also include the name of the Department and the Title of the rule being referenced, as well as the IDAPA number.

## BULLETIN PUBLICATION SCHEDULE FOR 1998

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date
98-1	January, 1998	November 19, 1997	January 7, 1998
98-2	February, 1998	December 24, 1997	February 4, 1998
98-3	March, 1998	January 21, 1998	March 4, 1998
98-4	April, 1998	February 25, 1998	April 1, 1998
98-5	May, 1998	March 25, 1998	May 6, 1998
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98-8	August, 1998	June 24, 1998	August 5, 1998
98-9	September, 1998	July 22, 1998	September 2, 1998
98-10	October, 1998	August 26, 1998	October 7, 1998
98-11	November, 1998	September 23, 1998	November 4, 1998
98-12	December, 1998	October 21, 1998	December 2, 1998

## BULLETIN PUBLICATION SCHEDULE FOR 1999

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date
99-1	January, 1999	November 18, 1998	January 6, 1999
99-2	February, 1999	December 23, 1998	February 3, 1999
99-3	March, 1999	January 20, 1999	March 3, 1999
99-4	April, 1999	February 24, 1999	April 7, 1999
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99-12	December, 1999	October 20, 1999	December 1, 1999



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38	Administration, Department of - Administrative Code Volume 8
02	Agriculture, Idaho Department of - Administrative Code Volume 1
40	Arts, Idaho Commission on the - Administrative Code Volume 8
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**IDAPA 05 - DEPARTMENT OF JUVENILE CORRECTIONS**  
**05.01.01 - RULES OF THE DEPARTMENT OF JUVENILE CORRECTIONS**  
**DOCKET NO. 05-0101-9801**

**NOTICE OF TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** These temporary rules are effective October 1, 1998.

**AUTHORITY:** In compliance with Sections 67-5222(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rule-making procedures have been initiated. The action is authorized pursuant to Section 20-504, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than November 18, 1998.

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

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

It is necessary to amend the recently promulgated rules of the Department of Juvenile Corrections in order to correct two (2) scrivener errors previously undetected by the Department (an error was found in Section 455 and one error was found in Section 475).

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

Protection of the public health, safety, or welfare requires a rule to become effective before it has been submitted to the legislature for review and that the agency may proceed with such notice as is practicable and adopt a temporary rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact Margaret P. White at (208) 334-5100, Ext. 384.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before November 25, 1998.

DATED this 18th day of September, 1998.

Margaret P. White, Deputy Attorney General  
Department of Juvenile Corrections  
PO Box 83720 / 400 North 10th Street  
Boise ID 83720-0285  
Phone: (208) 334-5100, Ext. 384  
Fax: (208) 334-5120

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**THE FOLLOWING IS TEXT OF DOCKET NO. 05-0101-9801**

**455. RULES AND DISCIPLINE.**

01. Written Policy and Procedures. The facility shall have written policy and procedure for maintaining discipline and regulating juveniles' conduct. The following general principle shall apply: (7-1-97)

a. The conduct of juveniles shall be regulated in a manner which encourages and supports appropriate behavior, with penalties for negative behavior; (7-1-97)

b. Rules of conduct. The facility shall have written rules of conduct which specify prohibited acts within the facility, the penalties that may be imposed for various degrees of violation, and the disciplinary procedures to be followed. Upon admission, each juvenile shall be provided a copy of the rules. If, at any time, a literacy or language barrier is recognized, the facility shall make good faith efforts to provide understanding; (7-1-97)

c. Disciplinary action shall be of a nature to regulate juveniles' behavior within acceptable limits and shall be taken at such times and in such degrees as necessary to accomplish this objective; (7-1-97)

d. The behavior of juveniles shall be controlled in an impartial and consistent manner; (7-1-97)

e. Disciplinary action shall not be arbitrary, capricious, retaliatory, or vengeful; (7-1-97)

f. Corporal or unusual punishment is prohibited, and care shall be taken to insure juveniles' freedom from personal abuse, humiliation, mental abuse, personal injury, disease, property damage, harassment, or punitive interference with daily functions of living, such as eating or sleeping; (7-1-97)

g. Use of restraints or use of ~~restraints or~~ physical force as punishment is prohibited. Use of restraints or physical force may be used only in accordance with written Policy and Procedure and limited to the following situations: ~~(7-1-98)~~(10-1-98)T

i. Protection of a juvenile from self injury; (7-1-97)

ii. Prevention of injury to others; (7-1-97)

iii. Precaution during transfer; (7-1-97)

iv. Medical reasons under the direction of medical staff; and (7-1-97)

v. Prevention of property damage. (7-1-97)

h. Withholding of food or variation of diet as punishment is prohibited; and (7-1-97)

i. Juveniles shall not be subject to any situation in which juveniles impose discipline on each other. (7-1-97)

02. Written Policy and Procedures. The facility shall have written Policy and Procedures to define and govern the resolution of rule infractions. (7-1-97)

03. Grievance Procedure. The facility shall have written Policy and Procedures for juveniles which will identify grievable issues and define the grievance process. (7-1-97)

04. Criminal Law Violations. When a juvenile allegedly commits an act that violates federal, state, or local criminal law, the case shall be promptly referred to the appropriate authority for possible investigation and prosecution. (7-1-97)

**(BREAK IN CONTINUITY OF SECTIONS)**

**475. NEW FACILITY DESIGN AND CONSTRUCTION.**

01. Applicability. All standards in this section, except where exceptions are stated, shall apply to new juvenile detention facilities and renovation of existing juvenile detention facilities for which construction is initiated after the effective date of these rules. In the case of partial renovation of an existing facility, it is intended that these rules should apply only to the part of the facility being renovated. (7-1-97)

02. Rated Capacity. The facility shall have a rated capacity established in accordance with these rules. Except in emergencies, the total number of juveniles in each sleeping room or housing unit shall not exceed its rated capacity. The number of juveniles which may be housed in a particular room, housing unit, or facility shall be based upon available square footage, sanitary fixtures, and other physical plant features as specified in these rules. (7-1-97)

03. Code Compliance. In addition to these rules, all new construction and renovation shall comply with the building, safety, and health codes of the local authority and the applicable requirements of the State Fire Marshal. Standards herein which exceed those of the local authority shall take precedence. (7-1-97)

04. Site Selection. New facilities should be located to facilitate access to community resources and juvenile justice agencies. If the facility is located on the grounds or in a building with any other correctional facility, it shall be constructed as a separate, self-contained unit. (7-1-97)

05. General Conditions. All newly constructed or renovated juvenile detention facilities shall conform to the following general conditions: (7-1-97)

a. Artificial light. Light levels in all housing areas shall be at least twenty (20) foot candles measured three (3) feet above the floor. Light levels in other areas shall be appropriate for the use and type of activities which occur. Night lighting shall not exceed five (5) foot candles during sleeping hours. (7-1-97)

b. Natural light. In all new construction, all living areas shall provide visual access to natural light. (7-1-97)

c. Heating, cooling and ventilation systems. HVAC systems shall be designed to provide that temperatures in indoor living and work areas are appropriate to the summer and winter comfort zones, and healthful and comfortable living and working conditions exist in the facility. (7-1-97)

d. Detention hardware. All locks, detention hardware, fixtures, furnishings, and equipment shall have the proper security value for the areas in which they are used. The use of padlocks in place of security locks on sleeping room or housing unit doors is prohibited. (7-1-97)

e. Privacy screening. Juveniles' rights to privacy from unauthorized or degrading observation shall be protected without compromising the security and control of the facility. Privacy screening for all toilet and shower areas which still allows adequate supervision of those areas should be incorporated into the design. (7-1-97)

f. Perimeter security. The facility shall have a perimeter which is secured in such a way that juveniles remain within the perimeter and that access by the general public is denied without proper authorization. (7-1-97)

g. Electronic surveillance and communications systems. The security area of the facility shall have an audio communication system equipped with monitors in each sleeping room and temporary holding room designed to allow monitoring of activities and to allow juveniles to communicate emergency needs to facility employees. Closed circuit television should primarily be used to verify the identity of persons where direct vision is not possible. Closed circuit television shall not be used to routinely monitor the interior of sleeping rooms. (7-1-97)

h. Emergency power. All newly constructed facilities shall provide an emergency source of power to

supply electricity for entrance lighting, exit signs, circulation corridors, fire alarm, electrically operated locks and the ventilation system. (7-1-97)

06. Admission and Release Area. The facility shall have an intake and release area which should be located within the security perimeter, but apart from other living and activity areas. Adequate space shall be allocated for, at least but not limited to, reception, booking and identification, search, shower and clothing exchange, medical screening, storage of juvenile's personal property and facility clothing, telephone calls, interviews, release screening and processing and temporary holding rooms designed to detain juveniles for up to eight (8) hours pending booking, court appearance, housing assignment, transfer, or release. Temporary holding rooms may be designed for multiple occupancy and shall provide at least twenty-five (25) square feet of floor space for each juvenile at capacity, but shall be no smaller than fifty (50) square feet. Temporary holding rooms shall have access to a toilet and wash basin with hot and cold water. (7-1-97)

07. Single Occupancy Rooms. Single occupancy sleeping rooms or cells shall have a minimum of thirty-five (35) square feet of unencumbered space and shall be equipped with at least a bed above the floor. (7-1-97)

08. Multiple Occupancy Rooms. Multiple occupancy sleeping rooms or cells shall have at least thirty-five (35) square feet of unencumbered floor space per occupant at the room's rated capacity and shall be equipped with at least a bed off the floor for each occupant. (7-1-97)

09. Sanitation and Seating. All single or multiple occupancy sleeping rooms shall be equipped with, or have twenty-four (24) hours per day access without staff assistance to toilets, wash basins with hot and cold running water, and drinking water at the following ratios: one (1) shower and one (1) toilet for every eight (8) juveniles or fraction thereof, one (1) wash basin with hot and cold water for every twelve (12) juveniles or a fraction thereof, and tables and seating sufficient for the maximum number expected to use the room at one time. (7-1-97)

10. Day Room/Multi-Purpose Room. The facility shall have at least one day room/multi-purpose room which provides a minimum of thirty-five (35) square feet of floor space per occupant for the maximum number expected to use the room at one time. (7-1-97)

11. Program Space. Adequate space shall be allocated for, but not limited to, educational programs, individual and group activities, exercise and recreation, visitation, confidential attorney and clergy interviews, and counseling. (7-1-97)

12. Interview Space. A sufficient number of confidential interview areas to accommodate the projected demand of visits by attorneys, counselors, clergy, or other officials shall be provided. At least one (1) confidential interview area is required. (7-1-97)

13. Outdoor Exercise Space. The facility should have a secure outdoor recreation area ~~large enough to ensure that each juvenile is offered at least one (1) hour of access daily.~~ ~~(7-1-98)~~ (10-1-98)T

14. Medical Service Space. Space shall be provided for routine medical examinations, emergency first-aid, emergency equipment storage, and secure medicine storage. (7-1-97)

15. Food Service. Where food is to be prepared in-house, the kitchen shall have sufficient space for food preparation, serving, disposal, and clean-up to serve the facility at its projected capacity. The kitchen shall be properly equipped and have adequate storage space for the quantity of food prepared and served. (7-1-97)

16. Laundry. Where laundry services are provided in-house, there shall be sufficient space available for heavy duty or commercial type washers, dryers, soiled laundry storage, clean laundry storage, and laundry supply storage. (7-1-97)

17. Janitor's Closet. At least one (1) secure janitor's closet containing a mop sink and sufficient space for storage of cleaning supplies and equipment shall be provided within the security perimeter of the facility. (7-1-97)

18. Security Equipment Storage. A secure storage area shall be provided for all chemical agents, weapons, and security equipment. (7-1-97)

19. Administration Space. Adequate space shall be provided which includes but is not limited to, administrative, security, professional and clerical staff, offices, conference rooms, storage rooms, a public lobby, and toilet facilities. (7-1-97)

20. Public Lobby. A public lobby or waiting area shall be provided which includes sufficient seating and toilets. Public access to security and administrative work areas shall be restricted. All parts of the facility that are accessible to the public shall be accessible to, and usable by, persons with disabilities in compliance with ADA standards. (7-1-97)

**IDAPA 05 - DEPARTMENT OF JUVENILE CORRECTIONS**  
**05.01.01 - RULES OF THE DEPARTMENT OF JUVENILE CORRECTIONS**  
**DOCKET NO. 05-0101-9802**

**NOTICE OF TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** These temporary rules are effective October 1, 1998.

**AUTHORITY:** In compliance with Sections 67-5222(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rule-making procedures have been initiated. The action is authorized pursuant to Section 20-504, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than November 18, 1998.

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

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

It is necessary to amend the recently promulgated rules of the Department of Juvenile Corrections in order to establish the conditions of care, safety and supervision for juveniles committed to the Department and assigned to private providers.

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

To protect the public health, safety or welfare.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact Margaret P. White at (208) 334-5100, Ext. 384.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before November 25, 1998.

DATED this 18th day of September, 1998.

Margaret P. White  
Deputy Attorney General  
Department of Juvenile Corrections  
PO Box 83720  
Boise ID 83720-0285  
Phone: (208) 334-5100, Ext. 384  
Fax: (208) 334-5120

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**THE FOLLOWING IS TEXT OF DOCKET NO. 05-0101-9802**

**200.---399. (RESERVED): STANDARD OPERATING PROCEDURES FOR CONTRACT PROVIDERS.**

The Idaho Department of Juvenile Corrections or its designee shall have the authority to visit and inspect all contract provider facilities to access such facilities' compliance with these rules. (10-1-98)T

**201. SCOPE.**

The condition and appearance of physical surroundings in which juveniles are placed have a positive or negative influence on the behavior of juveniles participating in the program. It shall be the responsibility of the contractor to see that all the buildings used to house, feed, supervise or instruct juveniles are structurally sound, adequately maintained and sanitary at all times. (10-1-98)T

**202. COMPLIANCE WITH STATE AND LOCAL CODES AND ORDINANCES.**

01. Local Building Code. The facility shall be in compliance with all state and local building codes certified at the time of construction or building purchase and shall continue to conform through any remodeling or new construction. (10-1-98)T

02. Zoning Laws. The contractor shall provide evidence that the facility meets all applicable zoning laws, regulations and neighborhood restrictions. (10-1-98)T

03. Life Safety Codes. The facility shall be in compliance with all state and local life safety codes as well as all local and state health and sanitation standards and shall make all documentation accessible to the Department of Juvenile Corrections upon request. (10-1-98)T

**203. COMPLIANCE WITH CHILD CARE LICENSURE REQUIREMENTS.**

The contractor agrees to maintain compliance with all relevant state child care licensure requirements and standards. This specifically includes those standards requiring all facility operators, owners, and all assigned staff and volunteers to submit fingerprints for completion of criminal history background checks. The contractor agrees that any and all subcontractors and consultants are also subject to this section. (10-1-98)T

**204. LOCATION OF FACILITY.**

01. Site. A facility should be located on a site which is conducive to the purposes and goals of its program. The design of the facility shall promote the purposes of the program and provide an environment consistent with the functions of the program. (10-1-98)T

02. Site Approval. If the program has been established or is seeking to exclusively serve juveniles referred by the Department of Juvenile Corrections, the Department reserves the right to approve the site, design and proposed floor plan for any new or relocated facility. The contractor will be asked to produce: (10-1-98)T

a. Evidence that the site location of the facility will be appropriate to juveniles to be served in terms of individual needs, program goals and access to service facilities. (10-1-98)T

b. A description of the way in which the facility physically harmonizes with the neighborhood in which it is located considering such issues as scale, appearance, density and population. (10-1-98)T

**205. ACCESSIBILITY, GENERAL SAFETY AND MAINTENANCE OF BUILDINGS AND GROUNDS.**

01. Reasonable Access. The program buildings, parking lots and other facilities shall provide reasonable access as required by the Americans with Disabilities Act and other federal and state laws and regulations. (10-1-98)T

02. Maintenance. The contractor shall ensure that all structures are maintained in good repair and are free from hazards to health and safety. The facility grounds shall also be maintained and shall be free from any hazard to health and safety. (10-1-98)T

03. Written Plan. The program shall have a written plan for preventive and ongoing maintenance of the



facility. (10-1-98)T

04. Safety Program. Each contractor shall have a designated staff member who is responsible for the safety program at the facility. This individual shall conduct routine inspections of the facility monthly, with copies of the inspections kept on file for review by the DJC facility monitors, to identify: (10-1-98)T

a. Fire safety; (10-1-98)T

b. Existing hazards; (10-1-98)T

c. Potential hazards; and (10-1-98)T

d. The corrective action that should be taken to address these hazards. (10-1-98)T

**206. VEHICLES.**

01. Condition. Vehicles used to transport juveniles must be mechanically sound, in good repair and meet the Department's requirements for insurance coverage. (10-1-98)T

02. Compliance with Applicable Laws. All vehicles must possess current state licenses and shall comply with all applicable state laws. When in use, all vehicles must carry a standard first aid kit and a fire extinguisher. (10-1-98)T

03. Maintenance and Equipment Check List. The contractor shall have a vehicle maintenance and equipment check list, which shall include a listing of all critical operating systems and equipment inspections, the date of the last inspection, and the type of service or action taken. All repairs required to critical operating systems (i.e., brakes, head lights) shall be made immediately. All worn or missing critical equipment shall be replaced immediately (i.e., tires, jacks, seat belts). (10-1-98)T

**207. DRIVERS.**

All drivers of vehicles must possess a valid Idaho driver's license and the proper licenses required by state law for the type of motor vehicle operated. All operators' driving records must be checked through the Office of Motor Vehicles to assess their suitability to transport juveniles. If the driving record is checked by the insurance agency, which reports acceptability to the contractor, this is sufficient to meet the terms of this section. Appropriate documentation shall be kept in personnel files. (10-1-98)T

**208. CONSULTANTS.**

01. Additional Services. All consultants employed by the contractor are subject to the provisions of Section VII of the Standard Contract. (10-1-98)T

02. Service Provider. Consultants may provide consultation to program staff regarding treatment planning, staff training, program development, and individual or family services. Consultants may also provide individual, group or family services to the clients of the program, as part of the overall individual service plan. (10-1-98)T

**209. SUBCONTRACTORS.**

01. Indemnification. While it is not anticipated that the contractor will subcontract any specific services of the contract, should subcontracting be approved according to the provisions of Section VI of the Standard Contract, the contractor agrees to assume responsibility for the performance of any subcontractor. (10-1-98)T

02. Subcontractors. The contractor shall maintain a list of subcontracted service providers and their qualifications. Documentation of services provided by subcontractors shall include the units of service and cost. (10-1-98)T

**210. EMERGENCY PROCEDURES.**

The Contractor will utilize and maintain a current emergency procedure manual which shall include, at minimum, procedures pertaining to: (10-1-98)T

01. Fire Safety and Escape. (10-1-98)T
02. Emergency Medical Care. (10-1-98)T
03. Notification and Filing Charge on Escape. (10-1-98)T
04. Incidents of Violence Within the Facility. (10-1-98)T
05. Suicide Prevention. (10-1-98)T
06. Child Abuse Reporting. (10-1-98)T
07. Sexual Abuse Disclosures. (10-1-98)T

**211. REPORTING REQUIREMENTS.**

The contractor shall notify the Department's Juvenile Management Center by telephone (not FAX), the probation officer and the youth's parents within twenty-four (24) hours, unless notification to the youth's parents would endanger the youth, in the event that any of the following changes occur: (10-1-98)T

01. Known Whereabouts Including: (10-1-98)T
  - a. Home visit; (10-1-98)T
  - b. Overnight recreational outing; or (10-1-98)T
  - c. Out of state travel. (10-1-98)T
02. Significant Change in Treatment Plan. (10-1-98)T
03. Significant Medical Difficulties. (10-1-98)T
04. Major Incidents. Incidents involving suicide or attempted suicide; rape; felony crime committed by the youth; sexual incidents involving youth in residence; placement in higher level of care; serious injury to the youth; or other major incidents. (10-1-98)T
05. Abuse and Neglect. Allegations of abuse and neglect shall also be reported to the Licensing Agency and/or law enforcement. (10-1-98)T

**212. DOCUMENTATION.**

01. Juvenile Files. The contractor shall maintain individual files on all youth in residence which shall include documentation on services provided under the terms of the Contract. (10-1-98)T

02. Contractor Files. The contractor shall document and retain documentation of all information related to the following: (10-1-98)T

- a. Consultation provided at the facility; (10-1-98)T
- b. Training provided to staff; (10-1-98)T
- c. All alleged instances of child abuse; (10-1-98)T
- d. Medical care provided to youth, including initial physical examination and assessment; (10-1-98)T

- e. Fiscal and program audits or reviews, including corrective actions required and taken; and (10-1-98)T
- f. Reports of sexual abuse disclosures to Health and Welfare and/or law enforcement. (10-1-98)T

**213. STAFF QUALIFICATIONS.**

01. Licenses. All individuals providing services to juveniles in the custody of the Department must possess all licenses and/or certifications required by statute or by Department of Health and Welfare, Division of Family and Community Services, as applicable. (10-1-98)T

02. Education and/or Experience. All individuals providing services must be qualified to do so by educational background and experience. In addition, certain program and professional care givers must meet specific minimum standards for education and/or experience. These standards shall constitute, in part, the basis for determining the adequacy of program and professional services delivered under contractual agreement with the Department. (10-1-98)T

**214. POSITION DESCRIPTIONS AND QUALIFICATION CRITERIA.**

01. Case Manager. An individual to whom the juvenile is assigned at admission who assists the juvenile with his individualized program plan, evaluates the juvenile and maintains his case record, presents the case in staffing, communicates with appropriate individuals regarding the juvenile, and prepares written communications including discharge reports. The Case Manager may also serve as the Counselor. Individuals providing this function must possess at a minimum, a bachelor's degree from a fully accredited college or university in the social sciences or a related field. (Providers with case management staff that do not meet this qualification must ensure that those staff are supervised directly by an individual who meets the qualifications. The provider will be expected to demonstrate continuing efforts to qualify existing staff). (10-1-98)T

02. Counselor. An individual responsible for developing and monitoring personal program plans for juveniles under his supervision, providing counseling regarding the implementation of those plans and coordinating with and for parents of juveniles. He also communicates with community agencies that the juveniles are using. Individuals providing this function must possess at a minimum, a bachelor's degree from a fully accredited college or university in the social sciences or a related field. (10-1-98)T

03. Juvenile Care Worker/Direct Care Worker. An individual responsible for supervising the juveniles' day-to-day living activities and performing such duties as preparing nutritious meals, supervising and training juveniles in basic living skills, and providing some community transportation. He/she must have a high school diploma or its equivalent. (10-1-98)T

04. Recreational Specialist. An individual who develops and implements an individualized and goal-directed recreational plan for a juvenile. The individual providing this function must possess a bachelor's degree in recreational therapy, health and physical education, or a related field or have a high school diploma and two (2) years related experience in providing recreational services to juveniles. (10-1-98)T

05. Social Worker. An individual who is responsible for the assessment of treatment needs and the provision and monitoring of therapeutic/rehabilitative treatment services to juveniles participating in a treatment program. Individuals providing this function must possess at a minimum, a bachelor's degree from a fully accredited college or university in social work, psychology or counseling and state certification. (10-1-98)T

06. Teacher. An individual who provides basic educational services as required by state and federal statutes. This individual must hold a valid Idaho teaching certificate in the appropriate instructional field. (10-1-98)T

07. Therapist. An individual who conducts a comprehensive assessment of the psychological, behavioral, social/familial deficits or dysfunctions presented by the juvenile, then establishes and implements a plan for therapeutic services. The plan must specify diagnosis and treatment problems to be addressed, an estimate of the time needed, and a schedule of the frequency and intensity of the services to be provided. At a minimum, the

individual must possess a medical degree in psychiatry, be a Board Certified Social Worker, or possess a master's degree in social work, psychology or counseling. (10-1-98)T

**215. PROGRAM STAFFING REQUIREMENTS.**

The contractor shall ensure that an adequate number of qualified staff are present at all times to supervise juveniles and provide for their health, safety and well-being. Staffing patterns should provide maximum case manager availability to juveniles at times when they are in the facility and should provide consistency and stability so that they know the roles of each staff member. (10-1-98)T

**216. TRAINING AND STAFF DEVELOPMENT.**

A well planned and executed training program increases the competency and performance of staff and volunteers and establishes a common understanding of a program's objectives, policies and rules. Staff should have a minimum of forty (40) hours of training per calendar year with fifty-six (56) hours of training mandatory (in addition to the minimum of forty (40) hours of "mentoring" required) in the first year of employment with contractor. (10-1-98)T

**217. GENERAL REQUIREMENTS FOR TRAINING PROGRAMS.**

01. Program Plan. Training for staff and volunteers shall be conducted in accordance with a written program plan for staff development and coordinated by a designated staff member at the supervisory level. All training programs shall be presented by persons that are qualified in areas in which they are conducting training. Training programs should define requirements for completion and make provisions for attendance recording, a system to recognize completions, and an evaluation of the training. They should also identify areas requiring annual re-certification and meet those needs. (10-1-98)T

02. Mandatory Inclusions. Training programs shall do the following: (10-1-98)T

a. Include professional development and skills development for all personnel and volunteers; (10-1-98)T

b. Meet the needs of each staff member's respective job classification and be pertinent to his individual work with juveniles; (10-1-98)T

c. Where available, involve the use of community resources; and (10-1-98)T

d. Include in-service training in existing practices, procedures and skills necessary for working with juveniles. (10-1-98)T

**218. PRE-SERVICE ORIENTATION.**

01. Mandatory Pre-service Topics. Pre-service orientation for all staff shall include, but not be limited to, program goals and objectives, program rules and regulations, job responsibilities, personnel policies, juvenile supervision, report writing, instruction in safety and emergency procedures, confidentiality issues, juvenile rights and grievance procedure, standard operating procedures, and communicable diseases. (10-1-98)T

02. Mandatory Direct Juvenile Care Topics. In addition to meeting the pre-service requirements listed above, individuals employed as direct child care staff who do not possess at least one (1) year of direct child care experience with "at risk" youth must complete a minimum fourteen (14) day internship. During this period, they shall be under the supervision of an experienced child care worker or direct care supervisor. They shall not be assigned sole responsibility for the supervision of juveniles until they can demonstrate, and it has been documented, that they have achieved basic child care/supervision competencies as defined above and have successfully completed any additional criteria set by the contractor. (10-1-98)T

**219. IN-SERVICE TRAINING REQUIREMENTS FOR DIRECT CARE WORKERS, COUNSELORS AND CASE MANAGERS.**

All juvenile care workers, supervisors, counselors and case managers (including all volunteers in these positions) shall receive a total of fifty-six (56) hours of training during the first year of employment. Training course contents must include at least the following: (10-1-98)T

01. Principles and Practices of Juvenile Care and Supervision. (10-1-98)T
02. Program Procedures and Programmatic Goals. (10-1-98)T
03. Juvenile Rights. (10-1-98)T
04. Procedures and Legal Requirements Concerning the Reporting of Abuse and Critical Incidents. (10-1-98)T
05. Behavioral Observation, Adolescent Psychology and Child Growth and Development. (10-1-98)T
06. Basic Counseling Skills. (10-1-98)T
07. Handling of Violent Juveniles (Use of Force/Crisis Intervention). (10-1-98)T
08. Significant Legal Issues (i.e., Juvenile Corrections Act). (10-1-98)T
09. Security Procedures (Key Control, Searches, Contraband). (10-1-98)T
10. Socio-cultural Lifestyle of Juveniles. (10-1-98)T
11. Report Writing. (10-1-98)T
12. Emergency Procedures/First Aid/CPR. (10-1-98)T
13. Standard Operating Procedures. (10-1-98)T
14. Communicable Diseases. (10-1-98)T

**220. DOCUMENTATION OF TRAINING.**

01. Staff Training Records. Staff training records shall be kept by a designated staff person. Separate training records shall be established for each staff member and volunteer and shall include name, assignment category (position, type of employee full-time/part-time/ volunteer), employment beginning date, annual training hours required, and a current chronological listing of all training completed. (10-1-98)T

02. Training Programs. Training programs must be documented by date and times training was conducted, topic of the training session, name and qualifications of the instructor, and a roster with signatures of all participants. (10-1-98)T

**221. VOLUNTEERS.**

Programs serving juveniles should consider soliciting the involvement of volunteers to enhance and expand their services, however, volunteers shall be recruited to supplement and enrich a program, not to substitute for the activities and functions of facility staff. (10-1-98)T

**222. VOLUNTEER PLAN.**

01. Written Plan. Programs that utilize volunteers regularly shall have a written plan that includes stipulations for their use and training. (10-1-98)T

02. Recruitment. Recruiting of volunteers is conducted by the chief administrative officer or his designee. Recruitment is encouraged from all cultural and socio-economic segments of the community. (10-1-98)T

03. Volunteer Requirements: (10-1-98)T

a. Volunteers must be at least eighteen (18) years of age, of good character, and sufficiently mature to

handle the responsibilities involved in the position; (10-1-98)T

b. Volunteers must complete an application for the position and are suited for the position to which they are assigned; (10-1-98)T

c. Volunteers must agree in writing to abide by all program policies; (10-1-98)T

d. Volunteers who perform professional services must be licensed or certified as required by state statute or regulation; (10-1-98)T

e. Written job descriptions must be provided for each volunteer position; and (10-1-98)T

f. Volunteers must agree to background and criminal record checks as prescribed by state statutes. (10-1-98)T

04. Supervision. Volunteers will be supervised by a paid employee of the program. This individual shall coordinate and direct the activities of the volunteer. Volunteer performance shall be evaluated periodically and evidence of this evaluation be made part of the personnel record of the volunteer. (10-1-98)T

05. Termination. There will be a procedure established for the termination of volunteers when substantial reasons for doing so exist. (10-1-98)T

**223. CRIMINAL BACKGROUND CHECKS.**

01. Procedure. All contractors providing services to the Department shall ensure that all employees and volunteers, as required by statute, have submitted the required fingerprint cards and releases to the Department of Law Enforcement/Bureau of Criminal Identification. Documentation of appropriate requests and responses should be kept in the employee personnel records. (10-1-98)T

02. Serious Crimes. Persons convicted of the following crimes shall not be employed by the contractor: (10-1-98)T

a. First degree, Section 18-4001, Idaho Code; (10-1-98)T

b. Second degree murder, Sections 18-4003 and 18-4015, Idaho Code; (10-1-98)T

c. Manslaughter, Section 18-4006, Idaho Code; (10-1-98)T

d. Rape, Sections 18-6101 and 18-6108, Idaho Code; (10-1-98)T

e. Aggravated assault, Sections 18-905 and 18-907, Idaho Code; (10-1-98)T

f. Assault/battery with intent to commit a serious felony, Sections 18-909 and 18-911, Idaho Code; (10-1-98)T

g. Domestic assault/battery, Section 18-918, Idaho Code; (10-1-98)T

h. Kidnapping, Sections 18-4501 and 18-4506, Idaho Code; (10-1-98)T

i. Desertion or non-support of wife or children, Section 18-401, Idaho Code; (10-1-98)T

j. Prostitution, Sections 18-5613 and 18-5614, Idaho Code; (10-1-98)T

k. Inducing person to prostitution, Sections 18-5609 through 18-5611, Idaho Code; (10-1-98)T

l. Injury to children; , Section 18-1501, Idaho Code; (10-1-98)T

- m. Sexual abuse of a child under age 16, Section 18-1506, Idaho Code; (10-1-98)T
- n. Lewd conduct with a minor child under age 16, Section 18-1508, Idaho Code; (10-1-98)T
- o. Sexual battery of a minor child, Sections 18-1508 and 18-1508-A, Idaho Code; (10-1-98)T
- p. Crimes against nature, Sections 18-6605 and 18-6606, Idaho Code; (10-1-98)T
- q. Incest, Section 18-6602, Idaho Code; (10-1-98)T
- r. Forcible sexual penetration by use of a foreign object, Section 18-6608, Idaho Code; (10-1-98)T
- s. Child pornography, Sections 18-1506 and 18-1507, Idaho Code; (10-1-98)T
- t. Trafficking in marijuana, Section 37-2732-B; (10-1-98)T
- u. Indecent exposure, Section 18-4116, Idaho Code; (10-1-98)T
- v. Counseling, etc. children to commit crimes, Section 18-204, Idaho Code; (10-1-98)T
- w. Criminal neglect, Section 18-1501, Idaho Code; (10-1-98)T
- x. Excessive punishment, Section 18-1501, Idaho Code; (10-1-98)T
- y. Ritualized abuse of a child, Section 18-1506-A, Idaho Code; (10-1-98)T
- z. Providing shelter to a runaway child, Section 18-1510, Idaho Code; (10-1-98)T
- aa. Sexual exploitation of a child, Section 18-1507, Idaho Code; (10-1-98)T
- bb. Conviction for attempt to commit or conspiracy to commit any of the above offenses or any substantially similar crime in another state or jurisdiction. (10-1-98)T

**224. PROGRAM.**

Contract programs with the Department shall provide rehabilitative services designed to improve the juvenile's behavior in the home and/or to facilitate his successful return to his home/community. (10-1-98)T

**225. ADMISSION POLICIES.**

Each contractor shall have clearly defined written policies and procedures governing admission. The policy and procedures shall include, but not be limited to: (10-1-98)T

01. Types of Information. The types of information to be gathered on all applicants before admission, criteria for acceptance, and procedures to be followed when accepting or rejecting referrals. Written notification of acceptance or rejection shall be submitted on the referral cover sheet to the Placement Manager within seven (7) days of receipt of referral. (10-1-98)T

02. Admission Policy Shall Be Stated in Contact. The admission policy shall be clearly stated in the contract with the Department and shall list the specific population to be served, the specific admission criteria, and specific exclusions. (10-1-98)T

03. Change in Admission Policy. Any change in the admission policy shall be considered a change in the contract, requiring a formal contract amendment or waiver. This does not preclude temporary exceptions requested by the Department or approved for the facility by the Department (i.e., changes in age limitations, level of intellectual functioning, pregnancy, and mental status). (10-1-98)T

04. Admission of Juveniles. No juvenile shall be refused admission due to race, ethnic origin, or religion. (10-1-98)T

05. Admitting More Juveniles Than Specified in Provider's License. Without authorization from the licensing agency and the Department, a contractor shall not admit more juveniles into care than the number specified on the provider's license. If a contractor wishes to increase capacity, he is responsible for contacting the licensing agency. A copy of the written confirmation to the contractor from the licensing agency for verbal approval to exceed the licensed capacity shall be forwarded to the Observation and Assessment Superintendent and the Contract Manager. (10-1-98)T

06. Admission Based on Assessed Needs and Contractors Ability to Meet Same. A juvenile's admission into a program shall be based on an assessment of the juvenile's comprehensive problems and needs and on the ability of the contractor to address same. A contractor shall not accept any juvenile for placement whose needs cannot be adequately met by the provider's program. (10-1-98)T

07. Participation in Admission Process. A contractor shall ensure, if feasible, that the juvenile and the person legally responsible for him are provided an opportunity to participate in the admission process and related decisions. (10-1-98)T

**226. EMERGENCY PLACEMENT.**

A residential facility shall not admit a juvenile on an emergency placement if the presence of that juvenile will be damaging to the on-going functioning of the group and/or the juveniles already in care. When a juvenile is accepted for emergency placement any available social, evaluative, and medical information shall be provided by the Placement Manager. (10-1-98)T

**227. RIGHT OF REFUSAL.**

A contractor shall not, without just cause, deny admission to any juvenile who meets the specific admission criteria set forth in the program description. If a contractor rejects a referral that the Department determines is consistent with the contract criteria for admission, the contractor shall submit in writing, or "e-mail", to the Placement Manager specific justification for rejecting the juvenile referred by the Department. (10-1-98)T

**228. DISCHARGES.**

01. Department Concurrence. A juvenile cannot be released from the program without prior concurrence of the Department. Release preparation for a juvenile begins with the initial development of an individual program plan and is an ongoing process throughout the juvenile's program. Criteria for the juvenile's release shall be explained to him/her as soon after admission to a program as possible. (10-1-98)T

02. Release Preparation. The District social worker is responsible for release preparation and must ensure that all the facility's obligations to the juvenile have been met prior to release. (10-1-98)T

**229. PLANNED DISCHARGES.**

01. Successful Completion. A planned discharge is a discharge following the juvenile's successful completion of his treatment program. (10-1-98)T

02. Release Plan. As soon as a juvenile is admitted to a program, a written release plan or aftercare plan shall be formulated. The release plan shall include expected length of stay, specific program goals to be achieved while in the program, and plans to support and the resources to be provided to the juvenile in order to continue to meet treatment goals in the community. (10-1-98)T

03. Written Recommendation. A contractor shall provide to the District social worker a written recommendation for release at least thirty (30) days prior to the juvenile's completion of the program. This recommendation shall include a current summary of the juvenile's progress, a summary of the efforts to reach the juvenile's goals and objectives, any unresolved goals or objectives, goals and objectives for parents/aftercare workers to continue to reinforce, recommendation for continuing service in the home community, the prognosis, and the current address of the recommended custodian. (10-1-98)T

04. Release Staffing. The Department shall convene a release "staffing" which will include the



juvenile's probation officer, the contractor, the juvenile's parent(s), and the juvenile. Based upon the results of that "staffing", the Department will make the final decision regarding release. (10-1-98)T

05. Discharge Procedures. The following procedures shall be completed at the time of discharge: (10-1-98)T

a. The contractor shall immediately provide to the individual or agency authorized to transport the juvenile his medication, prescriptions and Medicaid card. (10-1-98)T

b. Within two (2) working days, the contractor shall provide to the appropriate Department District social worker any dental or medical records available, and all school records available from school(s) the juvenile attended while in the program. (10-1-98)T

**230. "UNPLANNED" DISCHARGES.**

01. Termination Prior to Completion. An "unplanned" discharge is a juvenile's termination prior to the completion of the planned treatment program, either at the request of the contractor or on the initiative of the Department. (10-1-98)T

02. Case Staffing. When a contractor believes a juvenile is at risk for an unplanned discharge, the contractor shall request a case staffing with the District social worker to determine if the identified needs/problems can be resolved. (10-1-98)T

03. Written Policy. A contractor shall have a written policy concerning unplanned discharges. If the discharge is at the request of the contractor, the contractor shall provide a written request for release, at least fourteen (14) days prior to the recommended date of removal. This request shall include, but is not limited to, the following information: (10-1-98)T

a. A current summary of the juvenile's progress; (10-1-98)T

b. A summary of the juveniles' efforts towards achieving individual goals and objectives; (10-1-98)T

c. Specific offense(s) and, where applicable, dates and incident reports regarding the offense(s) which precipitated the request for removal; and (10-1-98)T

d. Any unresolved goals or objectives. (10-1-98)T

04. Provider Staffing. Upon receipt of the fourteen (14) day notice of discharge the District social worker shall schedule (to be held within five (5) days) a staffing with the provider to discuss the appropriateness of the request and determine what steps need to be taken in order to execute the discharge. The recommendation shall be documented on the Department staffing form and forwarded to the Placement Manager for approval. If an agreement cannot be reached, the case shall then be immediately referred to the Placement Manager for review and to allow for sufficient time for a decision to be made prior to the 14th day. (10-1-98)T

05. Prior Approval. No juvenile shall be discharged from the facility without prior approval of the Placement Manager. (10-1-98)T

06. Discharge Due to Behavior. A contractor shall not request the discharge of a juvenile based solely on behaviors specifically identified in the contract as "admission criteria". (10-1-98)T

**231. EMERGENCY DISCHARGES.**

01. Discharge Situations. Emergency discharge situations include, but are not necessarily limited to, the following: (10-1-98)T

a. Juvenile participation in a major disturbance at the facility (i.e., riot or hostage situation, etc.); (10-1-98)T

b. Involvement and/or arrest of a juvenile for use, or threatened use, of a weapon against another person; or (10-1-98)T

c. Attempted suicides and other psychiatric emergencies. (10-1-98)T

02. Endangerment to Staff/Juvenile. Emergency discharges shall be initiated only when the health and safety of a juvenile or staff is endangered by the juvenile's continued placement at the facility. (10-1-98)T

03. Hospitalization. Emergency discharge situations which result in hospitalization in a non-public facility due to psychiatric or medical reasons shall require prior authorization from the Placement Manager, or his designee. (10-1-98)T

04. Written Policy. A contractor shall: (10-1-98)T

a. Have a written policy concerning emergency discharges. The policy shall include as a minimum the following provisions: unless an extremely urgent situation exists, the facility shall give the Department a seventy-two (72) hour notice of discharge; (10-1-98)T

b. Except in cases of life threatening emergencies, emergency discharges shall take place only after consulting with the District social worker; and (10-1-98)T

c. In cases of life threatening emergencies, the Placement Manager or his designee shall be contacted as soon as possible. (10-1-98)T

**232. DISCHARGE SUMMARY.**

01. Comprehensive Discharge Summary. In cases of all discharges, the facility shall provide a comprehensive discharge summary to the District social worker to include, at a minimum a report on progress/lack of progress on all treatment plan areas, recommendations for follow-up, and prognosis. (10-1-98)T

02. Reporting Requirements. The report shall be forwarded to the Department within fifteen (15) days of the date of discharge if the juvenile has completed the program. The report shall be forwarded within seventy-two (72) hours of discharge if it is an unplanned discharge or emergency discharge. (10-1-98)T

**233. RESERVATION OF PROGRAM SLOTS.**

01. Interruption. When a juvenile's treatment program is interrupted and there is an expectation that the juvenile will return and continue to receive services, a program slot may be reserved for this purpose. (10-1-98)T

02. Reserved Time. Hospitalization for psychiatric or medical reasons, trial home visits and escapes are routine situations for program slot reservation. In these cases, the program slot may be reserved for up to two (2) days. (10-1-98)T

03. Escape Status. Program slots shall be reserved for juveniles who are on escape status for two (2) days, unless early discharge is requested by the Department Placement Manager. (10-1-98)T

04. Department Contact. When a program slot is to be reserved, the contractor shall contact the District social worker and request that the slot be reserved. (This action may also be initiated by the Department in which case the request should be coordinated with the facility.) (10-1-98)T

05. No Plan for Return. If there is no definite plan for the juvenile to return to the program (residential or non-residential) or if a date of return cannot be established within the maximum time allotted, the juvenile should be discharged effective the last day he/she was physically present in the program. (10-1-98)T

**234. NON-RESIDENTIAL ABSENCES.**

Program Attendance. Non-residential programs shall make reasonable efforts to ensure that the juveniles attend their

program daily. The non-residential program shall inform the District social worker of daily attendance and all attendance problems. The reporting guidelines shall be as follows: (10-1-98)T

01. Daily Attendance. Daily attendance shall be reported by 10:00 a.m. (10-1-98)T

02. Plan of Action. When a juvenile is absent for two (2) consecutive meetings/appointments the facility shall provide the District social worker with a plan of action to include the reason for the absences, if known, the facility's efforts to assist the juvenile in returning back to the program, and the juvenile's expected date of return, if known. (10-1-98)T

03. Staffing. The District social worker will conduct a staffing if no plan of action is submitted or the plan is inappropriate. (10-1-98)T

04. Notification of Parent(s). The facility shall also notify the juvenile's parent(s) of the absence as soon as practical. (10-1-98)T

**235. TIME LIMIT (RESIDENTIAL PROGRAMS).**

Unless the Department Director or his designee gives specific approval, the maximum time for which a program slot may be reserved and the contractor continue to receive payment is forty-eight (48) consecutive hours. At the end of this time, payment ceases and the juvenile shall be discharged from the program. If the juvenile returns to the program after the maximum time allotted for reservation of a program slot, new placement documents must be initiated by the Placement Manager. (10-1-98)T

**236. HOME PASSES.**

01. Potential Risk to Public Safety. Home passes for juveniles assigned to residential facilities should be considered as an integral part of the offender's treatment plan. However, in all cases, the potential risk to public safety and adequacy of home supervision shall be considered prior to allowing a juvenile to return home. It is also important that passes not interfere with the ongoing treatment and supervision needed by juveniles in Department custody. (10-1-98)T

02. Pass Restrictions. Prior to granting an initial home pass to a juvenile, the contractor shall contact the Juvenile Probation officer and the District social worker to assure whether the court or the Department has placed restrictions on the juvenile's pass privileges. All requests for home passes must be approved by the District social worker. Home passes involving an overnight stay or which involves special circumstances (such as a victim in the home) must be approved two (2) weeks in advance by the District social worker. (10-1-98)T

**237. ELIGIBILITY.**

Eligibility for passes shall be determined by the contractor in accordance with the program description submitted to and approved by the Placement Manager or as part of a Contract Proposal, subject to the following conditions: (10-1-98)T

01. Eligibility. A juvenile must be in placement a minimum of thirty (30) days before he/she is eligible for any passes. Any exceptions due to extenuating circumstances must be approved by the District social worker from the juvenile's original district (refer to Section 241 of these rules). (10-1-98)T

02. Restrictions. The committing juvenile court, the juvenile's probation officer or original district social worker may prohibit or otherwise restrict home passes. (10-1-98)T

**238. FREQUENCY.**

Frequency of passes shall be consistent with the terms of the juvenile's individual service plan and shall be determined by the contractor in accordance with the program description submitted to and approved in accordance to contract requirements, subject to the following: (10-1-98)T

01. Frequency of Home Passes. Home passes shall not exceed ninety-six (96) hours per month unless the juvenile is being prepared to return to his community within the next thirty (30) days. If this is the case, more frequent home passes may be approved by the District social worker upon receipt of a written request from the

contractor. (10-1-98)T

02. Number of Hours a Juvenile Is Allowed on Pass. No juvenile shall be allowed to be on pass for more than one-hundred sixty-eight (168) hours during a thirty (30) day period. (10-1-98)T

**239. "SPECIAL" AND HOLIDAY PASSES.**

01. Guidelines. When planning holiday home passes, the following guidelines shall be adhered to: (10-1-98)T

a. Juveniles should be advised about the criteria for holiday home passes as far in advance as possible. There should be no deviation from this criteria. (10-1-98)T

b. To the extent possible, passes should be in line with the existing behavioral treatment program (i.e., level system). (10-1-98)T

c. The length of the pass should be based on the needs of the juvenile rather than those of facility staff. (10-1-98)T

d. Regular passes can be accumulated during the month for an extended holiday pass up to a maximum of ninety-six (96) hours for those juveniles on the highest program levels. (10-1-98)T

e. Under no circumstances may a juvenile obtain a pass to visit facility staff, the family of facility staff, or the family of other juveniles. (10-1-98)T

02. Approval. All other special passes (i.e., funerals, extra passes due to weather conditions, etc.) must be approved by the District social worker. (10-1-98)T

**240. GROUP ACTIVITIES WITH DEPARTMENT JUVENILES AWAY FROM AGENCY FACILITIES.**

01. Recreational Activities. This policy applies to all Juvenile Corrections youth involved in outdoor recreational activities with an increased risk, i.e., overnight trips, water activities, etc. Facility Staff are to be responsible to ensure adherence to this policy as it applies to youth they oversee and to designate one (1) program staff member to be responsible for planning and conducting each trip which falls under this guideline. Individuals responsible for conducting the activity shall bring to the attention of the Facility Administrator hazards not specifically covered by this policy statement so that individual determination can be made regarding authorization of the program. (10-1-98)T

02. Requirements. (10-1-98)T

a. An activity plan and itinerary covering activities to be engaged in, when and where the group is going, how they will travel, how long they will stay and why the activity is being planned will be submitted to the local District social worker prior to the event. Time will be allowed for thorough review of plans before the group leaves. Routine, low risk activities within the local community(ies) adjacent to the facility do not require prior approval and are to be conducted at the discretion of and under the responsibility of the Contractor. (10-1-98)T

b. A basic first aid kit and current Red Cross First Aid Manual will be taken with the group. At least one (1) person certified in first aid and CPR shall accompany the group. (10-1-98)T

c. A staff or trained volunteer to client ratio of one (1) to six (6) for youth will be adhered to as a minimum unless there is a reason to require more staff. Physical disabilities, high client irresponsibility, mental deficiencies, or inclusion of groups of youth below age twelve (12) are reasons to consider additional staff. (10-1-98)T

d. All participants will be registered as program clients, staff, or volunteers including name, age, address, program title, and date. (10-1-98)T

e. All clients will have Department consent forms signed by parents or guardians (if available) and Department's Observation and Assessment (O&A) Center staff giving permission for program participation and acknowledging awareness of the activities to be engaged in along with permission to seek and/or administer necessary medical attention in the case of emergency. (10-1-98)T

f. There will be no consumption of alcoholic beverages or illicit drugs by staff or participants while engaged in any agency-sponsored trip or activity. (10-1-98)T

g. The Department's District social worker will be given a list of all program participants prior to the activity. (10-1-98)T

h. The Department's District social worker will be advised of the staff and volunteers involved in the program. (10-1-98)T

i. Swimming will only be allowed when a person in attendance has one (1) of the following certifications: (10-1-98)T

i. Basic Rescue and Water Safety Course; (10-1-98)T

ii. Water Safety Instruction; or (10-1-98)T

iii. Red Cross Life Saving Course. (10-1-98)T

j. Activities involving specific hazards will be evaluated as a planning procedure to determine potential hazard, precautions to eliminate or cope with each hazard, and the Department's O&A will review and approve these plans. (10-1-98)T

k. Injuries will be dealt with as follows: (10-1-98)T

i. Minor injuries, small cuts, minor burns, bruises, sprains, etc., will be treated immediately according to current Red Cross First Aid procedures. (10-1-98)T

ii. Serious or potentially serious injuries such as broken bones, large cuts or abrasions, concussions, etc., must be treated by a physician as soon as possible. If the injured person can safely be moved or if no ambulance is available, the person will be transported to the nearest medical clinic or hospital emergency room for treatment. If the person should not be moved, as in cases of suspected spinal injury, he should receive basic first aid as indicated in the Red Cross Manual and an ambulance should be requested. Parents are to be notified by the person in charge as soon as possible in cases of any injury requiring medical attention. (10-1-98)T

iii. A complete accident report will be filled out on all major injuries and returned to the Department's O&A as soon as possible. (10-1-98)T

iv. The Department's O&A will be notified at the first opportunity of serious injuries. (10-1-98)T

**241. SPECIAL CASES.**

01. Variations. If a contractor has need to regularly vary from the conditions set forth in this Section in order to promote the objectives of the treatment program, a specific plan for passes/earned leave must be developed. The plan should be submitted in advance to the Placement Manager or his designee for approval. The approved plan will become the procedures to be followed by the contractor. (10-1-98)T

02. Frequency/Duration of Passes. Specific exceptions regarding the frequency and duration of passes may be granted by the District social worker on a case-by-case basis, upon receipt of a written request by the contractor. (10-1-98)T

**242. TRANSPORTATION.**

01. Facility Passes. Payment for transportation to and from the facility for passes that are a part of the facility's approved program description, or are in accordance with the juvenile's Individual Treatment Plan, shall be the responsibility of the contractor. (10-1-98)T

02. Other Passes. Payment for transportation for all other passes are the responsibility of the juvenile's family or the individual requesting the pass. (10-1-98)T

03. Arrangements. Arrangements for transportation and care shall be made between the facility and Department's O&A immediately upon receiving written notification requesting the juvenile's appearance at a court hearing. (10-1-98)T

**243. REPORTING.**

At the conclusion of each home pass the facility shall determine whether any problems occurred or other significant positive or negative events transpired while the juvenile was on pass. This information shall be documented in the facility case record. Any unusual occurrences shall be reported to the District social worker who will report the incident to the Placement Manager. A drug screening UA may be conducted on each returning juvenile, at the expense of the contractor, and the results of that exam reported to the District social worker. (10-1-98)T

**244. TEMPORARY CLOSURE OF FACILITY.**

01. Prior Approval. Contractors providing services to the Department are expected to provide these services on a continuous basis consistent with the terms of the contract. Without prior approval of the Department, a facility cannot be closed by assigning all juveniles home on pass. (10-1-98)T

02. Temporary Closures. The only situation not requiring prior approval for temporary closure shall be a natural disaster, fire, flood, or other emergency situation in which the facility may be closed temporarily at the discretion of the contractor. Payment shall be withheld if a facility cannot justify closure. (10-1-98)T

03. Notification. The Department shall be notified as soon as possible so that alternative arrangements may be made for program participants. (10-1-98)T

**245. IN-STATE TRAVEL.**

01. Overnight Outings. Planned overnight facility outings in-state maybe approved by the District social worker. (10-1-98)T

02. Notification. The facility administrator, or his designee, shall notify the District social worker in writing at least three (3) days prior to the outing the date(s) of the outing, location of over-night accommodations, scheduled location of outing, the number of juveniles involved, and the number of staff providing supervision as well as their names and positions. (10-1-98)T

03. Unusual Occurrences. Any "unusual occurrences" during the outing shall be reported to the District social worker who will report the incident to the Placement Manager. (10-1-98)T

**246. OUT-OF-STATE TRAVEL.**

When a facility is planning an out-of-state trip for any of its residents, the facility administrator shall obtain prior authorization from the Placement Manager or his designee. The necessary sequence of action and approval is as follows: (10-1-98)T

01. Notification. The contractor notifies the District social worker in writing two (2) weeks in advance of the scheduled outing the date(s) of the scheduled trip, the location of the trip, transportation arrangements, where the juvenile(s) will be staying if overnight accommodations are required (address/phone number), and who is going, i.e., juvenile(s) and staff by name and position. (10-1-98)T

02. Prior Approval. The facility administrator shall obtain all necessary approvals prior to authorizing travel. (10-1-98)T

03. Confirmation of Approval. The facility administrator shall contact the District social worker for confirmation that approval has been obtained from the Placement Manager for out-of-state travel. (10-1-98)T

**247. OUT-OF-STATE TRAVEL/INDIVIDUAL JUVENILES.**

Out-of-state travel for an individual juvenile in the custody of the Department must have the prior written approval of the Department Placement Manager. The information required in Subsection 246.02 shall be included in the request for out-of-state travel. (10-1-98)T

**248. TREATMENT.**

01. Common Treatment Elements. Contract programs which offer treatment services to juveniles in the custody of the Department are a diverse group. Even though many contract programs offer unique patterns of services, it is possible to identify common treatment elements in the majority of contract programs and to establish a minimum standard for content and competency. (10-1-98)T

02. Waiver or Variation. Minimum treatment standards established herein shall apply to all services provided by the contractor. Any waiver or variation from the standards stated in this Section must be specified in the contract with the Department. (10-1-98)T

**249. INDIVIDUAL TREATMENT PLAN.**

01. Assessment. Each juvenile assigned to the care of the contractor shall be assessed to determine educational, vocational, personal, behavioral, placement and chemical dependency needs. The plan shall state expected goals and behavior, reflect the components of the Balanced Approach, and shall be completed and submitted to the District social worker within thirty (30) days of admission. It should satisfy requirements set forth by licensing standards. (10-1-98)T

02. Individualized Treatment Plan. The contractor shall provide an individualized treatment plan designed to enhance the growth and development of each juvenile assigned to their care and consistent with the personal needs of the child as identified by the assessment. This plan shall include input from the JPO and the District social worker. The contractor shall provide required information on the juvenile's current status to the District social worker on a quarterly basis. (10-1-98)T

**250. COUNSELING.**

For the purpose of this Section, all counseling services provided to juveniles, whether individual, group or family, must possess the following elements: (10-1-98)T

01. Planning. Counseling should be planned and goal directed. (10-1-98)T

02. Methods. The methods and techniques applied in counseling and the frequency and intensity of the sessions should be determined by assessment. (10-1-98)T

03. Direction. Counseling should be reality oriented and directed toward helping individuals understand and solve specific problems, to discontinue inappropriate, damaging, destructive or dangerous behaviors, and/or to fulfill individual needs. (10-1-98)T

04. Minimum Standard. The minimum standard for the frequency of counseling services shall be specified in the Statement of Work portion of the contract with the Department. (10-1-98)T

05. Progress. There should be a mechanism developed to monitor and record incremental progress toward desired outcome of counseling services. (10-1-98)T

**251. INDIVIDUAL COUNSELING.**

01. Availability. Individual counseling shall be available as an ongoing component of the juvenile's Individual Treatment Plan. If the assessment indicates a need for these services, individual counseling shall make provisions for crisis intervention and pursuit of goals/behaviors identified in the juvenile's Individual Treatment Plan.

(10-1-98)T

02. Space Requirement for Treatment. The contractor shall furnish adequate space for conducting private interviews and counseling sessions at the facility. The room(s) should be comfortably furnished. (10-1-98)T

**252. GROUP COUNSELING.**

01. Availability. Group Counseling shall be available as an ongoing component of the juvenile's Individual Treatment Plan. If the assessment indicates a need for these services, group counseling shall provide for crisis intervention and attention to goals/behaviors relevant to the entire group. (10-1-98)T

02. Space Requirement for Treatment. The contractor shall provide sufficient space to accommodate group meetings at the facility. The room(s) should be comfortably furnished. (10-1-98)T

**253. FAMILY COUNSELING.**

01. Availability. Family counseling services shall be available as a part of the juvenile's Individual Treatment Plan. If the assessment indicates a need for these services, family counseling should specifically address issues that directly or indirectly resulted in the child's removal from his/her home and the issue of his/her eventual reintegration back into the family unit. A statement of goals to be achieved or worked towards by the juvenile and his/her family should be part of the Individual Treatment Plan. (10-1-98)T

02. Counselor Qualifications. Family counseling may include private family counseling sessions and/or family group sessions, which shall be conducted by a staff person with, at a minimum, a Masters of Social Work, Masters of Counseling, or Masters of Psychology. (10-1-98)T

**254. SUBSTANCE ABUSE COUNSELING.**

01. Participation. Juveniles with an identified substance abuse problem shall participate in substance abuse counseling with a certified substance abuse counselor and should have access to in-house and/or community AA/NA meetings, at the appropriate point in his treatment. (10-1-98)T

02. Education. Juveniles considered to be at risk for substance abuse shall participate in drug awareness education. (10-1-98)T

**255. INDEPENDENT LIVING SKILLS TRAINING.**

01. Minimum Training. A residential contractor shall have a program to train age-appropriate juveniles in independent living skills consistent with their needs. This program shall include, at a minimum, instruction in: (10-1-98)T

- a. Hygiene and grooming skills; (10-1-98)T
- b. Laundry and maintenance of clothing; (10-1-98)T
- c. Appropriate social skills; (10-1-98)T
- d. Housekeeping; (10-1-98)T
- e. Use of recreation and leisure time; (10-1-98)T
- f. Use of community resources; and (10-1-98)T
- g. Money management. (10-1-98)T

02. Additional Training. When appropriate, the program shall also include instruction and training in: (10-1-98)T



- a. Use of transportation; (10-1-98)T
- b. Budgeting and shopping; (10-1-98)T
- c. Cooking; (10-1-98)T
- d. Punctuality, attendance and other employment-related matters; and (10-1-98)T
- e. Vocational planning. (10-1-98)T

**256. RECREATION.**

01. Written Plan. A residential contractor shall have a written plan for providing recreational services based on individual needs, interests, and the functional levels of the juveniles served. (10-1-98)T

02. Activities. The recreational program should include indoor and outdoor activities. Activities should minimize television and make use of a full array of table games and other activities that encourage both solitary entertainment and small group interaction. A comfortable furnished area should be designated inside the facility for leisure activities. (10-1-98)T

03. Staff. The contractor shall have staff educated/experienced in recreational programs to ensure good planning, organizing, supervision, and use of facility and community activities. Recreational activities considered part of the treatment plan shall be funded by the contractor. The use of community recreational resources should be maximized. When feasible for the juvenile population served, the contractor shall arrange the transportation and supervision required for maximum usage of community resources. No juvenile shall be required to pay to participate in recreational activities made available through the program. (10-1-98)T

**257. EMPLOYMENT.**

01. Written Policies and Procedures. If consistent with the particular program, written policy and procedure shall provide that program resources and staff time are devoted to helping employable juveniles locate employment. Staff shall ensure that each employment opportunity meets all legal and regulatory requirements for juvenile employment. The contractor shall make periodic checks on the job-site to ensure the juvenile is working under acceptable conditions. The juvenile's employer shall be consulted regularly by the contractor concerning the juvenile's work abilities and performance on the job-site. (10-1-98)T

02. Employment Opportunities. Every reasonable effort shall be made to select employment opportunities that are consistent with the individual interests of the juvenile to be employed. Preference will be given to jobs that are related to prior training, work experience, or institutional training and that may be suitable for continuing post release employment. Reasonable effort shall be made to provide juveniles with the highest paying job possible. Earned income by a juvenile shall be handled consistent with Subsection 267.05 of these rules. (10-1-98)T

**258. EDUCATION.**

01. Appropriate Services. A residential contractor shall ensure that each juvenile has access to appropriate educational and vocational services that are consistent with the juvenile's abilities and needs, taking into consideration age, level of functioning, and any educational requirements specified by law. (10-1-98)T

02. Mandatory Enrollment. All juveniles of mandatory school age shall be enrolled in a school system or in a program approved by the State Board of Education. Any contractor who provides education on the grounds of a facility through a cooperative agreement with the local education agency, or by virtue of an approved alternative school status, shall ensure provision of all educational services and accommodations included in the juvenile's Individual Education Plan (IEP) and required by state and federal regulation. (10-1-98)T

03. Special Education. The contractor shall ensure that the special education needs of juveniles assigned to his/her care are addressed. (10-1-98)T

04. Cooperative Relationships. The contractor shall make a good faith effort to maintain cooperative relationships with local school systems, colleges, and trade schools for the purpose of developing and maintaining suitable programs for juveniles. (10-1-98)T

05. Gainful Employment. All juveniles not enrolled in an appropriate educational/vocational program should be gainfully employed, if possible. (10-1-98)T

06. Structured Activities. The contractor shall provide structured educational activities for juveniles pending their enrollment in an appropriate educational/vocational setting. (10-1-98)T

**259. RELIGION.**

01. Policy and Procedure. Written policy and procedure shall ensure that attendance at religious services is voluntary. No juvenile shall be required to attend religious services. (10-1-98)T

02. Voluntary Practice. All juveniles shall be provided the opportunity to voluntarily practice their respective religions. (10-1-98)T

03. Attendance. Juveniles may be permitted to attend religious services of their choice in the community. (10-1-98)T

04. Transportation. The contractor must, when reasonably possible, arrange transportation for those juveniles who desire to take part in religious activities in the community. (10-1-98)T

05. Risk/Safety to Community. If the juvenile cannot attend religious services in the community because staff has reason to believe he/she would attempt to escape, or otherwise present a risk to the safety of the community, the contractor shall make every effort to ensure that he/she has the opportunity to participate in religious services at the facility. (10-1-98)T

06. Visits. Juveniles should be permitted to receive visits from representatives of their respective faiths. (10-1-98)T

07. Minor Juveniles. When the juvenile is a minor, the contractor shall determine the wishes of the legally responsible person with regard to religious observances and shall make every effort to ensure that these wishes are carried out. (10-1-98)T

**260. REPORTING TREATMENT PROGRESS.**

01. Reports. At minimum, the contractor shall submit in writing a Quarterly Progress Report on each juvenile. The first report shall be submitted within thirty (30) days of placement and shall include the individual service plan. Subsequent reports shall be submitted quarterly. (10-1-98)T

02. Progress Documentation. The quarterly report shall document the juvenile's progress toward the goals and objectives set forth in the individualized service plan. Quarterly reports should focus on areas of positive change in behavior and attitudes, as well as on the factors required for a successful program completion (progress in community protection, competency development, and accountability). The quarterly report shall, at a minimum, also include: (10-1-98)T

a. The juvenile's medical condition, any medical treatment and/or medications prescribed; (10-1-98)T

b. The juvenile's current grades (if applicable); (10-1-98)T

c. Any unusual occurrence reports involving the juvenile; (10-1-98)T

d. The dates of any home visits during the reporting period and, if applicable, documentation of any problems reported; and (10-1-98)T

e. The dates of family counseling sessions and documentation of parental participation. (10-1-98)T

03. Report Distribution. Copies of the quarterly report shall be distributed to the District social worker, the juvenile's probation officer, and to the Department O&A. The parent or guardian of the juvenile should receive a written progress report on the juvenile at least quarterly. The District social worker will review and forward the quarterly report to the appropriate court. (10-1-98)T

**261. CONFIDENTIALITY.**

01. Provisions. Sections 20-525 and 9-340(2)(b), Idaho Code, provides for confidentiality, under certain conditions, of records that contain information about juveniles. (10-1-98)T

02. Confidentiality. All records shall be stamped "confidential" on the cover or outside folder. (10-1-98)T

03. Record Supervision. Juvenile records shall be kept in locked areas and shall be directly supervised and controlled by an authorized staff member. (10-1-98)T

04. Automated Records. Automated records shall include a procedure to ensure confidentiality. (10-1-98)T

05. Policy and Procedure. The contractor shall have written policy and procedures to address the confidentiality of juvenile records. (10-1-98)T

06. Availability of Information. Written policy shall specify what information will be available to the juvenile and/or to the juvenile's parent/guardian, particularly in the following instances: if the juvenile's mental and/or social adjustment might be negatively affected, if a co-defendant is involved, if a confidential juvenile record is included, or if informants are named in the record. (10-1-98)T

07. Records Supervision. Written procedures shall specify who will supervise the maintenance of the records, who shall have custody of records, and to whom records may be released. (10-1-98)T

**262. ACCESS.**

01. Limitations. Access to confidential juvenile files shall be limited to the following authorized persons: (10-1-98)T

a. Staff authorized by the contractor and members of the administrative staff of the contractor's parent agency; (10-1-98)T

b. A parent/guardian for juveniles under age eighteen (18) or the juvenile, if he is age eighteen (18) or over; (10-1-98)T

c. Appropriate staff of the Department; (10-1-98)T

d. Counsel for the juvenile with signed consent form; (10-1-98)T

e. Judges, prosecutors, and law enforcement officers, when essential for official business; (10-1-98)T

f. Individuals and agencies approved by the Department to conduct research and evaluation or statistical studies; or (10-1-98)T

g. Schools. (10-1-98)T

02. Withholding of Information. If the Department or the contractor believes that information

contained in the record would be damaging to the juvenile's treatment/rehabilitation, that information may be withheld from the juvenile and/or his parent(s) or others except under court order. (10-1-98)T

**263. JUVENILE PHOTOGRAPHS.**

01. Limitations. No juvenile in the custody of the Department shall be used in person or by photograph for the express purpose of any fund raising efforts. (10-1-98)T

02. Policy and Procedure. Written policy and procedure shall specify instances under which information concerning a juvenile shall be released. This policy shall include, but not be limited to, release of photographs to the media or for inclusion in facility news letters or publications. Permission to release or use the photographs of juveniles in the custody of the Department shall require written authorization from the Director or his designee. (10-1-98)T

**264. RELEASE FORMS.**

01. Release of Information. The juvenile and parent or guardian will sign a Release of Information Consent Form before information about the juvenile is released to any non-juvenile justice entity. (10-1-98)T

02. Minimum Information. The Release of Information Consent Form shall, at a minimum, include the following: (10-1-98)T

a. Name of person, agency or organization requesting information; (10-1-98)T

b. Name of person, agency or organization releasing information; (10-1-98)T

c. The specific information to be disclosed; (10-1-98)T

d. The date consent form is signed; (10-1-98)T

e. Signature of the juvenile and the parent/guardian; and (10-1-98)T

f. The signature of the person witnessing the juvenile's signature. (10-1-98)T

03. Copies. A copy of the consent form shall be maintained in the juvenile's record. (10-1-98)T

04. Document Reproduction. The contractor agrees that no documents provided by the Department shall be reproduced or distributed without the written permission of the Department. (10-1-98)T

**265. RETENTION OF JUVENILE RECORDS.**

All juvenile records shall be retained until the juvenile reaches age twenty-one (21) or for six (6) years, whichever is longer. Contractors shall have a written policy on the retention and disposal of records. (10-1-98)T

**266. CLOTHING.**

01. Sufficient Clothing. Juveniles shall have sufficient clothing of the proper weight to participate in activities included in their Individual Treatment Plan. Juveniles may arrive at the facility with their own clothing. If the juvenile does not have sufficient clothing, or appropriate clothing, the contractor shall provide or purchase adequate and appropriate clothing for the juvenile. (10-1-98)T

02. Release from Facility. All clothing and incidentals become the property of the juvenile upon release from the facility. The contractor will ensure the proper care and cleaning of clothing in the juvenile's possession. (10-1-98)T

03. Replacement Clothing. Clothing provided and/or purchased as replacement will be at the expense of the contractor. Unique items of clothing not required for program participation may be purchased at the expense of the juvenile. (10-1-98)T

**267. PERSONAL FUNDS.**

**01. Funds Handled by a Contractor. (10-1-98)T**

a. A contractor shall be required to deposit all personal funds collected for the juvenile in a public banking institution in an account specifically designated "Juvenile Personal Funds" and to maintain a ledger showing the status of each juvenile's account. If the funds are collected in an interest bearing account the interest accrued MUST be given to the juvenile for whom the fund is collected. (10-1-98)T

b. All withdrawals by a juvenile or expenditures made on behalf of a juvenile by the contractor shall be documented by a sequentially numbered withdrawal request, signed and dated by the juvenile. This documentation shall be reconciled to the juvenile's ledger monthly. (10-1-98)T

c. A contractor may limit the amount of any withdrawal, if possession of excess monies creates a security problem within the program, or as part of a behavioral management plan. (10-1-98)T

d. If a juvenile's personal funds exceed two-hundred fifty dollars (\$250), the contractor shall open an interest bearing account in the name of the juvenile and the facility and allow the juvenile to invest any portion of that amount in the account. (10-1-98)T

**02. Reporting Requirements.** A report shall be filed with the Juvenile Management Center by July 31 for the year ending June 30 showing a list of all juvenile account balances, date of admission and, if appropriate, the date of discharge. The personal fund account is subject to review or audit by the Department or its representatives at any time. Any discrepancies in juvenile accounts shall be resolved within fourteen (14) days of notification. (10-1-98)T

**03. Transfer of Personal Funds. (10-1-98)T**

a. When a juvenile is discharged from the program, the balance of the juvenile's account minus any funds due the contractor shall be given to and/or mailed to the contractor within thirty (30) days regardless of the reasons for discharge. (10-1-98)T

b. If the juvenile is to be reassigned to another program (including O&A), a check should be made in the name of the juvenile and forwarded to the new program within seven (7) working days. The contractor must document efforts made, including contacts with the Department, in attempting to locate a juvenile for transfer of funds. When a juvenile cannot be located, those funds held on his behalf are considered to be abandoned after ninety (90) days and shall be remitted to the Department, made payable to the Juvenile Corrections Student Account. The Department will then follow the procedures outlined in the Abandoned Property Act, Section 14-501, et. seq., Idaho Code. The refund check must be accompanied by a list of the juveniles' names and case numbers. (10-1-98)T

**04. Claims Against a Juvenile's Account.** A contractor shall not require juveniles to pay for services and supplies which are to be provided by the contractor (i.e., toiletries, linen, laundry, drug screens, routine supplies, and lunch money). The contractor shall not access the juvenile's account for damages without following the disciplinary process, as provided in Sections 270 and 271 of these rules. (10-1-98)T

**05. Earned Income.** The contractor is responsible for maintaining and accounting for money earned by the juvenile. The contractor shall establish a written plan for the juvenile to save at least twenty percent (20%) of his net earnings. The plan shall specify the purpose for which funds saved will be used at program completion -- i.e., deposits on utilities and housing, purchase of tools necessary for employment. Additionally, there shall be a plan for the priority use of the juvenile's earned income to pay court ordered restitution. (10-1-98)T

**268. DISCIPLINE OF JUVENILES.**

**01. Written Policies and Procedures.** All residential providers and those non-residential providers offering day treatment services shall have comprehensive written policies and procedures regarding discipline and control, which shall be explained to all juveniles, families, staff, and placement agencies. These policies shall include

positive responses for appropriate behavior. They shall include a provision for notice to the juvenile being disciplined, a mechanism for a fair and impartial hearing by a disciplinary board and a process for appeal. The contractor must submit its formal written disciplinary process to the Placement Manager for review and approval. (10-1-98)T

02. Problem Resolution. Disciplinary actions are not the same as the consequences that are spelled out as a part of an individual behavioral treatment plan for the juvenile. A contractor shall make every effort to resolve problems with the least amount of formal disciplinary activity possible. Efforts should be made first to instruct and counsel the juvenile. (10-1-98)T

**269. CHARACTERISTICS OF THE FORMAL DISCIPLINARY PROCESS.**

01. Prior to Initiating a Report or Disciplinary Action. Prior to initiating a report or disciplinary action, careful attention should be given to the program rules to determine the seriousness of the misbehavior and the appropriate type of discipline. (10-1-98)T

02. Control of Juveniles. Staff will make every effort to maintain control of juveniles through methods of positive reinforcement. (10-1-98)T

03. Discipline. Discipline will be administered in a way to create a learning experience for the juvenile, and never is a way that degrades or humiliates a juvenile. (10-1-98)T

04. Other Juveniles. No juvenile shall supervise nor carry out disciplinary actions over another juvenile. (10-1-98)T

05. Prohibitions. The contractor is prohibited from using the following actions as disciplinary responses: (10-1-98)T

- a. Corporal punishment of any kind; (10-1-98)T
- b. Physical exercise or repeated physical motions; (10-1-98)T
- c. Denial of meals; or (10-1-98)T
- d. Denial of the following usual services: (10-1-98)T
  - i. Education, vocational services and employment; (10-1-98)T
  - ii. Medical services; and/or (10-1-98)T
  - iii. Communication with family, probation officer, or legal counsel. (10-1-98)T

**270. RESTITUTION.**

01. Responsibility. It is the policy of the Department to hold juveniles responsible for the financial consequences of their actions by authorizing restitution as part of the disciplinary process. Restitution owed by the juvenile because of court order shall be paid by the juvenile at a rate higher than that discussed herein, but at a rate appropriate for the circumstances of that juvenile. If, during the course of the juvenile's placement with contractor, restitution to the contractor, separate and apart from that restitution owed to the original victim, becomes an issue, the following guidelines apply: (10-1-98)T

02. Basis for Restitution. Restitution may be ordered as part of the disciplinary process when a juvenile has willfully damaged or destroyed property, has caused or attempted to cause injury to himself, other juveniles or staff resulting in expenses being incurred, and/or has a pattern of falsely alleging injury or illness with the result that medical expenses are incurred. (10-1-98)T

03. Actual Cost Restitution. "Actual Cost" restitution may be imposed when property is destroyed and when an incident results in outside medical care for staff or juveniles. (10-1-98)T

04. Satisfaction of Claim. In no instance shall a contractor withdraw all funds in a juvenile's account to satisfy a restitution claim. (10-1-98)T

05. Collection of Restitution. All juveniles shall be afforded an administrative hearing in accordance with the disciplinary procedure of the facility and standards set forth in these rules. (10-1-98)T

06. Juvenile's Personal Funds. Funds for restitution may be withdrawn from the juvenile's personal funds not to exceed one-half (1/2) the total in the account. The juvenile's personal needs allowance can be used to pay restitution only with the juvenile's agreement. Should the juvenile not agree and has no other funds available, then a plan must be developed by the contractor to assist the juvenile in earning the amount of restitution. (10-1-98)T

07. Payment Plan. If a juvenile owes more in restitution than he is able to pay immediately, program staff shall help him develop a payment plan. (10-1-98)T

**271. APPEAL OF DISCIPLINARY PENALTIES.**

Each contractor shall have a formal written process through which a juvenile can appeal a disciplinary action and receive a review of his/her case. The contractor shall explain to the juvenile how to use the appeal process. The juvenile must be informed that in any event he/she may include his/her District social worker in the disciplinary process. (10-1-98)T

**272. FOOD SERVICE.**

Juveniles shall be served a varied and nutritionally adequate diet with menus meeting standards set by a qualified nutritionist or dietician to ensure that they meet nationally recommended allowances for basic nutrition. Juveniles must be fed three (3) meals daily in accordance with licensure regulations. (10-1-98)T

**273. TRANSPORTATION.**

01. Transportation for Treatment Plan. It shall be the responsibility of the contractor to provide all transportation associated with the juvenile's Individual Treatment Plan. (10-1-98)T

02. Transportation for Court Proceedings. It is the responsibility of the Department to assure the juvenile's appearance in all court proceedings and to arrange transportation as indicated. (10-1-98)T

**274. REIMBURSABLE PROGRAM RELATED EXPENSES.**

The Department will reimburse the contractor for certain program-related expenses according to the following terms: (10-1-98)T

01. Provided Services. The item or service must be provided to promote the health, well-being, and/or treatment goals of the juvenile. (10-1-98)T

02. Availability. The item or service is not available through any other source, including the family of the juvenile. (10-1-98)T

03. Cost. The cost of the item or service is not specifically funded by the per diem paid to contractor, nor uses the cost of other items or services submitted by the contractor for the purpose of any part of a per diem rate. (10-1-98)T

04. Prior Approval. The contractor has obtained prior approval from the Department Director or his designee to make the expenditure. (10-1-98)T

**275. EXAMPLES OF REIMBURSABLE EXPENSES.**

Each item or service submitted for reimbursement will be reviewed on a case-by-case basis, and the criteria will be applied individually. Examples include the following: (10-1-98)T

01. Medication/Medical Services Not Covered By Medicaid. Prior approval of non-routine medical procedures need to be authorized in advance by the Placement Manager. The Department will reimburse the

contractor for medications and/or health care items/services based on the following criteria: (10-1-98)T

- a. The item or service is prescribed by a physician; (10-1-98)T
- b. The item or service is directly related to the health and well-being of the client; (10-1-98)T
- c. The item or service is denied reimbursement by Medicaid in writing; or (10-1-98)T
- d. The item or service is directly related to treatment of an existing condition and is not preventative, elective or discretionary treatment. (10-1-98)T

02. School Expenses. Prior approval is required before the reimbursement of school expenses. The Department will reimburse the contractor for certain expenses directly related to educational or vocational services. Reimbursement shall not include the routine purchase of school supplies, paper, pencils, pens, notebooks, workbooks, lunch fees, etc. Program related expense reimbursement for educational and vocational expenses will be limited to those items not included in the per diem rate and may include expenses such as the following: (10-1-98)T

- a. Tuition for approved course work, vocational education or required summer school; (10-1-98)T
- b. Certain fees; (10-1-98)T
- c. Tools, text books, supplies, and special clothing required by vocational courses; or (10-1-98)T
- d. The vocational student will be required to apply for and been denied financial assistance from state and federal programs or vocational rehabilitation. Justification that these expenses are not refundable through any other sources may be required. (10-1-98)T

03. Reimbursement for Mileage. The cost of transportation that is necessary due to extraordinary or extenuating circumstances that arise during the course of a juvenile's treatment program may be borne by the Department under the following circumstances: (10-1-98)T

- a. Transportation of the juvenile is not part of the routine services provided by the contractor for which they are reimbursed in the board rate; or (10-1-98)T
- b. The transportation required is to meet a specific unplanned or extraordinary need of the juvenile. (10-1-98)T

04. Reimbursement Rates. Mileage rates will be based on the Idaho State Travel Policies and Procedures. (10-1-98)T

**276. MONITORING MOVEMENT OF JUVENILES.**

Juveniles in contract placements are in the legal custody of the Department. The Department has a responsibility both to the court of jurisdiction and to the public to know the location of these juveniles at all times. The contractor shall follow a written plan to allow staff in residential and non-residential alternative programs to monitor movement into and out of the facility. Program staff shall be able to account for the whereabouts of its participants at all times. (10-1-98)T

**277. ESCAPE.**

01. Notification. In all instances the facility shall immediately notify the Juvenile Management Center switchboard, local law enforcement, the juvenile's probation officer, and shall attempt to contact the parent/guardian of the resident. (10-1-98)T

02. Maintenance of Belongings. Clothing and other personal belongings shall be secured immediately and maintained in a secure place until returned to the Department. (10-1-98)T

03. Program Assignment. The contractor shall not discharge a juvenile at the time of an escape. The



juvenile shall continue to be assigned to the program, although not physically present for two (2) days. The program must accept the juvenile back if apprehended and returned to the program within two (2) days. The program will be reimbursed for the days the juvenile was on escape status up to two (2) days. Should the program choose to discharge the juvenile after his/her return, then the procedures outlined in Section 230 or 231 of these rules shall apply. A juvenile on escape status may be discharged at the request of the Placement Manager within the two (2) days. The date of discharge shall be established by the Department. (10-1-98)T

04. Disciplinary Sanctions. All contractors providing residential care for adjudicated juveniles in the custody of the Department shall have established, in written policy and procedure, a range of disciplinary sanctions for imposition against the juvenile, and a plan for providing additional security when dealing with juveniles who have escaped from, and been returned (even temporarily), to the facility. (10-1-98)T

05. Reassignment of Juvenile. The Department considers all escapes as serious challenges to the "Balanced Approach" goal of community protection. In every case of escape, the Department will consider (taking into consideration input from the provider and the juvenile's probation officer), the necessity of reassigning the juvenile to a more restrictive level of custody. (10-1-98)T

06. Reassessment. In every escape in which the juvenile is away for ten (10) days or longer, or in which there is a felony charge other than that for the escape itself, or in which there was use of threat, force, violence or vehicular chase, the juvenile will be returned to the secure unit at O&A for reassessment and sanction. (10-1-98)T

**278. ROUTINE SEARCHES.**

01. Facility Program. Searches should be a part of every facility's program and should be conducted on a routine basis. The primary objective for a search is to ensure the safety of all juveniles, staff, and visitors. Searches shall be completed in the least intrusive manner possible for the type of search being conducted. (10-1-98)T

02. Policies and Procedures Governing Searches. The program shall maintain and make public written policies and procedures for conducting searches of residents, all areas of the facility, staff and visitors to the program to control contraband and/or locate missing property. It is suggested that a sign be posted notifying visitors of the specific policy of the facility regarding searches. (10-1-98)T

03. Policies and Procedures Governing Consequences. The facility shall also have written policy and procedures establishing the consequences for residents found with contraband. The resident should acknowledge, with their signature, that they were informed of what constitutes contraband and also the consequences for its possession. (10-1-98)T

**279. FACILITY SEARCHES.**

In order to ensure the safety of residents, staff and visitors, periodic facility searches for contraband shall be conducted. The frequency and extent of whole facility and ground searches should be consistent with program policies and can be included during other routine inspections or activities. Searches shall be conducted by staff trained in the appropriate search techniques. Searches called by the facility staff do not have to include the entire facility but can be limited to specific areas or residents. The residents' belongings shall be disturbed no more than necessary during the search. The search shall be documented in terms of who conducted the search, what areas were searched, and what type of contraband was found, if any. If a search yields contraband, the District social worker will be notified and it shall be reported according to the requirements of the Department. If necessary, the appropriate law enforcement agency should be notified. (10-1-98)T

**280. PERSONAL ITEMS, ETC.**

Routine searches of suitcases and/or personal items being introduced into the facility will be conducted by facility staff prior to the juvenile taking possession of his property, or when the juvenile is returning to the facility from a home pass. Search of a juvenile's belongings may be done at any time and shall be as least intrusive as possible. All searches shall be documented in the facility log and, if contraband is found, reported in accordance with Section 285 of these rules. If necessary, the appropriate law enforcement agency shall be notified. (10-1-98)T

**281. RESIDENT PAT DOWN SEARCHES.**

01. Necessity. Pat down searches of residents may be conducted whenever the facility feels it is necessary to discourage the introduction of contraband into the facility, or to promote the safety of staff and other residents. A pat down search may be used when a juvenile is returning from a visit or outside appointment or activity when there is reason to believe contraband is on his/her person. (10-1-98)T

02. Pat Down Searches Are Conducted as Follows: (10-1-98)T

a. The search shall be conducted by staff trained in proper search techniques; (10-1-98)T

b. The search shall be conducted by a staff member of the same sex as the juvenile being searched, and shall be in the presence of another staff member; (10-1-98)T

c. The juvenile is told he/she is about to be searched; (10-1-98)T

d. The juvenile should remove all outer clothing (gloves, coat, hat and shoes) and empty all pockets; (10-1-98)T

e. The staff person shall then pat the outer clothing of the juvenile using only enough contact to conduct an appropriate search; (10-1-98)T

f. If the staff member finds a bulge, odd shaped lump, etc., the juvenile shall be asked to identify the item and appropriate steps should be taken to remove the item for inspection; and (10-1-98)T

g. If the resident refuses to comply, the facility Director will be notified immediately. (10-1-98)T

03. Documentation. All pat down searches shall be documented in the facility log. A written report shall be completed when contraband is found and reported to the District social worker. If necessary, the appropriate law enforcement agency shall be notified. (10-1-98)T

**282. RESIDENT STRIP SEARCHES.**

01. Resident Strip Searches. Strip searches may be performed by facility staff, only after a pat down search, whenever there is reasonable suspicion to believe that weapons or contraband may be found through additional searches. Strip searches shall be authorized by the facility Director or his designee. The following are steps to conduct a strip search: (10-1-98)T

a. A strip search shall be conducted by two (2) staff members of the same sex as the juvenile who is being searched; (10-1-98)T

b. A strip search shall be performed in an area that ensures the privacy and dignity of the juvenile; (10-1-98)T

c. Have the juvenile remove all clothing and move away from the articles; (10-1-98)T

d. DO NOT TOUCH the juvenile; (10-1-98)T

e. Have the juvenile run his hands through his hair; and (10-1-98)T

f. Search clothing carefully and return it to the juvenile. (10-1-98)T

g. Body cavity searches are not to be conducted by facility staff. (10-1-98)T

02. Documentation. All strip searches are to be documented in writing and, if contraband is found a written report shall be completed and given to the District social worker. If necessary, the appropriate law enforcement agency will be notified. (10-1-98)T

**283. VISITOR SEARCHES.**

01. Visitor Rules. Prior to a visitor being allowed in the facility they shall be given rules established by the facility that govern their visit and advised that they may be subject to a search. They shall sign a statement of receipt of these rules and it shall be placed in the facility's file. Visitors may be required to submit packages, handbags and briefcases for inspection by trained staff. If there is reason to believe that additional searches are necessary, admission to the facility shall be denied. (10-1-98)T

02. Facility Log. All visitor searches shall be documented in the facility log. When contraband is found a written report shall be completed and given to the District social worker. If necessary, the appropriate law enforcement agency will be notified. (10-1-98)T

**284. STAFF SEARCHES.**

01. Staff Rules. All staff members shall receive rules that govern what is considered contraband in the facility. They will sign a statement saying they have read the rules and it will be placed in their personnel file. The facility Director may authorize a search of a staff person's belongings and/or a pat down search to follow guidelines previously established. Refusal to comply with the search, or possession of contraband, if contraband is found, shall be handled by the facility Director in accordance with the facility's rules and regulations that govern employees. (10-1-98)T

02. Documentation. All staff searches shall be documented in writing and will be reported to the District social worker. If necessary, the appropriate law enforcement agency shall be notified. (10-1-98)T

**285. CONTRABAND DISPOSAL.**

All contraband found in the possession of residents, visitors or staff shall be confiscated by staff and secured under lock and key in an area inaccessible to residents. Local law enforcement shall be notified in the event illegal drugs, paraphernalia, or weapons are found. It shall be the responsibility of the facility Director, in consultation with the Department, to dispose of all contraband not confiscated by police. Visitors who bring in items that are unauthorized but not illegal will have these items taken and locked in an area inaccessible to the residents during the visit. The visitor will get these items back upon their exit from the facility. Disposal and reporting of all contraband shall be in accordance with Department Rule. (10-1-98)T

**286. DRUG SCREENS.**

Drug screens may be done randomly or on an as needed basis with the approval of the facility Director. A record shall be kept of all drug screens and their results. A positive drug screen shall immediately be reported to the District social worker supervising the case. (10-1-98)T

**287. USE OF FORCE.**

01. Minimal Use. Only the minimal use of force required to control the destructive behavior shall be used. (10-1-98)T

02. Physical Force. Physical force shall never be used as punishment. (10-1-98)T

03. Documentation. All use of force shall be documented in writing, dated, and signed by staff reporting the incident. The documentation shall be submitted to the facility Director with a copy to remain on file for review by the Department. (10-1-98)T

04. Inappropriate Force. Section 16-1619, Idaho Code, mandates that all instances of suspected use of inappropriate force by staff shall be reported to the Department of Health and Welfare, and/or law enforcement within twenty-four (24) hours of the incident. Use of inappropriate force shall be reported as an unusual occurrence to the Department. (10-1-98)T

**288. PASSIVE PHYSICAL RESTRAINT.**

01. Resident Control. Passive physical restraint constitutes a use of force but may be used to control a

resident whose behavior may cause injury to staff, another resident, or himself. In certain instances, passive physical restraint may be used to prevent a juvenile from escaping from custody and to prevent damage to property.

(10-1-98)T

02. Policies. In these instances, personnel may be required to justify their use of force before a state regulatory agency or a court of law. The facility shall have written policies regulating the use of any form of restraint, and all staff who would be in a position to use physical restraints shall have received training in non-violent crisis intervention and/or techniques of passive restraint.

(10-1-98)T

03. Prior Approval. A program shall not use any form of physical, mechanical, or chemical restraint other than passive physical restraint without prior written approval of the Department.

(10-1-98)T

**289. ROOM RESTRICTIONS.**

The facility shall have written policies and procedures regulating the use of the juvenile's room for "room restriction". The policy shall ensure that there are procedures for recording each incident involving the use of restriction. The reason for the room restriction is explained to the resident and he has an opportunity to explain the behavior. Other less restrictive measures have been applied prior to the restrictions. Residents in room restriction shall have access to the bathroom. Staff shall check on a resident in room restriction a minimum of once every fifteen (15) minutes. Room restriction may only be used in an unlocked area. Room restriction shall not exceed a total of eight (8) hours.

(10-1-98)T

**290. BATTERY ON STAFF.**

All instances of battery committed on staff shall be documented and, whenever appropriate, charges will be filed with appropriate authorities. Each such incident shall be reported to the Department.

(10-1-98)T

**291. SUICIDE PRECAUTIONS.**

All contractors must have a plan for responding to juveniles who present a risk of suicide. The procedure shall, at a minimum, include a process for determination or assessment of suicidal behavior and risk, a procedure for contacting appropriate health authorities and the Department, and a plan of direct supervision of a juvenile until a suicide crisis has ended.

(10-1-98)T

**292. JUVENILES' RIGHTS AND RESPONSIBILITIES.**

It is the responsibility of the facility (with assistance from the Department when needed) to explain to each juvenile in placement what their rights are and what has been forfeited as a result of being placed in custody. Each juvenile should be advised specifically of his rights and responsibilities outlined in Appendix A. A signed copy should be filed in the juvenile's case record.

(10-1-98)T

**293. LETTERS.**

01. Restrictions. Juveniles shall be allowed to send and receive letters from all persons, including persons in other programs or institutions, unless specifically prohibited by the Department. All restrictions of mail shall be documented in the juvenile's Individual Treatment Plan. There shall be no general restrictions on the number of letters written, the length of any letter, or the language in which a letter may be written.

(10-1-98)T

02. Inspection of Outgoing Letters. (10-1-98)T

a. Outgoing letters are to be posted unsealed and inspected for contraband. (10-1-98)T

b. EXCEPTION: Outgoing "privileged" mail may be posted sealed and may not be opened, except with a search warrant, as long as it can be confirmed to be to an identifiable source. For purposes of this regulation "an identifiable source" means that the official or legal capacity of the addressee is listed on the envelope and that the name, official or legal capacity, and address of the addressee has been verified. Possible identifiable sources are the following:

(10-1-98)T

i. Court(s); (10-1-98)T

ii. Attorney(s); (10-1-98)T

- iii. District Social Worker, and/or Director of the Department of Juvenile Corrections; (10-1-98)T
- iv. Other state and federal departments, agencies and their officials; and (10-1-98)T
- v. Members of the press. (10-1-98)T
- c. Upon the determination that the mail is not identifiable as privileged mail, said mail shall be opened and inspected for contraband. (10-1-98)T

03. Inspection of Incoming Letters. Letters from the following identifiable sources must be opened by the juvenile to whom it is addressed and may be inspected for contraband only in the resident's presence: (10-1-98)T

- a. Court(s); (10-1-98)T
- b. Department officials and probation and parole officials; (10-1-98)T
- c. Prosecuting attorney(s); (10-1-98)T
- d. Other attorney(s); and (10-1-98)T
- e. Members of the press; and (10-1-98)T
- f. State and federal agencies and officials. (10-1-98)T

04. Reading of Letters. Routine reading of letters by staff is prohibited. Contractor may determine that reading of a juvenile's mail is necessary to maintain security, order or program integrity, but such reading of mail must be documented and a copy of this documentation shall be kept for review by the District social worker. (10-1-98)T

**294. STATIONERY AND STAMPS.**

Indigent juveniles will be provided with sufficient stationery, envelopes and postage for all legal and official correspondence and for at least two (2) personal letters each week. (10-1-98)T

**295. PACKAGES.**

All packages shall be inspected for the purpose of discovering contraband. (10-1-98)T

**296. PUBLICATIONS.**

Books, magazines, newspapers and printed matter which may be legally sent to juveniles through the postal system shall be approved, unless deemed to constitute a threat to the security or integrity of the programs. (10-1-98)T

**297. WITHHOLDING OF CORRESPONDENCE.**

If it is determined that any letters or publications passed through the mail illegally or that its presence within the program would present a threat to the security or integrity of the facility, it may be withheld. This decision is made by the facility Director. The decision and reasons for withholding correspondence shall be discussed with the juvenile and documented in the juvenile's case file. The juvenile has the right to appeal this decision to the District social worker. (10-1-98)T

**298. RESTRICTIONS ON CORRESPONDENCE.**

All juveniles, regardless of status, shall be allowed to receive approved correspondence. However, a juvenile may have the privilege of originating correspondence limited to communications with the court(s), parent/guardian, the Department, and legal counsel while on restriction if deemed to be in the juvenile's best interest by the facility Director. The juvenile has the right to appeal this decision to the District social worker. (10-1-98)T

**299. COLLECTION AND DISTRIBUTION OF MAIL.**

The collection and distribution of mail is never to be delegated to a juvenile. Neither is the mail to be dropped on a table or other convenient location for each juvenile to come and look for his own. Mail shall be delivered promptly to the juvenile to whom it is addressed. (10-1-98)T

**300. VISITATION.**

The contractor shall develop written rules governing visiting at the facility and shall provide a copy to each juvenile, his parent or guardian, and the District social worker. In all cases, the contractor will screen potential visitors and approve or disapprove their visiting of the juvenile in accordance with the facility's criteria. The juvenile's probation officer should, if possible, be consulted in this process. (10-1-98)T

**301. PERSONAL SAFETY.**

01. Responsibility. Every juvenile has the fundamental right to feel safe. Contractors have the responsibility to ensure that juveniles are safe while in their care. Every juvenile shall be informed of procedures whereby a professional staff person can be contacted on a twenty-four (24) hour basis if the juvenile does not feel safe. (10-1-98)T

02. Periodic Contacts. The facility Director should make periodic contact with juveniles in the program to determine if they feel safe and are comfortable when interacting with peers and staff. (10-1-98)T

**302. SMOKING/SALE OF CIGARETTES.**

01. Sale/Purchase. Idaho law prohibits the sale of cigarettes to persons under eighteen (18) years of age. It also prohibits minors from purchasing tobacco products. The Department cannot approve any practices that are prohibited by law. (10-1-98)T

02. Written Policies. Every facility/program shall establish written policies and procedures banning the use of cigarettes and other tobacco products by juveniles at the facility. Recognizing that many juveniles may need help to stop smoking, the provider shall assist the juvenile in obtaining additional services to address this problem. (10-1-98)T

**303. GRIEVANCE PROCEDURES.**

01. Written Procedures. Each program shall have a written grievance procedure for juveniles (which includes the right to appeal disciplinary actions against them if a separate disciplinary grievance procedure is not available to them). It shall be written in a clear and simple manner and shall allow juveniles to make complaints without fear of retaliation. (10-1-98)T

02. Grievance Forms. The grievance procedure shall be explained to the juvenile by a staff member who shall enter a note into the juvenile's file confirming the explanation. Grievance forms shall be in a location accessible to juveniles without having to request such a form from staff. Completed forms should be placed in a secure area until collected and not accessible to staff or other residents. A copy of the grievance shall be provided, as soon as possible to the District social worker. (10-1-98)T

**304. RESEARCH.**

01. Written Policies. Residential and non-residential alternative programs shall have written policies regarding the participation of youth in research projects. Policy shall prohibit participation in medical or pharmaceutical testing for experimental or research purposes. (10-1-98)T

02. Voluntary Participation. Policy shall govern voluntary participation in non-medical and non-pharmaceutical research programs. (10-1-98)T

**305. PROVISION OF MEDICAL SERVICES.**

01. Medical Consent. Each juvenile shall be provided with routine and emergency medical, dental, and/or mental health services while in the contractor's care. As part of the admission process, the contractor shall secure a medical consent authorization form signed by a juvenile's parent, guardian, or committing authority. The consent form shall be filed in the juvenile's case record at the facility. (10-1-98)T

02. Emergency Medical Treatment. In cases of non-routine or emergency medical treatment requiring signed authorization for juveniles in the custody of the Department, reasonable efforts must be made to obtain the consent of the parent or guardian. Should the parent or guardian not be available or refuse to sign, the authorization shall be signed by the Placement Manager or his designee. This does not restrict the contractor taking the action needed to ensure the health of the juvenile. (10-1-98)T

03. Medical Service Agreements. Each contractor shall have an agreement with a licensed general hospital, clinic or physician, and dentist to provide juveniles with routine and emergency services on a twenty-four (24) hour basis. Emergency medical care shall be provided in a public hospital or in a facility which accepts Medicaid reimbursement. (10-1-98)T

**306. ACCESS TO EMERGENCY SERVICES.**

The contractor shall have a written plan for providing access to twenty-four (24) hour emergency medical and dental care. It shall define the circumstances which constitute a medical emergency and shall include instructions to staff regarding their conduct once the existence of a medical emergency is suspected or has been established. The plan shall include arrangements for transportation, use of hospital emergency rooms or other appropriate health facilities, and emergency on-call physician and dental services when a health facility is not readily accessible in a nearby community. (10-1-98)T

**307. TRAINING.**

01. Health-Related Emergencies. Juvenile care workers and other staff shall be trained to respond to health-related emergencies. At all times at least one (1) staff member on duty must be qualified to administer first aid and cardiopulmonary resuscitation (CPR). All staff who may be alone with juveniles on any shift shall obtain and maintain certification for both first aid and CPR before being allowed on a shift alone. (10-1-98)T

02. Minimum Training. Training shall include, at a minimum, the following: (10-1-98)T

a. Recognition of signs and symptoms of physical illness and knowledge of action required in emergency situations; (10-1-98)T

b. Signs and symptoms of mental illness, suicide risk, retardation, chemical use and/or dependency; (10-1-98)T

c. Methods of obtaining assistance, including emergency medical back-up plans; and (10-1-98)T

d. Procedures for transferring juveniles to appropriate medical facilities or health care providers. (10-1-98)T

**308. ROUTINE MEDICAL/DENTAL TREATMENT.**

01. Prior Approval. No prior approval or review is required for routine medical and/or dental services. (10-1-98)T

02. Routine Services. Examples of routine medical/dental services for which no prior approval or review is required, are: (10-1-98)T

a. Admission physical exams, including STD exams and treatment, as well as PAP smears. (10-1-98)T

b. Admission dental exams, including x-rays (no Panorex), and cleanings. (10-1-98)T

c. Admission eye exams and glasses, if needed. (10-1-98)T

d. Annual physical exams, including STD exams and treatment, PAP smears. (10-1-98)T

e. Annual dental exams with x-rays (no Panorex), and cleanings. (10-1-98)T

- f. Annual eye exams, if needed. (10-1-98)T
- g. URI - upper respiratory infections with doctor visit and routine course of antibiotics. (10-1-98)T
- h. UTI - urinary tract infections with doctor visit and routine course of antibiotics. (10-1-98)T
- i. Routine medication checks - with no change in medication regime. (10-1-98)T
- j. Acne - doctor visit with over the counter medication prescribed. (10-1-98)T

**309. MEDICAL HISTORY AND RELATED TREATMENT.**

01. Admission to Program. Medical information shall be obtained immediately upon a juvenile's admission to the program by a person trained by a recognized health authority. The health screening evaluation report shall be filed in the juvenile's facility file. The evaluation shall include the following information: (10-1-98)T

- a. Whether the juvenile is presently on medication; (10-1-98)T
- b. Whether the juvenile has a current medical or dental complaint; (10-1-98)T
- c. Medical and dental conditions for which the juvenile has received treatment in the past; (10-1-98)T
- d. The juvenile's general appearance and behavior; (10-1-98)T
- e. Physical deformities; and (10-1-98)T
- f. Evidence of abuse and/or trauma. (10-1-98)T

02. Identified Medical Needs. Identified medical, dental and/or mental health needs shall be addressed through referral to an appropriate health care service as approved by the Juvenile Management Center. (10-1-98)T

**310. PHYSICAL EXAMINATION.**

If a physical examination has not been done on a juvenile within the previous thirty (30) days, one shall be completed within seven (7) days of admission to the facility. Additionally, a routine medical and dental examination shall be provided to each juvenile annually between the date of admission and the date of discharge from the facility. (10-1-98)T

**311. FIRST AID KITS.**

01. Accessibility. First aid kits shall be kept locked and shall be placed in an area of the facility readily accessible to facility workers. Each kit shall include, at a minimum, the following: (10-1-98)T

- a. Latex Gloves; (10-1-98)T
- b. Rolled gauze; (10-1-98)T
- c. Sponges; (10-1-98)T
- d. A triangle bandage; (10-1-98)T
- e. Band-Aids; (10-1-98)T
- f. Instruction pamphlets for first aid; (10-1-98)T
- g. Salves and other over-the-counter medication approved by a recognized health authority; (10-1-98)T



- h. Antiseptic lotion; (10-1-98)T
- i. Note paper and pencil; (10-1-98)T
- j. Blunt end scissors, safety pins, and tweezers; and (10-1-98)T
- k. Ammonia inhalant. (10-1-98)T

02. Contents. The contents, location and use of first aid kits shall be reviewed annually with all staff. The content of the kits shall be inventoried monthly. (10-1-98)T

**312. COMMUNICABLE DISEASES.**

01. Policies. The health authority, i.e., the physician health administrator of an agency responsible for the provision of health care services to the contractor, shall establish policies and procedures for serving juveniles with infectious diseases such as tuberculosis, hepatitis-B, and AIDS. These policies and procedures should address the management of communicable diseases and provide an orientation for new staff and juveniles concerning the diseases and ongoing education for staff and juveniles regarding these diseases. Counseling should be provided for those who have been diagnosed as being HIV positive. Policies and procedures should be updated as new information becomes available. (10-1-98)T

02. Testing. In accordance with law, a juvenile may request that he be tested for the presence of HIV. Any juvenile requesting to be tested should be taken to a public health facility or, if available, a facility which accepts Medicaid reimbursement for administration of the test. (10-1-98)T

03. Examinations. Examinations shall be performed on juveniles by proper medical authorities for all symptomatic cases of communicable diseases such as tuberculosis, ova and parasites, infectious hepatitis, and venereal disease. Juveniles will be tested and, if indicated, treated. (10-1-98)T

04. Medical Information. Staff shall be provided information about a juvenile's medical condition only when that knowledge is necessary for the performance of their job duties. The health authority shall determine policies regarding any necessary labeling of files for staff protection, protection of other juveniles, or proper treatment for the juvenile. (10-1-98)T

05. Confidentiality. Confidentiality shall be maintained. (10-1-98)T

**313. PREGNANCY.**

01. Individual Treatment Plan. An Individual Treatment Plan goal and objectives will be developed when a pregnancy has been diagnosed. The plan shall be based on the orders of the juvenile's community obstetric physician and shall include special care, regular medical check-ups, and special dietary and recreational needs. (10-1-98)T

02. Parenting Classes. Parenting classes shall be an integral part of the Individual Treatment Plan for all pregnant females in care. This service should also be offered as a priority to young men in care who are already fathers or whose spouse/girlfriend is expecting a child. (10-1-98)T

03. Medicaid Reimbursement. Medical services relating to pregnancy shall be provided by a physician/hospital accepting Medicaid reimbursement, unless medical expenses are paid by the juvenile's family. (10-1-98)T

04. Infant Care. When an infant is delivered and the mother requires continued residential care, the infant shall be placed with an appropriate family member or in the temporary care of the Department of Health and Welfare FACS Division. (10-1-98)T

**314. REFUSAL OF TREATMENT - JUVENILES OVER EIGHTEEN YEARS OF AGE.**

If a juvenile over eighteen (18) years of age chooses to refuse necessary treatment or medication, as recommended by

a physician, the juvenile shall sign a statement refusing to submit to treatment. A staff member shall witness the juvenile's signature. This form shall be filed in juvenile's case record. The contractor shall notify the District social worker immediately whenever a juvenile refuses treatment. (10-1-98)T

**315. REFUSAL OF TREATMENT - JUVENILES UNDER EIGHTEEN YEARS OF AGE.**

When a juvenile is under eighteen (18) years of age and refuses treatment and/or medication for a condition which poses a significant risk of death or permanent physical impairment, the contractor shall issue its approval for the immediate administration of the medical procedure or medication in accordance with standard practice. (10-1-98)T

**316. NON-ROUTINE MEDICAL TREATMENT.**

Where it has been determined by a duly qualified and licensed physician that non-routine medical care is required, it is desirable to have approval of the juvenile's parent or guardian. The matter shall be submitted to the Placement Manager for review and direction. (10-1-98)T

**317. USE OF PHARMACEUTICAL PRODUCTS.**

A program shall have written policies and procedures governing the use and administration of medication to juveniles. Policies should conform to all applicable laws and regulations including, but not limited to those of the Department of Health and Welfare. If initiating any medication scheme, or modifying a scheme once developed, the District social worker must be notified. (10-1-98)T

**318. NOTICE AND APPROVAL.**

01. Prescription Medications. The contractor shall notify the Department's District social worker, the youth's parent(s) (to the extent possible) and the probation officer within three (3) working days when a non-psychotropic prescription medication is given to a youth. The notice shall include the name of the medication being given, the dosage, frequency, and duration the medication will be given, and the reason the medication was prescribed. (10-1-98)T

02. Intent to Administer Medication. The contractor shall notify the Department's District social worker, the youth's parent(s) and the probation officer within three (3) working days of the intent to administer psychotropic medication, and allow the parent(s) five (5) days to respond. The notice of intent to administer psychotropic medication shall include: (10-1-98)T

- a. The name of the medication that has been recommended for prescription; (10-1-98)T
- b. Notification to the parent(s) that they have five (5) days from the date of mailing to consent or refuse to consent to the administration of the medication; (10-1-98)T
- c. A place for the parent(s) to sign if they consent; (10-1-98)T
- d. A place for the parent(s) to indicate if they are refusing consent; (10-1-98)T
- e. Notification to the parent(s) that if a response is not received within five (5) days of the date of mailing of the notice, it will be interpreted as though written consent were received; and (10-1-98)T
- f. The name and phone number of the doctor, or his/her designee, who can explain the reason the medication is recommended for prescription and any possible side effects. (10-1-98)T

03. Reason for Administering Medication. The contractor shall have staff available to explain to parents and the Department's District social worker the reason for making a referral to a physician who has prescribed psychotropic medication. The contractor shall assure that any physician prescribing psychotropic medication is willing to discuss with parents and Department staff the reason the psychotropic medication was prescribed and the potential side effects of the medication. (10-1-98)T

04. Parental Consent. The contractor shall not administer any psychotropic medication without the consent of the youth's parent. If the parent refuses to consent and the contractor believes that the medication is imperative to the youth's services, the contractor may request that a staffing be scheduled by the probation officer to

determine if alternative consent authority is desirable. (10-1-98)T

**319. NOTIFICATION OF DEATH OF A JUVENILE WHO IS IN THE CUSTODY OF THE DEPARTMENT.**

01. Notification. In the event of the death of a juvenile who is in the Department's custody, the contractor shall immediately notify the juvenile's parent or guardian, the Juvenile Management Center and the local coroner. (10-1-98)T

02. Law Enforcement Contact. In the event of sudden death, or if death occurs as a result of a crime or accident, the appropriate law enforcement agency shall be contacted immediately by the program. (10-1-98)T

03. Burial Expenses. Certain burial expenses for indigent families may be paid by the Department. (10-1-98)T

**320. NOTIFICATION OF SERIOUS ILLNESS, SEVERE BODILY INJURY OR SEVERE PSYCHIATRIC EPISODE.**

The contractor shall immediately report the incidence of severe bodily injury, incidents of serious illness and severe psychiatric episodes to the juvenile's parents and the District social worker. (10-1-98)T

**321. MONITORING OF CONTRACT PROGRAMS.**

01. Performance Review. All contracts which provide a continuing service to the Department shall have a comprehensive performance review at least once in a twelve (12) month period. This review shall include, but not be limited to, applicable performance standards, operating procedures, reporting requirements, general maintenance and upkeep of the physical plant, staffing patterns, qualifications, and training requirements. All standards by which performance and compliance are to be judged shall be contained or referenced by the contractual agreement. In addition to annual monitoring, more frequent visits may be made to each program to monitor compliance with the contract and ensure that progress is being made on corrective action plans. (10-1-98)T

02. Department File. A facility file shall be maintained in the Department's District Office for each contract program within the district. (10-1-98)T

03. Compliance Monitor. All private providers who contract with the Department of Juvenile Corrections to serve juveniles will be monitored for contract compliance. Contract monitoring of Department providers will include: (10-1-98)T

a. Routine review of operations and practices for compliance with contract terms and the Department's Standard Operating Procedures; (10-1-98)T

b. Investigation and resolution of incidents and concerns regarding matters of safety, security and sound treatment practice; and (10-1-98)T

c. Compilation of an annual evaluation of provider performance. (10-1-98)T

04. Provider Performance. A Quality Assurance Team, appointed by the Department Director, will be primarily responsible for contract monitoring. Members of this team will visit providers at least annually and will be responsible for completing an annual report on provider performance based upon information gathered from completing the Department's Contract Monitoring Outline. Additionally, information will be gathered from other Department staff who work with the provider and from community representatives who have knowledge of the program's operation. (10-1-98)T

05. Written Report. Every site visit by a member of the Quality Assurance Team will result in a written report with a copy forwarded to the provider. Corrective action agreed upon with the provider is to be noted in the report. Providers may contest any finding or recommended corrective action to the Quality Assurance Team leader or to the Department Director. (10-1-98)T

06. Liaison Assistance. The seven Department District Liaisons provide assistance in contract monitoring by visiting contract programs in their respective districts on a monthly basis, and provide contract programs with a Department liaison as they do for the community at large. District Liaisons can also be helpful to providers because of their knowledge of other programs and resources within the district. (10-1-98)T

07. Liaison Review. Although not charged with the responsibility for routinely completing a contract monitoring report, the District Liaison may periodically review a specific area of contract compliance, particularly if there has been indication of a problem or concern in the area. A record of all such contacts will be maintained in a contract file in the Department's District Office and will be shared with the Quality Assurance Team. (10-1-98)T

08. Notification of Problem. If a problem is identified in the course of a contract monitoring visit, the provider will be notified as soon as possible. Ideally, this will take place in an exit interview before the respective Department staff leaves the facility/program. Plans for corrective action resulting from an exit interview must be documented in a contract file in the District Office and shared in writing with the Quality Assurance Team. In these cases, the Quality Assurance Team will confirm plans for corrective action in writing with the provider. (10-1-98)T

**322. FINANCIAL MONITORING.**

The Contract Manager is responsible for monitoring the payments made on contracts to prevent overpayment of the contract. (10-1-98)T

**323. INDEPENDENT REVIEWS BY DEPARTMENT STAFF**

The Department may, as the situation warrants, conduct independent reviews of programs and program operations. The program shall cooperate as with any other type of review or monitoring. (10-1-98)T

**324. EVALUATION OF PERFORMANCE.**

Contractors shall submit an annual written report which shall be due within sixty (60) days after the end of each contract year. The annual report shall reflect the efficiency and effectiveness of services for juveniles served during the program and one year thereafter. Should the Department develop the capacity to collect this data electronically, the Contractor may be required to participate in this process. The performance areas to be addressed in the report should include, but not be limited to the following: (10-1-98)T

01. Re-Contact. Program participants' rate of re-contact with the Juvenile or Criminal Justice System. (10-1-98)T
02. Compliance. Compliance to Referral Policies and/or rejection rate of referrals. (10-1-98)T
03. Length of Stay. Length of stay. (10-1-98)T
04. Treatment Plan Objectives. Average percentage of treatment plan objectives that are successfully completed at discharge. (10-1-98)T
05. Successful Transition. Number of juveniles successfully making the transition back to regular community schools and/or employment. (10-1-98)T
06. Grade Placement. The program's impact on school grade placement when re-enrollment occurs. (10-1-98)T
07. GED/High School Equivalency. The number of juveniles attaining GEDs or High School Equivalency while enrolled in the program. (10-1-98)T
08. Referrals. The number of juveniles who were referred to, and have participated in, higher education, vocational training, and other community based programs. (10-1-98)T
09. Cost Efficiency. The steps taken to maximize cost efficiency and efficiencies realized. (10-1-98)T
10. Escape Rates. The rate of escapes from the program and return of escaped juveniles to the program. (10-1-98)T

11. Restitution. The rates or amounts of restitution and community service provided by residents. (10-1-98)T
12. Victim Restoration. The efforts made to facilitate victim restoration and successful rates of victim restoration/mediation. (10-1-98)T
- 325. -- 399. (RESERVED).**

## **APPENDIX A**

### **JUVENILES RIGHTS AND RESPONSIBILITIES**

#### **Your Rights**

You will have your own program, called an Individualized Service Plan. This plan is basically to help you learn ways to take care of yourself and your personal belongings and to get along with other people.

You and your parent(s) or guardian may see the case record that we keep on you, if deemed appropriate by your specific program needs. Before anything in your record can be given to anybody other than you or your parent(s) or guardian, we will obtain written permission from you and your parent(s), guardian, or legal custodian.

You can know about your health condition unless the doctor asks in writing that you not be told. You may take part in plans for your medical treatment and, if you are 18 years old or older, you may refuse recommended treatment.

You will be free of physical restraint so long as you are not in danger of hurting yourself or others. Then you will be held safely and for only as long as you are upset. Mechanical restraint that keeps you from moving freely may only be used by the program if it has prior approval of the Department.

If you are given medicine, it shall be only after a doctor or nurse approves it and only under the circumstances they define. Medicine must not be given to you to punish you, make things easier for you, or in place of your program.

You will be served three nutritious meals a day. You cannot be denied a meal as punishment.

You will be treated with respect by staff even when you are being disciplined or otherwise corrected. You will not be cursed at or called names.

You will be allowed to have appropriate visitors at reasonable times--that is, at times when you are not expected to be sleeping, eating, or doing activities that are in your program.

You may receive and send mail without it being read by anyone but you, except in circumstances that the program Director determines are a risk to the safety and security or integrity of the program. Mail will routinely be inspected for contraband in your presence.

You may use the telephone at reasonable times. You may visit your friends and family as outlined in your program. Telephone calls or visits can be stopped only if you have done something to hurt yourself or others.

You will be allowed time alone as long as there is no danger to yourself and it does not interfere with your program.

You may manage your own money and know the amount in your account each month. You may help in deciding what you can or should buy and how much you should spend. (You must pay an appropriate amount of your money to restitution, if you owe restitution).

You will be required only to do the work outlined in your program and to share duties such as keeping your room neat

and helping with kitchen and other household chores.

You may belong to clubs and go to church unless the person in charge of your program believes that something bad could happen to you, or by you, there.

If you feel that you have not been treated fairly, you should notify your case Social Worker about it. If you feel that any of your rights might have been violated, you can file a grievance. If you are 18 years old or older, you have the right to register and vote.

If you are 21 years old or younger, you have the right to an education.

### **Your Responsibilities**

You are expected to follow the rules, procedures, schedules and directives of staff while at this facility.

It is your responsibility to see that your behavior and language do not discriminate or show prejudice or disrespect against other persons.

You are responsible for helping to clean and maintain your living quarters.

You must ask for medical and dental care when you feel you need it.

You are to conduct yourself properly during visits and community outings and activities.

You must not accept or bring into or take out of the facility items that are illegal or not allowed by this facility.

You must not violate the law.

You must keep yourself clean and odor free.

You must follow grievance procedures in making any complaint. If any action is taken against you by staff or other juveniles because of the complaint, you should report it to the facility supervisor.

You must use the appeal procedures when you feel any unfair disciplinary action has been taken against you.

I hereby acknowledge that these Rights and Responsibilities have been explained to me by

\_\_\_\_\_ (Name) on \_\_\_\_\_ (Date) and that I also  
have received a copy of these Rights and Responsibilities.

Resident \_\_\_\_\_ Date \_\_\_\_\_

Parent/Guardian (if appropriate) \_\_\_\_\_ Date \_\_\_\_\_

Program Director \_\_\_\_\_ Date \_\_\_\_\_

**IDAPA 07 - DIVISION OF BUILDING SAFETY**  
**07.01.02 - RULES GOVERNING FEES FOR ELECTRICAL INSPECTIONS**

**DOCKET NO. 07-0102-9801**

**NOTICE OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective on May 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1006(5), Idaho Code.

**DESCRIPTIVE SUMMARY:** The pending rule is being adopted as proposed. The original text of the proposed rule was published in the September 2, 1998 Idaho Administrative Bulletin, Volume 98-9, pages 4 through 8.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Gary L. Malmen, Electrical Bureau Chief, Division of Building Safety, 277 N. 6th Street, Suite 101, P.O. Box 83720, Boise, Idaho 83720-0028, (208) 334-2183.

DATED this 17th day of September, 1998.

Connie J Mumm  
Division of Building Safety  
277 N. 6th Street, Suite 100  
P.O. Box 83720  
Boise, ID 83720-0048  
(208) 334-3950/fax (208) 334-2683

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**IDAPA 07**  
**TITLE 01**  
**Chapter 02**

**RULES GOVERNING FEES FOR ELECTRICAL INSPECTIONS**

**There are no substantive changes  
from the proposed rule text.**

**The original text was published in the Idaho  
Administrative Bulletin, Volume 98-9, September 2, 1998,  
pages 4 through 8.**

**This rule has been adopted as Final by the Agency  
and is now pending review by the  
1999 Idaho State Legislature for final adoption.**

**IDAPA 09 - IDAHO DEPARTMENT OF LABOR**  
**09.01.30 - RULES OF THE BENEFITS BUREAU**  
**DOCKET NO. 09-0130-9803**  
**NOTICE OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective upon adjournment of the legislature, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 72-1333(2), Idaho Code.

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

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the Idaho Administrative Bulletin, September 2, 1998, Volume No. 98-9, pages 19 through 22.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Jean Hull, Benefits Bureau Chief, Idaho Department of Labor, at (208) 334-6317.

DATED this 23rd day of September, 1998.

Roger B. Madsen, Director  
Idaho Department of Labor  
317 W. Main St.  
Boise, ID 83735  
Fax # (208) 334-6430

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**IDAPA 09**  
**TITLE 01**  
**Chapter 30**

**RULES OF THE BENEFITS BUREAU**

**There are no substantive changes  
from the proposed rule text.**

**The original text was published in the Idaho  
Administrative Bulletin, Volume 98-9, September 2, 1998,  
pages 19 through 22.**

**This rule has been adopted as Final by the Agency  
and is now pending review by the  
1999 Idaho State Legislature for final adoption.**



**IDAPA 09 - IDAHO DEPARTMENT OF LABOR**  
**09.01.40 - RULES OF THE JOB TRAINING PARTNERSHIP ACT**

**DOCKET NO. 09-0140-9801**

**NOTICE OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective upon adjournment of the legislature, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 72-1333(2), Idaho Code.

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

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the Idaho Administrative Bulletin, September 2, 1998, Volume 98-9, pages 25 and 26.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Laura Gleason, Workforce Systems Bureau, Idaho Department of Labor, at (208) 334-6299.

Dated this 23rd day of September, 1998.

Roger B. Madsen, Director  
Idaho Department of Labor  
317 W. Main Street  
Boise, ID 83735  
Fax # (208) 334-6430

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**IDAPA 09**  
**TITLE 01**  
**Chapter 40**

**RULES OF THE JOB TRAINING PARTNERSHIP ACT**

**There are no substantive changes  
from the proposed rule text.**

**The original text was published in the Idaho  
Administrative Bulletin, Volume 98-9, September 2, 1998,  
pages 25 and 26.**

**This rule has been adopted as Final by the Agency  
and is now pending review by the  
1999 Idaho State Legislature for final adoption.**

**IDAPA 13 - IDAHO FISH AND GAME COMMISSION**  
**13.01.10 - RULES GOVERNING THE IMPORTATION, POSSESSION,**  
**RELEASE, SALE, OR SALVAGE OF WILDLIFE**

**DOCKET NO. 13-0110-9802**

**NOTICE OF CORRECTION**

**CORRECTION:** The above listed docket, 13-0110-9802, was inadvertently published with an incorrect docket number in the October 7, 1998 Idaho Administrative Bulletin, Volume 98-10. The docket was incorrectly numbered and printed as Docket No. 13-0110-9801. No other changes have been made to Docket No. 13-0110-9802.

**AUTHORITY:** In compliance with Section 67-5228, Idaho Code, notice is hereby given that this agency, with the consent of the Administrative Rules Coordinator, is correcting a transcription error. This action is authorized pursuant to Section 67-5228, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise statement of the correction being made:

The proposed rule docket, Docket No. 13-0110-9802, was incorrectly published as Docket No. 13-0110-9801 in the October 7, 1998 issue of the Idaho Administrative Bulletin, Volume 98-10. There are no corrections or changes being made to the text of the proposed rule. Docket No. 13-0110-9801 was published as a temporary and proposed rule in the June 3, 1998 issue of the Idaho Administrative Bulletin, Volume 98-6. This action is necessary to prevent any confusion arising from the use of an incorrect docket number.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this correction, contact Dennis Stevenson at (208) 334-3577.

Dated this 13th day of October, 1998.

Dennis Stevenson  
Office of the Administrative Rules Coordinator  
Department of Administration  
650 W. State St.  
P.O. Box 83720  
Boise, Idaho 83720-0004

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

**16.01.02 - WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS**

**DOCKET NO. 16-0102-9801**

**NOTICE OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the Board of Health and Welfare (Board) and is now pending review by the 1999 Idaho State Legislature for final approval. In November 1997, the Board adopted this rule as a temporary rule, which is currently effective. The pending rule will become final and effective immediately upon the adjournment, sine die, of the First Regular Session of the Fifty-fifth Idaho Legislature unless prior to that date the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Sections 39-105, 39-107, and 39-3601 et seq, Idaho Code.

**DESCRIPTIVE SUMMARY:** The temporary/proposed rule changed the arsenic human health criteria from 6.2 ug/l and 0.02 ug/l to a universal 50 ug/l. Idaho Administrative Bulletin, Volume 98-1, January 7, 1998, pages 186 through 206. After consideration of public comments, the Division of Environmental Quality, Department of Health and Welfare (Department) recommended that the Board retain the rule at 50 ug/l for arsenic as it is currently the maximum contaminant level (MCL) under the federal Safe Drinking Water Act and is protective of human health. Upon the Department's recommendation, the Board adopted the rule as initially proposed. The Department's Rulemaking and Public Comment Summary, which contains a complete consideration of the issues raised by the public, is included in the rulemaking record maintained by the Division of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rule, contact Susan Burke at (208)373-0502.

Dated this 4th day of November, 1998.

Paula Junae Saul  
Environmental Quality Section  
Attorney General's Office  
1410 N. Hilton  
Boise, Idaho 83706-1255

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**IDAPA 16  
TITLE 01  
Chapter 02**

**WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS**

**There are no substantive changes  
from the proposed rule text.**

**The original text was published in the Idaho  
Administrative Bulletin, Volume 98-1, January 7, 1998,  
pages 186 through 206.**

**This rule has been adopted as Final by the Agency and is now pending review  
by the 1999 Idaho State Legislature for final adoption.**

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.01.08 - IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS**  
**DOCKET NO. 16-0108-9801**  
**NOTICE OF PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized by Chapter 1, Title 39, Idaho Code and Chapter 21, Title 37, Idaho Code. Section 39-105(3)(e), Idaho Code, contains explicit authorization for capacity development. In addition, this rulemaking is required by Section 1420(a) of the federal Safe Drinking Water Act (42 U.S.C. Section 300g-9(a)). Failure to comply with this provision will result in losing 20% of the state's annual Drinking Water Revolving Loan Fund capitalization grant from the federal government for the years 1999 to 2003 and possibly beyond, if Congress continues the appropriations. This amounts to 1.5 to 2.0 million dollars per year over that period.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this proposed rulemaking will be held as follows:

**Monday, November 23, 1998, 7 p.m.**  
**Division of Environmental Quality, Conference Center**  
**1410 N. Hilton, Boise, Idaho.**

The meeting site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the meeting. For arrangements, contact the undersigned at (208)373-0418.

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

The proposed rule will add a requirement that new community and nontransient noncommunity public water systems provide evidence of financial, technical, and managerial capacity at the time they apply for approval of their plans and specifications. General criteria for evaluating water system capacity will be provided in the rule. Construction of a new water system will not be allowed to proceed until the capacity requirements have been met. This requirement will apply to developers of rural subdivisions and business interests who are proposing to construct facilities such as factories, day care centers, and residential trailer parks that are not served by an existing public water system.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, the Idaho Department of Health and Welfare, Division of Environmental Quality (Department), intends to present the final proposal to the Board of Health and Welfare in February 1999 for adoption of a temporary and pending rule. The temporary rule is expected to be effective March 1, 1999 and the pending rule is expected to be final and effective upon the conclusion of the 2000 session of the Idaho Legislature.

**NEGOTIATED RULEMAKING:** The text of the rule is based on a consensus recommendation resulting from the negotiated rulemaking process. The negotiation was open to the public. Representatives of various interest groups that are potentially affected by the rule have assisted the Department in developing a rule that meets the statutory requirements of the national Safe Drinking Water Act while minimizing demands placed on the regulated community. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Volume 98-5, May 6, 1998, page 138.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rule, contact Tom John at (208)373-0502.

Anyone can submit written comment regarding this proposed rule. All written comments must be received by the undersigned on or before November 25, 1998.

DATED this 4th day of November, 1998.

Paula Junae Saul  
Environmental Quality Section  
Attorney General's Office  
1410 N. Hilton  
Boise, Idaho 83706-1255  
Fax No. (208)373-0481

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**THE FOLLOWING IS TEXT OF DOCKET NO. 16-0108-9801**

**003. DEFINITIONS.**

01. Action Level. The concentration of lead or copper in water that determines, in some cases, whether a water system must install corrosion control treatment, monitor source water, replace lead service lines, or undertake a public education program. (12-10-92)
02. Annual Samples. Samples that are required once per calendar year. (12-10-92)
03. Average Daily Demand. The volume of water used by a system on an average day based on a one (1) year period. (12-10-92)
04. Backflow. The reverse from normal flow direction in a plumbing system or water system caused by back pressure or back siphonage. (12-10-92)
05. Board. The Idaho State Board of Health and Welfare. (12-10-92)
06. Capacity. The capabilities required of a public drinking water system in order to achieve and maintain compliance with these rules and the requirements of the federal Safe Drinking Water Act. It is divided into three (3) main elements: ( )
- a. Technical capacity means the system has the physical infrastructure to consistently meet drinking water quality standards and treatment requirements and is able to meet the requirements of routine and emergency operations. It further means the ability of system personnel to adequately operate and maintain the system and to otherwise implement technical knowledge. Certification and training of the operator(s) is required, as appropriate, for the system size and complexity. ( )
- b. Financial capacity means the financial resources of the water system, including an appropriate budget, rate structure, cash reserves sufficient for future needs and emergency situations, and adequate fiscal controls. ( )
- c. Managerial capacity means that the management structure of the water system embodies the aspects of water treatment operations, including, but not limited to: ( )
- i. Short and long range planning; ( )
- ii. Personnel management; ( )
- iii. Fiduciary responsibility; ( )
- iv. Emergency response; ( )
- v. Customer responsiveness; ( )

- vi. Source water protection; ( )
- vii. Administrative functions such as billing and consumer awareness; and ( )
- viii. Ability to meet the intent of the federal Safe Drinking Water Act. ( )
067. Community Water System. A public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents. (12-10-92)
078. Composting of Samples. The mixing of up to five (5) samples by the laboratory. (12-10-92)
089. Confirmation Sample. A sample of water taken from the same point in the system as the original sample and at a time as soon as possible after the original sample was taken. (12-10-92)
0910. Connection. Each structure, facility, or single family residence which is connected to a water system, and which is or could be used for domestic purposes, is considered a single connection. Multi-family dwellings and apartment, condominium, and office complexes are considered single connections unless individual units are billed separately for water by the water system, in which case each such unit shall be considered a single connection. (10-1-93)
101. Consumer. Any person served by a public water system. (12-10-92)
142. Contaminant. Any physical, chemical, biological, or radiological substance or matter in water. (12-10-92)
123. Cross Connection. Any actual or potential connection or piping arrangement between a public or a consumer's potable water system and any other source or system through which it is possible to introduce into any part of the potable water system used water, water from any source other than an approved public water system, industrial fluid, gas or substance other than the intended potable water with which the system is supplied. Cross connections include bypass arrangements, jumper connections, removable sections, swivel or change-over devices and other temporary or permanent devices which, or because of which "backflow" can or may occur. (10-1-93)
134. Department. The Idaho Department of Health and Welfare. (12-10-92)
145. Director. The Director of the Department of Health and Welfare or his designee. (12-10-92)
156. Disinfection. Introduction of chlorine or other agent or process approved by the Department, in sufficient concentrations, followed by adequate contact time so as to kill or inactivate pathogenic and indicator organisms. (12-10-92)
167. Drinking Water System. All mains, pipes, and structures through which water is obtained and distributed, including wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use. (12-10-92)
178. DWIMS. Idaho Department of Health and Welfare Drinking Water Information Management System. (10-1-93)
189. Exemption. A temporary deferment of compliance with a maximum contaminant level or treatment technique requirement which may be granted only if the system demonstrates to the satisfaction of the Department that the system cannot comply due to compelling factors and the deferment does not cause an unreasonable risk to public health. (12-10-92)
1920. Fee Assessment. A charge assessed on public drinking water systems based on a rate structure calculated by system size. (10-1-93)

- ~~20~~1. Groundwater System. A public water system which is supplied exclusively by a ground water source or sources. (12-10-92)
- ~~21~~2. Health Hazards. Any condition which creates, or may create, a danger to the consumer's health. Health hazards may consist of, but are not limited to, design, construction, operational, structural, collection, storage, distribution, monitoring, treatment or water quality elements of a public water system. (10-1-93)
- ~~22~~3. Inorganic. Generally refers to compounds that do not contain carbon and hydrogen. (12-10-92)
- ~~23~~4. Log. Logarithm to the base ten (10). (12-10-92)
- ~~24~~5. Maximum Daily Consumption Rate. The average rate of consumption for the twenty-four (24) hour period in which total consumption is the largest on record. (12-10-92)
- ~~25~~6. Maximum Hourly Demand. The greatest volume of water used in any hour during a one (1) year period. (12-10-92)
- ~~26~~7. Method Detection Limit (MDL). The lowest concentration which can be determined to be greater than zero with ninety-nine percent (99%) confidence, for a particular analytical method. (12-10-92)
- ~~27~~8. New System. Any water system that meets, for the first time, the definition of a public water system provided in Section 1401 of the federal Safe Drinking Water Act (42 U.S.C. Section 300f). This includes systems that are entirely new construction and previously unregulated systems that are expanding. ( )
- ~~27~~9. Noncommunity Water System. A public water system that is not a community water system. (12-10-92)
- ~~28~~30. Nontransient Noncommunity Water System. A public water system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year. (12-10-92)
- ~~29~~31. Nuclear Facility. Factories, processing plants or other installations in which fissionable material is processed, nuclear reactors are operated, or spent (used) fuel material is processed, or stored. (12-10-92)
- ~~30~~2. Operating Certificate. A document certifying that a public drinking water system has paid its annual fee assessment. (10-1-93)
- ~~31~~3. Operator/Owner/Purveyor of Water. The person, company, corporation, association, or other organizational entity which holds legal title to the public water system, who provides, or intends to provide, drinking water to the customers and/or is ultimately responsible for the public water system operation. ( )
- ~~31~~4. Peak Hourly Flow. The highest hourly flow during any day. (12-10-92)
- ~~32~~5. Person. A human being, municipality, or other governmental or political subdivision or other public agency, or public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent or other legal representative of the foregoing or other legal entity. (12-10-92)
- ~~33~~6. Pesticides. Substances which meet the criteria for regulation pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, and any regulations adopted pursuant to FIFRA. For example, pesticides include, but are not limited to insecticides, fungicides, rodenticides, herbicides, and algacides. (12-10-92)
- ~~34~~7. Public Notice. The notification of public water system consumers of information pertaining to that water system including information regarding water quality or compliance status of the water system. (12-10-92)
- ~~35~~8. Public Water System. A system for the provision to the public of piped water for human consumption, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes (1) any collection,

treatment, storage, and distribution facilities under control of the operator of such system, and used primarily in connection with such system, and (2) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water system is either a "community water system" or a "noncommunity water system". (12-10-92)

369. Reciprocity. Acceptance of a certification made by another state. Laboratory reciprocity may be granted to laboratories outside of Idaho after application, proof of home state certification, and EPA performance evaluation results are submitted and reviewed. Reciprocity must be renewed after a time specified by the Idaho Laboratory Certification Officer to remain valid. (10-1-93)

3740. Repeat Compliance Period. Any subsequent compliance period after the initial compliance period. (12-10-92)

3841. Sampling Point. The location in a public water system from which a sample is drawn. (12-10-92)

3942. Sanitary Defects. Any faulty structural condition which may allow the water supply to become contaminated. (12-10-92)

403. Spring. A source of water which flows from a laterally percolating water table's intersection with the surface or from a geological fault that allows the flow of water from an artesian aquifer. (12-10-92)

444. Surface Water System. A public water system which is supplied by one (1) or more surface water sources or groundwater sources under the direct influence of surface water. (12-10-92)

45. System Operator. The person who is employed, retained, or appointed to conduct the tasks associated with day to day operation and maintenance of a public drinking water system, including, but not limited to, repair and maintenance of equipment, adjustment of flow rates and storage quantities, reading of meters, and collection of regulatory monitoring samples. ( )

426. Transient Noncommunity Water System. A noncommunity water system which does not regularly serve at least twenty-five (25) of the same persons over six (6) months per year. (10-1-93)

437. Turbidity. A measure of the interference of light passage through water, or visual depth restriction due to the presence of suspended matter such as clay, silt, nonliving organic particulates, plankton and other microscopic organisms. Operationally, turbidity measurements are expressions of certain light scattering and absorbing properties of a water sample. Turbidity is measured by the Nephelometric method. (12-10-92)

448. Unregulated Contaminant. Any substance that may affect the quality of water but for which a maximum contaminant level or treatment technique has not been established. (12-10-92)

459. Variance. A temporary deferment of compliance with a maximum contaminant level or treatment technique requirement which may be granted only when the system demonstrates to the satisfaction of the Department that the raw water characteristics prevent compliance with the MCL or requirement after installation of the best available technology or treatment technique and the deterrent does not cause an unreasonable risk to public health. (12-10-92)

4650. Volatile Organic Chemicals (VOCs). VOCs are lightweight organic compounds that vaporize or evaporate easily. (10-1-93)

4751. Vulnerability Assessment. A determination of the risk of future contamination of a public drinking water supply. (12-10-92)

4852. Waiver. (12-10-92)

a. For the purposes of these rules, except Sections 550 through 552, "waiver" means the Department approval of a temporary reduction in sampling requirements for a particular contaminant. (10-1-93)



b. For purposes of Sections 550 through 552, "waiver" means a dismissal of any requirement of compliance. (12-10-92)

c. For the purposes of Section 010, "waiver" means the deferral of a fee assessment for a public drinking water system. (10-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**501. -- 5498. (RESERVED).**

**549. DEMONSTRATION OF TECHNICAL, FINANCIAL, AND MANAGERIAL CAPACITY OF PUBLIC DRINKING WATER SYSTEMS.**

No person shall proceed, or cause to proceed, with construction of a new community or nontransient, noncommunity drinking water system until it has been demonstrated to the Department that the water system will have adequate technical, financial, and managerial capacity, as defined in Section 003 of these rules. Demonstration of capacity shall be submitted to the Department prior to or concurrent with the submittal of plans and specifications, as required in Section 39-118, Idaho Code, and Subsection 551.04 of these rules. The Department shall issue its approval of the new system capacity demonstration in writing. ( )

01. Technical Capacity. In order to meet this requirement, the public water system shall submit documentation to demonstrate the following: ( )

a. The system meets the relevant design, construction, and operating requirements of Sections 550, 551, and 552 of these rules; ( )

b. The system has an adequate and consistent source of water; ( )

c. A plan is in place to protect the water source and deal with emergencies; ( )

d. A plan exists for replacement or improvement of infrastructure as necessary; and ( )

e. There are trained personnel with an understanding of the technical and operational characteristics of the system. ( )

02. Financial Capacity. A demonstration of financial capacity must include but is not limited to the following information: ( )

a. Documentation that organizational and financial arrangements are adequate to construct and operate the public water system in accordance with these rules (see Sections 550, 551, and 552). This information can be provided by submitting estimated construction, operation, and maintenance costs, letters of credit, or other access to financial capital through public or private sources and, if available, a certified financial statement; ( )

b. Demonstration of revenue sufficiency, that includes but is not limited to billing and collection procedures, a proposed rate structure which is affordable and ensures availability of operating funds, revenues for depreciation and reserves, and the ability to accrue a capital replacement fund. A preliminary operating budget shall be provided; and ( )

c. Adequate fiscal controls must be demonstrated. ( )

03. Managerial Capacity. In order to demonstrate adequate managerial capacity, the owner and/or operator of a new drinking water system shall submit at least the following information to the Department: ( )

a. Clear documentation of legal ownership and any plans that may exist for transfer of that ownership on completion of construction or after a period of operation; ( )

b. The name, address, and telephone number of the person who will be accountable for ensuring that the water system is in compliance with these rules; ( )

c. The name, address, and telephone number of the system operator; ( )

d. A description of the manner in which the water system will be managed. By-laws, restrictive covenants, articles of incorporation, or procedures and policy manuals which describe the management organization structure are a means of providing this information; ( )

e. A description of staffing should be provided, including training, experience, certification or licensing, and continuing education completed by the water system staff; ( )

f. An explanation of how the water system will establish and maintain effective communications and relationships between the water system management, its customers, professional service providers, and any applicable regulatory agencies; and ( )

g. Evidence of planning for future growth, equipment repair and maintenance, and long term replacement of system components. ( )

04. Submittal Form. The Department shall provide a standard form to be used in preparing a new system capacity demonstration. ( )

05. Expanding Systems. A public water system which comes into existence as a result of growth in population or number of service connections within a previously unregulated system will be considered a new system under these rules and is subject to all design, construction and operating requirements herein. ( )

06. Consolidation. In demonstrating new system capacity, the owner of the proposed new system must investigate the feasibility of obtaining water service from an established public water system. If such service is available, but the owner elects to proceed with an independent system, the owner must explain why this choice is in the public interest in terms of environmental protection, affordability to water users, and protection of public health. ( )

07. Exclusion. New public water systems which are public utilities as defined in Sections 61-104 (Corporation), 61-124 (Water System), 61-125 (Water Corporation), and 61-129 (Public Utility), Idaho Code, must meet the regulatory requirements of the Idaho Public Utilities Commission (IPUC) in Chapter 1, Title 61, Idaho Code, Public Utilities Law, and IDAPA 31.01.01, "Rules of Procedure of the Idaho Public Utilities Commission". Such water systems will not be required to meet any requirements of this Section which are in conflict with the provisions and requirements of the IPUC. ( )

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE  
16.01.10 - ENVIRONMENTAL AUDIT PROTECTION RULES**

**DOCKET NO. 16-0110-9801**

**NOTICE OF PENDING RULE**

**EFFECTIVE DATE:** The repeal of the Division of Environmental Quality's Environmental Audit Protection Rules has been adopted by the Board of Health and Welfare (Board) and is now pending review by the 1999 Idaho State Legislature for final approval. The repeal will become final and effective on July 1, 1999 unless prior to that date the action is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has repealed a rule chapter. The action is authorized by Sections 39-105, 39-107, and 39-4405, Idaho Code.

**DESCRIPTIVE SUMMARY:** A detailed summary of the reasons for repealing the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, Volume 98-5, May 6, 1998, page 139. The agency received no comments on the proposal, and the rule has been repealed as initially proposed. The rulemaking record is maintained at the Division of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rule, contact Tim Teater at (208)373-0502.

Dated this 4th day of November, 1998.

Paula Junae Saul  
Environmental Quality Section  
Attorney General's Office  
1410 N. Hilton  
Boise, Idaho 83706-1255

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**IDAPA 16  
TITLE 01  
Chapter 10**

**ENVIRONMENTAL AUDIT PROTECTION RULES**

**This rule is being repealed in its entirety.**

**There are no substantive changes  
from the proposed rule.**

**The original text was published in the Idaho  
Administrative Bulletin, Volume 98-5, May 6, 1998, page 139.**

**This rule has been adopted as Final by the Agency  
and is now pending review by the  
1999 Idaho State Legislature for final adoption.**

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO**  
**DOCKET NO. 16-0304-9802**

**NOTICE OF TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** These temporary rules are effective October 1, 1998 and November 1, 1998.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 56-202(b) and 39-106(l), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than November 18, 1998.

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

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

- Sanctions the individual not complying with work requirements rather than the household.
- Increases time limited benefits for certain qualified aliens from five (5) to seven (7) years.
- Allows benefits for certain Hmong and Highland Laotians and Native Americans lawfully residing in the U.S.
- Provides benefits to lawful permanent residents residing in the U.S. on August 22, 1996, who are blind or disabled, 65 years of age or older and a child under 18 years old.
- Disqualification of persons convicted of drug felonies if the felony occurred after August 22, 1996.
- Deletes obsolete reference to mailing Food Stamp coupons to households.
- Prohibits discrimination on the basis of race, color, national origins, gender, religion, age, disability, political beliefs, sexual orientation, marital or family status.
- Increases excess shelter deduction from \$250 to \$275 per month.
- Increases monthly gross and net income limits.
- Increases monthly thrifty food plan allotment.
- Adds good cause criteria for non-cooperation with Child Support Enforcement.

**TEMPORARY RULE JUSTIFICATION:** Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to comply with deadlines in amendments to governing law or federal programs and to confer a benefit.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact Patti Campbell, Bureau of Policy at (208) 334-5819.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before November 25, 1998.

DATED this 4th day of November, 1998.

Sherri Kovach  
Administrative Procedures Coordinator  
DHW - Division of Legal Services  
450 West State Street, 10th Floor  
P.O. Box 83720  
Boise, Idaho 83720-0036  
(208) 334-5564 phone, (208) 334-5548 fax

**THE FOLLOWING IS TEXT OF DOCKET NO. 16-0304-9802**

**115. AUTHORIZED REPRESENTATIVE.**

The ~~head of the household, spouse or other responsible household member~~ can choose ~~another person a nonhousehold member~~ to act as the household's authorized representative. The household can designate in writing another responsible household member or a responsible adult outside the household as the authorized representative. An adult employee of an authorized drug addiction or alcoholic treatment and rehabilitation center may act as an authorized representative for the household. An adult employee of an authorized group living arrangement center may act as an authorized representative for the household. Conditions for an authorized representative are:

~~(6-1-94)~~(10-1-98)T

01. Designating Authorized Representative. When ~~the head of household or spouse members~~ cannot apply for, get or use Food Stamps, the household can choose an authorized representative. The household must appoint the authorized representative in writing. ~~The person may be a household member or an adult outside the household.~~ The authorized representative should be aware of household circumstances. The household should prepare or review the AFA when the authorized representative will be interviewed.

~~(6-1-94)~~(10-1-98)T

02. Persons Who Cannot Be An Authorized Representative. Persons with a conflict of interest may not act as an authorized representative without the Department's written approval. The Field Office supervisor must determine if no one else is available and give written approval. Persons with a conflict of interest are listed below:

(6-1-94)

- a. Retailers allowed to accept Food Stamps. (6-1-94)
- b. Department employees involved in the certification or issuance process. (6-1-94)
- c. A person disqualified for IPV during the penalty period, unless he is the only adult household member and no one else is available. (6-1-94)
- d. Homeless meal providers. (6-1-94)

03. Department Responsibilities. The Department will: (6-1-94)

- a. Make sure authorized representatives are properly selected. (6-1-94)
- b. Record the representative's name in the case record. (6-1-94)
- c. Not place limits on the number of households a representative may represent. (6-1-94)
- d. Inform the household it will be liable for any overissuance resulting from wrong information given by the representative. (6-1-94)
- e. Make sure the household freely requested the representative. (6-1-94)
- f. Make sure the household is getting the correct amount of benefits. (6-1-94)
- g. Make sure the representative is properly using the Food Stamps. (6-1-94)

04. Authorized Representative Removed. The Department may remove an authorized representative for up to one (1) year if the person knowingly distorts a household's circumstances, gives false information, or improperly uses the Food Stamps. This provision does not apply to drug and alcohol centers and group homes. Written notice must be sent to the household and the authorized representative thirty (30) days before the penalty begins. The notice must list:

(6-1-94)

- a. The proposed action. (6-1-94)
- b. The reason for the action. (6-1-94)
- c. The right to a fair hearing. (6-1-94)
- d. The name and telephone number to contact for more information. (6-1-94)
- 05. Named on ID Card. The name of the authorized representative must be on the ID card. (6-1-94)
- 06. Contingency Designation. A household member able to apply for and get Food Stamps can name an authorized representative, in writing, in case the household becomes unable to use Food Stamps. (6-1-94)
- 07. Emergency Designation. The household may choose an emergency authorized representative if unforeseen circumstances arise. The household must complete a statement appointing the person as the authorized representative. The authorized representative must sign the statement. The client listed on the ID card must sign the statement. The emergency authorized representative can present the ID card and signed statement to act on the household's behalf and to obtain the Food Stamp allotment. The household cannot be required to go to the Field Office to complete this statement. (6-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**120. HOUSEHOLD INTERVIEWS.**

Households must have a face-to-face interview before certification and recertification, unless the interview is waived. ~~The head of household, spouse, or~~ a household member or an authorized representative can be interviewed. The applicant may bring any other person to the interview. (6-1-94)(10-1-98)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**125. SCHEDULING INTERVIEWS.**

The Department will schedule interviews to make sure eligible households get Food Stamps within thirty (30) days of application. The Department will give the household notice of the date of the interview, and the right to set up a second appointment within ten (10) days if it cannot keep the first appointment. Applications must not be denied before thirty (30) days because a first appointment, or later appointments, are missed. The notice must tell the household of the right to a second appointment if it cannot keep the first appointment. The notice must tell the household to set up a second appointment within ten (10) days if it cannot keep the first appointment. The notice must tell the household of the right to reapply if it cannot keep the second appointment. (7-1-98)(10-1-98)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**146. DENIAL OF FOOD STAMP APPLICATION.**

The Department will deny the Food Stamp application under conditions listed below. The Department will send the household notice of denial. (6-1-94)

01. Household Ineligible. The Department will deny the application for ineligible households as soon as possible, but not later than ~~within~~ thirty (30) calendar days ~~of~~ following the application date. (6-1-94)(10-1-98)T

02. Household Fails to Appear for Interview. If the household fails to appear for ~~the first scheduled~~ an interview, ~~the household must keep a second appointment within ten (10) days of the first appointment. If the~~

~~household fails to keep a second appointment, deny the application within ten (10) days of the first scheduled appointment. If, after the denial, the household schedules and keeps an appointment and provides the required proof within and fails to contact the Department, the application will be denied thirty (30) calendar days after the application date, prorate benefits from the application date. (7-1-98)(10-1-98)T~~

03. Household Does Not Provide Proof After Interview. If the household did not provide requested proof after an interview or later request, the Department will deny the application ten (10) calendar days after the request for proof. (6-1-94)

04. Household Does Not Provide Proof After Department Help. The Department will deny the application thirty (30) calendar days after the application date if the Department helped the household get proof but the household did not provide the proof. (6-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**204. CITIZENSHIP OR SATISFACTORY IMMIGRATION STATUS.**

A person must be a U. S. resident to get Food Stamps. A person must be a U.S. citizen or qualified legal noncitizen to get Food Stamps. To be eligible for Food Stamps, legal noncitizens must meet a category in Subsections 204.01 through 204.0811. (9-1-97)~~(10-1-98)T~~

01. Permanent Residents Admitted Before August 22, 1996. A non-citizen lawfully admitted to the United States for permanent residence before August 22, 1996: (9-22-96)T

a. Who is a veteran honorably discharged for a reason other than alienage or on active duty in the U.S. Armed Forces for other than training or the spouse or unmarried dependent of the veteran or person on active duty; or (9-22-96)T

b. Who has forty (40) quarters of work. A quarter worked by the legal non-citizen's parent, while the legal non-citizen was under age eighteen (18) and a quarter worked by the legal non-citizen's spouse during marriage if the legal non-citizen remains married to the spouse or the spouse is deceased can be counted as a quarter of work for the legal non-citizen. Any quarter after January 1, 1997, in which a legal non-citizen received any Federal means-tested benefit is not counted as a quarter of work. (9-22-96)T

02. Permanent Residents Admitted On or After August 22, 1996. A lawful permanent resident admitted on or after August 22, 1996: (9-22-96)T

a. Who is a veteran honorably discharged for a reason other than alienage or on active duty in the U.S. Armed Forces for other than training or the spouse or unmarried dependent of the veteran or person on active duty; or (9-22-96)T

b. Who has lived in the United States for five (5) years and has forty (40) quarters of work. (9-22-96)T

03. Lawful Non-citizen, Permanent Residents Residing in the U.S. on August 22, 1996. Lawful non-citizen, permanent residents residing in the U. S. on August 22, 1996 who are: (11-1-98)T

a. Blind or disabled of any age under the disability criteria listed in Subsections 216.02 through 216.10; or (11-1-98)T

b. Sixty-five (65) years of age or older, at that time; or (11-1-98)T

c. A child who is now under the age of eighteen (18). (11-1-98)T

~~034.~~ Refugees. A refugee admitted under Section 207 of the Immigration and Nationality Act, a Cuban/

Haitian entrant as defined in Section 501(e) of the Refugee Assistance Act of 1980 or an Amerasian admitted under Section 584 of Public Law 100-202 and amended by Public Law 100-461, is eligible: (9-22-96)T

a. For ~~five~~ seven (57) years from ~~their~~ refugee's date of entry; or (9-22-96)T(11-1-98)T

b. With no time limit if the refugee is a veteran honorably discharged for a reason other than alienage or on active duty in the U.S. Armed Forces for other than training, or the spouse or unmarried dependent of the veteran or person on active duty. (9-22-96)T

045. Asylees. An asylee admitted under Section 208 of the Immigration and Nationality Act is eligible: (9-22-96)T

a. For ~~five~~ seven (57) years from the date asylee status is assigned; or (9-22-96)T(11-1-98)T

b. With no time limit if the asylee is a veteran honorably discharged for a reason other than alienage or on active duty for other than training in the U.S. Armed Forces, or the spouse or unmarried dependent of the veteran or person on active duty. (9-22-96)T

056. Deportation Withheld. An individual whose deportation has been withheld under Section 241(b)(3) or 243(h) of the Immigration and Nationality Act is eligible: (9-22-96)T

a. For ~~five~~ seven (57) years from the date deportation was withheld; or (9-22-96)T(11-1-98)T

b. With no time limit if the deportee is a veteran honorably discharged for a reason other than alienage or on active duty in the U.S. Armed Forces for other than training or the spouse or unmarried dependent of the veteran or person on active duty. (9-22-96)T

067. Conditional Entrants. A conditional entrant admitted under Section 203(a)(7) of the Immigration and Nationality Act who is a veteran honorably discharged for a reason other than alienage or on active duty in the U.S. Armed Forces for other than training or the spouse or unmarried dependent of the veteran or person on active duty. (9-22-96)T

078. Parolees. A person paroled into the United States under Section 212(d)(5) of the Immigration and Nationality Act for a period of at least one (1) year who is a veteran honorably discharged for a reason other than alienage or on active duty in the U.S. Armed Forces for other than training or the spouse or unmarried dependent of the veteran or person on active duty. (9-22-96)T

089. Battered Non-citizen. A legal non-citizen admitted to the United States as a battered non-citizen under Section 204(a)(1)(A), or 204(a)(1)(B) of the Immigration and Nationality Act, as a non-citizen whose deportation is suspended under Section 244(a)(3) of the INA who is a veteran honorably discharged for a reason other than alienage or on active duty in the U.S. Armed Forces for other than training or the spouse or unmarried dependent of the veteran or person on active duty. (9-22-96)T

10. Certain Hmong and Highland Laotians. Certain Hmong and Highland Laotians who were: (11-1-98)T

a. Members of a Hmong or Highland Laotian tribe at the time the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964 and ending May 7, 1975; or (11-1-98)T

b. The spouse or unmarried dependent child of such an individual; or (11-1-98)T

c. The unremarried surviving spouse of such an individual who is deceased. (11-1-98)T

11. Native Americans. Native Americans with treaty rights to cross the U.S. borders, American Indians born in Canada to whom the provisions of Section 289 of the Immigration and Nationality Act apply, or members of an Indian tribe as defined in Section 4(e) of the Indian Self-Determination and Education Assistance Act. (11-1-98)T



**205. WRITTEN DECLARATION OF CITIZENSHIP OR IMMIGRATION STATUS.**

To get Food Stamps, a person must be a citizen, national of the United States, or have satisfactory immigration status. The person must declare citizenship or legal noncitizen status in writing, under penalty of perjury. (7-1-98)

01. Citizen/Legal Noncitizen Status at Application. One (1) adult household member must sign a written declaration attesting to the citizenship or legal noncitizen status of all household members. An adult household member must sign his own name for a child under eighteen (18) years of age. If there are no adult household members, the applicant must sign for himself and for all other non-adult household members. (7-1-98)

02. Sanctions for Failure to Sign Citizen/Legal Noncitizen Status. If ~~an adult household member~~ the applicant fails to sign the written declaration, the household is not eligible for Food Stamps. When all household members are under the age of eighteen (18) ~~the head of one (1) household member~~ must sign for all household members. ~~(7-1-98)~~(10-1-98)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**218. PERSONS DISQUALIFIED AS FOOD STAMP HOUSEHOLD MEMBERS.**

Persons disqualified as Food Stamp household members must not participate in the Food Stamp program. Disqualified household members are not counted in the household size. Disqualified household members' income and resources are counted. Disqualified household members are listed below: (6-1-94)

01. Ineligible Legal Noncitizen. Ineligible legal noncitizens not meeting citizenship or eligible legal noncitizen requirements. (7-1-98)

02. Persons With Citizenship Questionable. Persons refusing to sign a declaration attesting to citizenship or legal noncitizen status. (7-1-98)

03. Person Refusing SSN. Persons disqualified for failure or refusal to provide a Social Security Number. (6-1-94)

04. JSAP or Work Registration Noncompliance. Persons, ~~not the head of household,~~ disqualified for failure to comply with JSAP or work registration requirements. ~~(6-1-94)~~(10-1-98)T

05. Persons With IPV. Persons disqualified for an Intentional Program Violation (IPV). (6-1-94)

06. Voluntary Quit or Reduction of Hours of Work. Persons, ~~not the head of household,~~ disqualified for a voluntary quit or reduction in hours of work. ~~(7-1-98)~~(10-1-98)T

07. ABAWD Not Meeting Work Requirement. Persons who have received three (3) months of Food Stamp benefits in a three (3) year period without meeting the ABAWD work requirement. (7-1-98)

08. Fugitive Felon. Persons who are determined to be a fugitive felon or probation or parole violator. (7-1-98)

09. Drug Convicted Felon. Persons who have been convicted of a felony offense which has as an element the possession, use or distribution of a controlled substance. (7-1-98)

10. Failure to Cooperate in Paternity Establishment or Obtaining Support. Persons disqualified for failure to cooperate in establishing paternity and obtaining support for a child under eighteen (18). (7-1-98)

**219. -- 220. (RESERVED).**

**~~220. HEAD OF FOOD STAMP HOUSEHOLD.~~**

~~The selection of head of the Food Stamp household depends on whether the household has adults only or has children. (6-1-94)~~

~~01. Households With Adult Members Only. The head of the Food Stamp household for work registration and voluntary quit is always the principal wage earner. Except when determining head of household for work registration and voluntary quit, the household can choose any adult member as head of the Food Stamp household. (6-1-94)~~

~~02. Households With Children. The household with children can choose any adult with children as head of the Food Stamp household. All adult household members should agree to the choice. The Department will designate the principal wage earner as the head of household, if all adult household members do not agree or decline to select a head of household. The household can change its choice of head of household at each certification, recertification, and when household composition changes. The household must be told of this option, in writing, at application, recertification, and when household composition changes. (1-1-95)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

~~222. -- 2235. (RESERVED).~~

~~**224. HEAD OF HOUSEHOLD FOR JSAP.**~~

~~In households with only adult members, the head of household for JSAP is the principal wage earner. In households with children, the household may designate any adult household member with children as the head of the household, as long as all adult members agree to the selection. If all adult household members do not agree to the selection or decline to select an adult parent as head of household, the Department will designate the principal wage earner as the head of the household or permit the household to make another selection. The principal wage earner can be a household member excluded from the Food Stamp program. The principal wage earner conditions and limits are described below: (1-1-98)F~~

~~01. Household Member With Most Earned Income. The principal wage earner is the household member with the most earned income in the two (2) months before the month of JSAP violation. (1-1-98)F~~

~~02. Person Designated by Household. The principal wage earner is designated by the household, when there is no principal source of earned income in the two (2) months before the month of JSAP violation. (1-1-98)F~~

~~03. Parent as Principal Wage Earner. The principal wage earner is never a person of any age, living with a parent or person acting as a parent, if the parent is: (6-1-94)~~

~~a. Registered for work; or (1-1-98)F~~

~~b. Getting unemployment compensation benefits; or (1-1-98)F~~

~~e. Working a minimum of thirty (30) hours per week; or (1-1-98)F~~

~~d. Receiving weekly earnings equal to Federal minimum wage multiplied by thirty (30) hours. (1-1-98)F~~

~~**225. DESIGNATING NEW PRINCIPAL WAGE EARNER.**~~

~~A person meeting the requirements in Section 224 can be designated the new principal wage earner. The designation must not be changed if the principal wage earner has a period of ineligibility for violation of JSAP requirements. The principal wage earner can be changed after the sanction period ends. (1-1-98)F~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**227. EXEMPTIONS FROM JSAP FOR HOUSEHOLD MEMBERS NOT PARTICIPATING IN TAFI.**

Exemptions from JSAP for household members not participating in the TAFI program are listed in Subsections 227.01 through 227.12. (1-1-98)T

01. Parents and Caretakers of Child Under Six (6) Years of Age. A parent or caretaker responsible for the care of a dependent child under age six (6). If the child becomes six (6) during the certification period, the parent or caretaker must register at the next scheduled recertification, unless exempt for another reason. (6-1-94)

02. Parents and Caretakers of An Incapacitated Person. A parent or caretaker responsible for the care of a person incapacitated due to illness or disability. (6-1-94)

03. Incapacitated Person. A person physically or mentally unfit for employment. If a disability is claimed which is not evident, proof to support the disability can be required. Proof includes, but is not limited to, receipt of permanent or temporary disability benefits, or a statement from a physician or licensed or certified psychologist. (6-1-94)

04. Persons Enrolled Half Time. Persons enrolled at least half-time in any recognized school, training programs or institutes of higher education. To be exempt from JSAP, students enrolled at least half-time in an institution of higher education must meet the FCS student definition. (1-1-98)T

05. SSI Applicant. A person applying for SSI may have registration waived until determined SSI eligible and exempt from JSAP. A person applying for SSI may have registration waived until determined SSI ineligible and must register for JSAP. (6-1-94)

06. Employed Person. An employed person is working at least thirty (30) hours per week, or receiving earnings equal to the Federal minimum wage multiplied by thirty (30) hours. An employed person is also a migrant or seasonal farm worker under contract or agreement to begin employment within thirty (30) days. (6-1-94)

07. Self-Employed Person. A person is self-employed if he is working a minimum of thirty (30) hours per week or receiving earnings equal to the Federal minimum wage multiplied by thirty (30) hours. (6-1-94)

08. Addicts or Alcoholics. Regular participants in a drug or alcoholic treatment and rehabilitation program are exempt from JSAP. (6-1-94)

09. Unemployment Insurance (UI) Applicant/Recipient. A person getting UI is exempt from JSAP. A person applying for, but not getting UI, if required to register for work with the DOE as part of the UI application process is exempt from JSAP. (6-1-94)

10. Children Under Sixteen (16) Years of Age. Persons younger than sixteen (16) are exempt from JSAP. If a child turns sixteen (16) within a certification period, he must register at recertification, unless exempt for another reason. (6-1-94)

11. Sixteen (16) or Seventeen (17) Year Old. A household member age sixteen (16) or seventeen (17) is exempt if the person is: ~~Not the head of the household or~~ attending school at least half-time, or is enrolled in an employment and training program at least half-time. ~~(6-1-94)~~(10-1-98)T

12. Age Sixty (60) or Older. A person sixty (60) or older is exempt from JSAP. (6-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**237. SANCTIONS FOR FAILURE TO COMPLY WITH JSAP.**

When a JSAP participant fails or refuses to comply, without good cause, sanctions listed in Subsections 237.01

through 237.032 must be applied. In determining which sanction to impose, sanctions for voluntary quit or reduction in work hours must be considered. ~~(1-1-98)T(10-1-98)T~~

~~01. Head of Household. If the noncomplying member is the head of the household, the entire household will be ineligible. The household's period of ineligibility shall not exceed six (6) months. The household is not eligible for the greater of the sanction periods listed below or until the sanctioned member complies. End the household's sanction, before the penalty period ends, if the sanctioned member becomes exempt from JSAP.~~

~~(1-1-98)T~~

~~a. First failure to comply. The greater of the date the member corrects the sanction or one (1) month.~~

~~(1-1-98)T~~

~~b. Second failure to comply. The greater of the date the member corrects the sanction or three (3) months.~~

~~(1-1-98)T~~

~~c. Third failure to comply and subsequent failures. Six (6) months sanction for the household. The sanctioned member remains sanctioned until he complies.~~

~~(1-1-98)T~~

~~021. Not Head of Noncomplying Household Member. If ~~the noncomplying member is not the head of the household, the person is~~ excluded as a household member. The person cannot get Food Stamps, but his income and resources are counted in the Food Stamp computation for the household. The person is not eligible for the greater of the sanction periods listed below or becomes exempt from JSAP. End the household's sanction, before the penalty period ends, if the sanctioned member becomes exempt from JSAP.~~

~~(1-1-98)T(10-1-98)T~~

~~a. First failure to comply. The greater of the date the person corrects the sanction or one (1) month.~~

~~(1-1-98)T~~

~~b. Second failure to comply. The greater of the date the person corrects the sanction or three (3) months.~~

~~(1-1-98)T~~

~~c. Third failure to comply and subsequent failures. The greater of the date the person corrects the sanction or six (6) months.~~

~~(1-1-98)T~~

~~032. Joins Another Household. If a sanctioned household member leaves the original household and joins another Food Stamp household, sanctions apply: As head of household, the entire new household is ineligible for the remainder of the sanction period or until other conditions for ending JSAP sanctions are met. If not the head of household, the person is treated the member as an excluded household member. The person cannot get Food Stamps, but his income and resources are counted in the Food Stamp computation for the household. The person is excluded for the rest of the sanction period, or until conditions for ending JSAP sanctions are met.~~

~~(6-1-94)(10-1-98)T~~

**238. NOTICE OF SANCTIONS FOR FAILURE TO COMPLY WITH JSAP.**

Send the household a Notice of Decision when a participant fails to comply with JSAP requirements. The Notice of Decision must contain data listed in Subsections 238.01 through 238.054. If Notice of Decision is sent, and the Department proves the member complied by the effective date of the action, the action to end Food Stamps does not take effect. ~~(1-1-98)T(10-1-98)T~~

01. Sanction Period. The Notice of Decision must include the proposed sanction period. (6-1-94)

02. Reason for Sanction. The Notice of Decision must include the reason for sanction. (6-1-94)

~~03. Ability to Reapply after Sanction. If the head of household is ineligible the Notice of Decision must say the household may reapply.~~

~~(1-1-98)T~~

~~043. Actions to End Sanction. The Notice of Decision must include the actions the sanctioned person must take to end the sanction.~~

~~(6-1-94)~~

054. Right to Appeal. The Notice of Decision must tell the household of it's right to a fair hearing.

(1-1-98)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**241. ENDING SANCTIONS FOR FAILURE TO COMPLY WITH JSAP.**

~~Households or h~~Households or household members sanctioned for not complying with JSAP are ineligible until a condition listed below is met. ~~(6-1-94)~~(10-1-98)T

- 01. Fair Hearing Reversal. Sanction ends if a fair hearing reverses the sanction. (6-1-94)
- 02. Sanctioned Member Becomes Exempt. Sanction ends if the sanctioned member becomes exempt from JSAP. (9-22-96)T
- ~~03. Sanctioned Member Leaves Household. Sanction ends if the sanctioned member leaves the Household. (6-1-94)~~
- ~~04. New Head of Household. Sanction ends if a new eligible individual joins the household and is the new head of household. (6-1-94)~~
- ~~05. Six (6) Months Elapse for Sanctioned Household. The household's sanction ends if six (6) months elapse. The sanction for the individual member continues until he becomes exempt or complies. (9-22-96)T~~
- 063. Member Complies with JSAP. Sanction ends if the member, who refused to comply with a JSAP requirement, complies. The member must complete corrective action and serve the minimum sanction period. (1-1-98)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**248. SANCTIONS FOR FAILURE TO COMPLY WITH UI REQUIREMENTS.**

When the Department finds a member failed or refused to comply, with UI requirements, without good cause, sanctions listed in Subsections 248.01 through 248.03 must be applied. (1-1-98)T

- ~~01. Head of Household. If the noncomplying member is the head of the household, the entire household will be ineligible. The household is not eligible until the conditions for ending UI sanctions are met. (1-1-98)T~~
- ~~021. Not Head of Noncomplying Household Member. If ~~t~~The noncomplying member is ~~not the head of the household~~, the person is excluded as a household member. The person cannot get Food Stamps, but his income and resources are counted in the Food Stamp computation for the household. Exclusion continues until conditions for ending UI sanctions are met. (1-1-98)T(10-1-98)T~~
- ~~032. Joins Another Household. If a sanctioned household member leaves the original household and joins another Food Stamp household, ~~sanctions apply. As head of household, the entire new household is ineligible for the remainder of the sanction period or until other conditions for ending UI sanctions are met. If not the head of household~~, the person is treated as an excluded household member. The person cannot get Food Stamps, but his income and resources are counted in the Food Stamp computation for the household. The person is excluded for the rest of the sanction period, or until conditions for ending UI sanctions are met. (1-1-98)T(10-1-98)T~~

(BREAK IN CONTINUITY OF SECTIONS)

**261. VOLUNTARY JOB QUIT OR REDUCTION OF WORK.**

When a Food Stamp household reports the loss of earned income, determine if a member of the household voluntarily quit a job or voluntarily reduced ~~their~~ his work hours to less than thirty (30) hours a week. ~~If the head of household voluntarily quit a job or reduced their work hours to less than thirty (30) hours a week, without good cause, the household is not eligible for Food Stamps.~~ If a ~~non-head member~~ member of the household voluntarily quit a job or voluntarily reduced ~~their~~ his work hours to less than thirty (30) hours a week, without good cause, that person is not eligible for Food Stamps. When a household applies for Food Stamps, determine if a member voluntarily quit ~~their~~ his most recent job or reduced ~~their~~ his hours of work to less than thirty (30) hours per week, without good cause, in the last sixty (60) days. If a new member enters the household, ~~determine if the head of household changes.~~ ~~D~~determine if the new household member voluntarily quit a job or reduced work hours without good cause in the last sixty (60) days. (7-1-98)(10-1-98)T

~~**262. HEAD OF HOUSEHOLD FOR VOLUNTARY QUIT OR REDUCTION OF WORK HOURS.**~~

~~In households with only adult members, the head of household for voluntary quit or reduction of work hours is the principal wage earner. In households with children, the household may designate any adult household member with children as the head of the household, as long as all adult members agree to the selection. If all adult household members do not agree to the selection or decline to select an adult parent as head of household, the Department will designate the principal wage earner as the head of the household or permit the household to make another selection. The principal wage earner can be a household member excluded from the Food Stamp program. The principal wage earner conditions and limits are described below: (7-1-98)~~

~~01. Household Member With Most Earned Income. The principal wage earner is the household member with the most earned income in the two (2) months before the month of voluntary quit. (6-1-94)~~

~~02. Person Designated by Household. The principal wage earner is designated by the household, when there is no principal source of earned income in the two (2) months before the month of voluntary quit. (6-1-94)~~

~~03. Parent as Principal Wage Earner. The principal wage earner is never a person of any age living with a parent or person acting as a parent, if the parent is: (1-1-98)T~~

~~a. Registered for work; or (1-1-98)T~~

~~b. Getting unemployment compensation benefits; or (1-1-98)T~~

~~c. Working a minimum of thirty (30) hours per week; or (1-1-98)T~~

~~d. Receiving weekly earnings equal to Federal minimum wage multiplied by thirty (30) hours. (1-1-98)T~~

~~**263. DESIGNATING NEW PRINCIPAL WAGE EARNER.**~~

~~A person meeting the requirements in Section 262 can be designated the new principal wage earner and head of household. Except for households with children, the designation must not be changed if the current head of household has a period of ineligibility for voluntary quit. The head of household can be changed after the sanction period ends. A household with children can change the head of household at certification, recertification and when a new household member enters the household. (7-1-97)~~

~~**262. -- 263. (RESERVED).**~~

(BREAK IN CONTINUITY OF SECTIONS)

**267. GOOD CAUSE FOR VOLUNTARILY QUITTING A JOB OR REDUCING WORK HOURS.**

If ~~the head of a~~ a household member voluntarily quits a job, determine if the quit was for good cause. All facts and

circumstances submitted by the household and the employer must be considered. Good cause includes, but is not limited to, reasons listed below: ~~(7-1-98)~~(10-1-98)T

01. Personal Difficulties. Personal difficulties include: health problems; structured drug and alcohol treatment; jailed or necessary court appearances; conflicts with verified and practiced religious and ethical beliefs. (6-1-94)

02. Family Emergencies. Family emergencies include: crisis in family health; child legal or behavioral problems. (7-1-98)

03. Environmental Barriers. Environmental barriers include: weather conditions preventing the person from reaching the work site; unexpected loss of transportation; housing or utility problems requiring immediate attention. (6-1-94)

04. Work Site Problems. Work site problems include: temporary layoff from a regular, full-time job. The person must be able to return to the job within ninety (90) days. Work site conditions not meeting legal or local standards of health and safety, hours, pay, or benefits. Alleged discrimination on the job site. (6-1-94)

05. Employment or School. The ~~head of~~ household member accepts employment, or enrolls at least half-time in any recognized school, training program, or an institution of higher education. ~~(6-1-94)~~(10-1-98)T

06. Employment or School in Another Area. Another household member accepts employment in another area, requiring the household to move. Another household member enrolls at least half-time in a recognized school, a training program, or an institution of higher education in another area, requiring the household to move. (6-1-94)

07. Retirement. Persons under age sixty (60) resign, if the resignation is recognized as retirement. (6-1-94)

08. Full Time Job Does Not Develop. A person accepts a bona fide offer of a full time job. The job does not develop. The job results in employment of less than twenty (20) hours a week, or weekly earnings of less than the Federal minimum wage multiplied by twenty (20) hours. (6-1-94)

09. Temporary Pattern of Employment. Person leaves a job where workers move from one (1) employer to another, such as migrant farm labor or construction work. Households may apply for benefits between jobs, when work is not yet available at the new site. Even though the new employment has not actually begun, the previous quit is with good cause if it is the pattern of that type of employment. (6-1-94)

**268. PROOF OF JOB QUIT OR REDUCTION OF WORK HOURS.**

Request proof ~~of the household's statements~~ if the household's job quit or reduction of work hours is questionable. The household is responsible for providing proof. If the household cannot get timely proof, offer assistance. Proof includes, but is not limited to, contacts with the previous employer or union organizations. If the employer cannot be contacted or the employer will not provide the information try to get the proof from a third party. In some cases, the household and the Department cannot prove the circumstances of the quit. This may occur because the employer cannot be located or refused to cooperate. This may include quits due to employer discrimination or unreasonable employer demands. In cases where proof of the voluntary quit cannot be obtained, the household must not be denied Food Stamps on the basis of a voluntary quit or reduction of work hours. If a household member refuses, without good cause, to provide enough information to determine voluntary quit or work reduction, a penalty must be imposed. Impose the appropriate quit or reduction penalty. ~~(7-1-98)~~(10-1-98)T

**269. EXPLANATION OF PENALTIES FOR QUITTING JOB OR REDUCTION OF WORK HOURS.**

Explain voluntary quit or reduction of work hours penalties to the applicant household at application. Explain the penalties imposed if ~~the head of a~~ household member quits a job or reduces hours of work to less than thirty (30) hours a week without good cause. ~~Explain the penalties imposed if the household allows a person to join their household as head of household and that person has voluntarily quit a job or reduced hours of work to less than thirty (30) hours a week without good cause.~~ ~~(7-1-98)~~(10-1-98)T

**270. PENALTY FOR APPLICANT QUITTING A JOB OR REDUCING WORK HOURS.**

If the Department determines a voluntary quit or reduction of work hours was not for good cause, the application must be denied if the head of the household quit or reduced work hours. If the member who quit was not the head of household, that member is not eligible. A for a ninety (90) day penalty period. The penalty period begins the date the household member quit. The applicant household must be told the job quit and work reduction penalty information ~~(7-1-98)~~(10-1-98)T

01. Denial Reason. The household must be informed of the reason for the Food Stamp denial for the member or entire household. ~~(7-1-98)~~(10-1-98)T

02. Sanction Period. The household must be informed of the proposed voluntary quit or work reduction sanction period. (7-1-98)

~~03. Disqualified Household's Right to Reapply. The household must be informed of the right to reapply for Food Stamps. If eligible benefits will begin ninety (90) days after the date of quit or work reduction. (7-1-98)~~

04~~3~~. Fair Hearing. The household must be informed of the right to a fair hearing. (6-1-94)

**271. PENALTY FOR RECIPIENT QUITTING A JOB OR REDUCING WORK HOURS.**

If the Department determines a member of the household voluntarily quit a job or reduced work hours, the penalty listed in Subsection 271.01 or ~~271.02~~ must be imposed. The benefits must end, beginning the first month after timely notice. The household must be told the information listed in Subsections 271.03~~2~~ through 271.08~~6~~ within ten (10) calendar days of the voluntary quit or reduction in work ruling. When determining the penalty to impose, previous sanctions for noncompliance with JSAP and work registration requirements must be considered. Previous penalties for applicant voluntary quit or work reduction must also be considered. ~~(7-1-98)~~(10-1-98)T

~~01. Head of Household. If the member who quit or reduced work hours is the head of household, the entire household will be ineligible. The household's period of ineligibility shall not exceed six (6) months. The household is not eligible for the greater of the penalty periods listed below or until the member meets one (1) of the conditions to end the penalty. (7-1-98)~~

~~a. First quit or reduction. The greater of the date the member meets one (1) of the conditions to end the penalty or one (1) month. (7-1-98)~~

~~b. Second quit or reduction. The greater of the date the member meets one (1) of the conditions to end the penalty or three (3) months. (7-1-98)~~

~~e. Third quit or reduction and subsequent quit or reduction. Six (6) months for the household. The member who quit or reduced work hours remains ineligible until he meets one of the conditions to end the penalty. (7-1-98)~~

02~~1~~. ~~Not Head of Household Sanction Period. If~~The member who quit or reduced work hours is ~~not the head of the household, the person is~~ excluded as a household member. The person cannot get Food Stamps, but his income and resources are counted in the Food Stamp computation for the household. The person is not eligible for the greater of the penalty periods listed below or until he meets one (1) of the conditions to end the penalty. ~~(7-1-98)~~(10-1-98)T

a. First quit or reduction. The greater of the date the person cures the sanction or one (1) month. (7-1-98)

b. Second quit or reduction. The greater of the date the person cures the sanction or three (3) months. (7-1-98)

c. Third quit or reduction and subsequent quit or reduction. The greater of the date the person cures the sanction or six (6) months. (7-1-98)

03~~2~~. Closure Reason. The household must be informed of the reason for the closure. (6-1-94)



043. Sanction ~~Period~~ Notice. The household must be informed of the proposed sanction period. ~~(6-1-94)~~(10-1-98)T
054. Sanction Start. The household must be informed the sanction will begin the first month after timely notice. (6-1-94)
065. Actions to End Sanction. The household must be informed of the actions the household can take to end the sanction. (6-1-94)
07. ~~Right to Reapply. The household must be informed of the right to reapply. Eligibility begins after the sanction period ends.~~ (6-1-94)
086. Fair Hearing. The household must be informed of the right to a fair hearing. (6-1-94)

**272. VOLUNTARY QUIT OR REDUCTION OF WORK HOURS DURING THE LAST MONTH OF THE CERTIFICATION PERIOD.**

If the Department determines a member of the household voluntarily quit a job or reduced work hours, without good cause, in the last month of the certification period the voluntary quit or work reduction penalty is imposed. (7-1-98)

01. No Reapplication. If the household does not apply for recertification in the last month of the certification the appropriate penalty is imposed. Begin the penalty the first month after the last month of the certification. The penalty is in effect should the household apply during the penalty period. (7-1-98)

02. Reapplication. If the household does apply for recertification in the last month of the certification period, ~~the recertification application is denied if the member was the head of the household. If the person quitting work or reducing hours was not the head of the household, he is ineligible.~~ The penalty is imposed, beginning the first month after the last month of the certification period. ~~(7-1-98)~~(10-1-98)T

**273. VOLUNTARY QUIT OR REDUCTION OF WORK HOURS NOT FOUND UNTIL THE LAST MONTH OF THE CERTIFICATION PERIOD.**

The Department may find ~~the head of a household member~~ voluntarily quit a job or reduced work hours, without good cause, before the last month of the certification period. If the voluntary quit or reduction is not found until the last month of the certification, the voluntary quit or reduction penalty must be determined. ~~(7-1-98)~~(10-1-98)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**275. ENDING VOLUNTARY QUIT OR REDUCTION OF WORK HOURS PENALTY.**

Eligibility may be re-established after a voluntary quit or work reduction penalty period has elapsed for an otherwise eligible ~~household or~~ household member when a condition in Subsection 275.01 is met. Eligibility may be reestablished before the end of the penalty period for an otherwise eligible ~~household or~~ household member when a condition in Subsection 275.02 is met. ~~(7-1-98)~~(10-1-98)T

01. Ending Voluntary Quit or Reduction Penalty After Penalty Period Has Elapsed. (7-1-98)
- a. Member gets a job. The penalty member gets new employment comparable in salary or hours to the job the person quit. Comparable employment may entail fewer hours or a lower net salary than the job which was quit. To be comparable, the hours for the new job cannot be less than twenty (20) hours per week. To be comparable, the salary or earnings for the new job cannot be less than Federal minimum wage multiplied by twenty (20) hours per week. (7-1-98)
- b. Member increases hours to more than thirty (30) hours per week. The penalty member's hours of work are restored to the average number of hours per week before reduction. (7-1-98)

~~e. Six (6) months elapse. The penalty for the household ends if six (6) months elapse. The sanction for the individual member continues until a condition for ending the penalty is met. (7-1-98)~~

02. Ending Voluntary Quit or Reduction Penalty Before the End of the Penalty Period. (7-1-98)

a. Member leaves household. The penalty member leaves the household. The penalty follows the member who caused it. If the penalty member joins another household ~~as the head of household, the new household he is ineligible for the greater of the~~ balance of the penalty period, or the date ~~the member he~~ complies. ~~The household's penalty period cannot exceed six (6) months. (7-1-98)(10-1-98)T~~

~~b. The household's penalty ends when the head of household changes because a new and otherwise eligible member joins the household as head of household. The penalty period continues for the penalty member for the greater of the length of the minimum penalty period or the date he complies. (7-1-98)~~

~~eb. Member becomes exempt. The penalty member becomes exempt from JSAP requirements. The voluntary quit penalty does not end if the member becomes exempt due to application or receipt of Unemployment Insurance. (1-1-98)T~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**278. COOPERATION IN ESTABLISHMENT OF PATERNITY AND OBTAINING SUPPORT.**

A natural or adoptive parent or other individual living with and exercising parental control over a minor child who has an absent parent must cooperate in establishing paternity for the child and obtaining support for the child and herself. Cooperation is defined in Subsection 278.01 and 278.02. (7-1-98)

01. Providing All ~~Known~~ Information. Cooperation includes but is not limited to providing all ~~known~~ information to identify and locate the absent parent. At a minimum, the first and last name of the absent parent and at least two (2) of the following pieces of information must be provided: ~~(7-1-97)T(10-1-98)T~~

a. Birth Date. (7-1-97)T

b. Social Security Number. (7-1-97)T

c. Current address. (7-1-97)T

d. Current phone number. (7-1-97)T

e. Current employer. (7-1-97)T

f. Make, model, and license number of any motor vehicle owned by the absent parent. (7-1-97)T

g. Names, phone numbers and addresses of the parents of the absent parent. (7-1-97)T

02. Established Case for Participant. After CSS has established a case for a participant, all child support payments must be sent directly to CSS. After CSS has established a case, cooperation includes forwarding support payments received directly from the absent parent to CSS. (7-1-98)

**(BREAK IN CONTINUITY OF SECTIONS)**

**280. EXEMPTIONS FROM THE COOPERATION REQUIREMENT.**

The parent or individual will not be required to provide information about the absent or alleged parent or otherwise cooperate in establishing paternity or obtaining support if good cause for not cooperating exists. Good cause for

failure to cooperate must be proved. Notify the parent or individual in writing of the right to claim a good cause exemption at application and recertification. (7-1-98)

01. Good Cause Defined. Good cause for failure to cooperate in obtaining support is listed below: (7-1-98)

a. Rape or incest. Proof the child was conceived as a result of incest or forcible rape. (7-1-98)

b. Physical or emotional harm. Proof the absent parent may inflict physical or emotional harm to the children, the participant or individual exercising parental control. This must be supported by medical evidence, police reports, or as a last resort, an affidavit from a knowledgeable source. (7-1-98)

c. Minimum information cannot be provided. Substantial and credible proof is provided indicating the participant cannot provide the minimum information regarding the non-custodial parent. (10-1-98)T

02. Procedures for a Good Cause Claim. A parent or individual claiming good cause for failure to cooperate must submit a notarized statement to the Department identifying the child for whom the exemption is claimed. The statement must list the reasons for the good cause claim. Allow the individual twenty (20) days to supply evidence supporting the claim. Evidence submitted must be reviewed by the EE or SRS and his Supervisor. A decision on the claim must be made within thirty (30) days of the claim. Food Stamps must not be delayed, denied or stopped pending a decision on a good cause claim. The final decision on the claim will be made by the Self Reliance staff after consultation with CSS. (7-1-98)

03. Good Cause Decision. Waive the cooperation requirement if good cause exists. Take no further action to establish paternity or obtain support. If good cause does not exist, notify the parent or individual of the decision, the cooperation requirement and that the case will be referred to CSS. Disqualify the parent or individual who subsequently refuses to cooperate. (7-1-97)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**287. INELIGIBILITY FOR A FELONY CONVICTION FOR POSSESSION, USE, OR DISTRIBUTION OF A CONTROLLED SUBSTANCE.**

A person convicted under Federal or State law of any felony offense which has as an element the possession, use, or distribution of a controlled substance is not eligible for Food Stamps. The ~~conviction~~ felony must have occurred after August 22, 1996. Count the income and resources of the disqualified individual in full. ~~(7-1-98)~~(10-1-98)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**321. RESOURCES OF DISQUALIFIED HOUSEHOLD MEMBERS.**

The household must report the resources of members disqualified for Food Stamps. The household must verify any questionable information. The resources of the disqualified person are included in determining the resource limit. Disqualified household members with resources counted toward the household limit are listed below: (6-1-94)

01. Member Disqualified for IPV. Resources of a household member disqualified for an intentional program violation are counted. (6-1-94)

02. Member Disqualified for Failure to Comply. Resources of a household member disqualified for failing to comply with a work requirement are counted. (6-1-94)

03. Member Ineligible due to SSN. Resources of a household member ineligible for refusing to get an SSN are counted. (6-1-94)

04. Ineligible Legal Noncitizen. Resources of an ineligible legal noncitizen household member are counted. (7-1-98)

05. Member Disqualified for Failure to Meet the ABAWD Work Requirement. Resources of a household member disqualified for failure to meet the ABAWD work requirement are counted. (7-1-98)

06. Member Disqualified for a Voluntary Quit or Reduction in Hours of Work. Resources of a ~~non-head~~ ~~of household~~ member disqualified for a voluntary quit or reduction of work are counted. ~~(7-1-98)~~(10-1-98)T

07. Member Disqualified as a Fugitive Felon or Probation or Parole Violator. Resources of a member disqualified as a fugitive felon or probation or parole violator are counted. (7-1-98)

08. Member Disqualified for Failure to Cooperate in Establishing Paternity and Obtaining Support. Resources of a member disqualified for failure to cooperate in establishing paternity and obtaining support are counted. (7-1-98)

09. Member Disqualified for Conviction of a Controlled Substance Felony. Resources of a member disqualified for conviction of a felony which has as an element the possession, distribution or use of a controlled substance are counted. (7-1-98)

**(BREAK IN CONTINUITY OF SECTIONS)**

**532. GROSS INCOME LIMIT.**

Households exceeding the gross income limit for the household size are not eligible, unless they are categorically eligible or have an elderly or disabled member. Categorically eligible households are exempt from gross and net income limits. All members of categorically eligible households must be approved for TAFI, AABD, or SSI. Households with elderly or disabled household members are exempt from the gross income limit. Gross income limits are listed in Table 532.

TABLE 532 - GROSS INCOME LIMIT	
HOUSEHOLD SIZE	GROSS INCOME LIMIT
1	\$ <del>855</del> <u>73</u>
2	\$ <del>1,150</del> <u>76</u>
3	\$ <del>1,445</del> <u>79</u>
4	\$ <del>1,739</del> <u>83</u>
5	\$ <del>2,034</del> <u>86</u>
6	\$ <del>2,328</del> <u>9</u>
7	\$ <del>2,622</del> <u>3</u>
8	\$ <del>2,918</del> <u>6</u>
Each Added Person	Add \$ <del>295</del> <u>304</u>

~~(10-1-97)F~~(10-1-98)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**543. STANDARD UTILITY ALLOWANCE (SUA).**

The shelter deduction is computed using the SUA or actual utility costs. The SUA is described below: (6-1-94)

01. Standard Utility Allowance (SUA). The Standard Utility Allowance (SUA) can be used instead of actual costs of heating, cooling, cooking fuel, electricity, the basic service fee for one (1) telephone, water, sewer and garbage collection. The SUA is one hundred ~~sixty-five~~ seventy-one dollars (\$~~165~~71). The household must be told if actual utility costs exceed the SUA, the actual costs can be used if the household proves these costs.

~~(10-1-96)~~(10-1-98)T

02. SUA Qualifications. To qualify for the SUA, households must: (6-1-94)

a. Receive energy assistance payments made under the Low Income Home Energy Assistance Act of 1981; or (6-1-94)

b. The household must have a primary heating or cooling system. The household must have out-of-pocket heating or cooling costs billed on a regular or irregular basis. The heating or cooling costs must be separate from rent or mortgage payments. If not billed regularly for heating or cooling costs, the household must be otherwise Food Stamp eligible between billing periods. (6-1-94)

c. If the household claims cooling costs, the household must have either an air conditioning system or a room air conditioner to qualify for the SUA. (6-1-94)

d. If the household claims heating costs, the household must have expenses for a primary source of heat. Households buying wood for their primary source of heat may get the SUA. Cutting their own wood for the primary source of heat does not qualify a household for the SUA. Supplemental heat sources like, space heaters, electric blankets, cook stoves and a secondary heat source like a fireplace do not qualify households for the SUA. (6-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**548. COMPUTING THE SHELTER DEDUCTION.**

The shelter deduction is computed as listed below: (6-1-94)

01. Household With Elderly or Disabled Member. If the household has an elderly or disabled member, deduct the monthly shelter cost exceeding fifty percent (50%) of the household's income after all other deductions. (6-1-94)

02. Household With No Elderly or Disabled Member. If the household does not have an elderly or disabled member, deduct the excess of fifty percent (50%) of the household's income, after all other deductions, up to the maximum two hundred ~~fifty~~ seventy-five dollars (\$~~250~~750) limit. ~~(7-1-98)~~(10-1-98)T

**549. NET INCOME LIMIT TEST.**

Categorically eligible households do not have a net income limit. Households with an elderly or disabled household member must meet the net income limit. For all other households, compare the net income to the net income eligibility limit for that size household. This comparison must be completed for initial eligibility and when income changes. When the household income changes to a different income eligibility limit, apply the different limit. If the net income of the household exceeds the net income limit the household is not eligible for Food Stamps, unless categorically eligible. Net income limits are listed in Table 549.

<b>TABLE 549 - NET INCOME LIMITS</b>	
<b>HOUSEHOLD SIZE</b>	<b>NET INCOME LIMIT</b>
1	\$ <del>658</del> 71
2	\$ <del>889</del> 05
3	\$1,1 <del>14</del> 38
4	\$1,3 <del>38</del> 71
5	\$1,5605
6	\$1,7 <del>91</del> 838
7	\$2,0 <del>18</del> 71
8	\$2,24305
Each Added Person Add \$22734	

~~(10-1-97)T~~(10-1-98)T

**550. STEPS TO COMPUTE FOOD STAMP PAYMENT.**

Use the steps in Subsections 550.01 through 550.38 to compute the Food Stamp issuance. Do not round figures or calculations of income and deductions in determining gross or net income. (7-1-97)

01. Step 1. List projected wages and salaries for the household for the month. Do not count excluded income. (6-1-94)
02. Step 2. Compute and list net self-employment income. If a farmer, list any self-employment profit or loss. (6-1-94)
03. Step 3. Add results of Step 1 and Step 2. THIS IS GROSS EARNED INCOME. (6-1-94)
04. Step 4. Compute and list prorated monthly non-excluded educational income. (6-1-94)
05. Step 5. Compute and list prorated monthly tuition, mandatory fees, and allowed expenses. (6-1-94)
06. Step 6. Subtract amount in Step 5 from the amount in Step 4. (6-1-94)
07. Step 7. List other unearned income for household. (6-1-94)
08. Step 8. Add results of Step 6 and Step 7. THIS IS TOTAL UNEARNED INCOME. (6-1-94)
09. Step 9. Add results of Step 3 and Step 8. (6-1-94)
10. Step 10. Subtract any loss not used up in Step 2 from Step 9. THIS IS GROSS MONTHLY INCOME. Record the gross monthly income. Check to see if gross income exceeds the limit for family size. Categorically eligible households are exempt from the gross income test. Households with an elderly or disabled household member are exempt from the gross income test. (6-1-94)
11. Step 11. Multiply amount in Step 3 times twenty percent (20%). (6-1-94)
12. Step 12. Subtract amount in Step 11 from amount in Step 3. (6-1-94)

13. Step 13. Add amount in Step 12 to amount in Step 8. (6-1-94)
14. Step 14. List the standard deduction of one hundred thirty-four dollars (\$134). (7-1-97)
15. Step 15. Subtract amount in Step 14 from amount in Step 13. (6-1-94)
16. Step 16. List converted medical costs over thirty-five dollars (\$35) for household with elderly or disabled member. (6-1-94)
17. Step 17. Subtract amount in Step 16 from amount in Step 15. (6-1-94)
18. Step 18. List converted dependent care costs (not to exceed two hundred dollars (\$200) per dependent under age two (2) and one hundred seventy five dollars (\$175) for any other dependent). (10-1-94)
19. Step 19. Subtract amount in Step 18 from amount in Step 17. (7-1-97)
20. Step 20. List child support paid or expected to be paid by the household. (7-1-97)
21. Step 21. Subtract amount in Step 20 from amount in Step 19. THIS IS INCOME, AFTER DEDUCTIONS, EXCEPT SHELTER DEDUCTION. (7-1-97)
22. Step 22. Divide amount in Step 21 by two (2) (this is used to weigh shelter costs). THIS IS HALF THE ADJUSTED INCOME. (7-1-97)
23. Step 23. List rent or mortgage payment. (7-1-97)
24. Step 24. List property taxes (averaged over twelve (12) months). (7-1-97)
25. Step 25. List homeowners insurance on structure (averaged over twelve (12) months). (7-1-97)
26. Step 26. Add amount in Step 23 and amount in Step 24 and amount in Step 25. (7-1-97)
27. Step 27. If client chooses the standard utility allowance (SUA), add one hundred ~~sixty-five~~ seventy-one dollars (\$~~165~~71) to the amount in Step 246. (~~10-1-96~~)(10-1-98)T
28. Step 28. If client has chosen to use actual utility expenses, list and add the following expenses. (7-1-97)
  - a. Basic rate for telephone. (6-1-94)
  - b. Electric bill. (6-1-94)
  - c. Gas bill. (6-1-94)
  - d. Heating oil. (6-1-94)
  - e. Wood costs (only if purchased for heat). (6-1-94)
  - f. Water and sewer bill. (6-1-94)
  - g. Garbage and trash collection. (6-1-94)
  - h. Installation costs for utilities. (6-1-94)
  - i. Other allowed utility costs. (6-1-94)
29. Step 29. If client has chosen to use actual utility expenses, add amount in Step 26 and amount in

- Step 28. (7-1-97)
30. Step 30. Use amount from Step 27 (using standard utility allowance) or amount from Step 29 (using actual utility costs) as total shelter cost. (7-1-97)
31. Step 31. Subtract half adjusted income (Step 22) from amount in step 30. THIS IS THE EXCESS SHELTER DEDUCTION. The maximum excess shelter deduction for household with no elderly or disabled member is two hundred ~~forty~~ seventy-five dollars (\$~~2750~~). If any member of the household is age sixty (60) or disabled, the maximum is the full excess shelter allowance. (~~7-1-98~~)(10-1-98)T
32. Step 32. Subtract amount in Step 31 from amount in Step 21. THIS IS THE NET INCOME. (7-1-97)
33. Step 33. List maximum net income limit based on household size. (7-1-97)
34. Step 34. If amount in Step 32 is less than or equal to amount in Step 33, or if all household members are categorically eligible, compute the Food Stamp amount. If the amount in Step 32 is greater than the amount in Step 33, net income exceeds allowed limits. (7-1-97)
35. Step 35. List maximum Food Stamp amount for number of eligible household members. (7-1-97)
36. Step 36. Multiply amount in Step 32 times three-tenths (0.3) (thirty percent (30%)). (7-1-97)
37. Step 37. Subtract amount in Step 36 from the amount in Step 35. (7-1-97)
38. Step 38. Round the amount in Step 37 to the next lower dollar. THIS IS THE FOOD STAMP ISSUANCE AMOUNT. (7-1-97)

**(BREAK IN CONTINUITY OF SECTIONS)**

- 581. MAXIMUM FOOD STAMPS BY HOUSEHOLD SIZE.**  
 The maximum Food Stamp amount by household size is listed in Table 581. (7-1-97)

<b>TABLE 581 - MAXIMUM FOOD STAMPS BY HOUSEHOLD SIZE</b>	
<b>HOUSEHOLD SIZE</b>	<b>MAXIMUM FOOD STAMPS</b>
1	\$122 <u>5</u>
2	\$224 <u>30</u>
3	\$324 <u>9</u>
4	\$408 <u>19</u>
5	\$485 <u>97</u>
6	\$582 <u>97</u>
7	\$643 <u>59</u>
8	\$735 <u>4</u>
Each Added Person Add \$92 <u>4</u>	



~~(10-1-97)T~~(10-1-98)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**633. NOTICE OF CHANGES NOT REQUIRED.**

Notice to individual Food Stamp households is not required when the conditions listed in Subsection 633.01 below are met. Mass notice must be given in some situations, as listed in Subsection 633.02- below: ~~(6-1-94)~~(10-1-98)T

01. Waiver by the Household. ~~The head of a~~ household member, spouse or authorized representative provides a written statement requesting closure. The person gives information causing reduction or an end to benefits and states, in writing, they know adverse action will be taken. The person acknowledges in writing continuation of benefits is waived, if a fair hearing is requested. ~~(6-1-94)~~(10-1-98)T

02. Mass Change. Mass changes include: (6-1-94)
- a. Changes in the income limit tables. (6-1-94)
  - b. Changes in the issuance tables. (6-1-94)
  - c. Changes in Social Security benefits. (6-1-94)
  - d. Changes in SSI payments. (6-1-94)
  - e. Changes in TAFI or AABD grants. (7-1-98)
  - f. Changes caused by a reduction, suspension, or cancellation of Food Stamps ordered by the Secretary of USDA. (6-1-94)
  - g. When it performs mass changes, the Department notifies Food Stamp households of the mass change by one of the following methods: (6-1-94)
    - i. Media notices. (6-1-94)
    - ii. Posters in the Food Stamp offices and issuance locations. (6-1-94)
    - iii. A general notice mailed to households. (6-1-94)

03. Mass Changes in TAFI or AABD. When a mass change to TAFI or AABD causes a Food Stamp change, use the following criteria: (7-1-98)

- a. If the Department has thirty (30) days advance notice of the TAFI or AABD mass change, Food Stamps must be adjusted the same month as the change. (7-1-98)
- b. If the Department does not have advance notice, Food Stamp benefits must be changed no later than the month after the TAFI or AABD mass change. (7-1-98)
- c. Ten (10) day advance notice to Food Stamp households is not required. Adequate notice must be sent to Food Stamp households. (6-1-94)
- d. If a household requests a fair hearing because of an issue other than mass change, continue Food Stamps. (6-1-94)

04. Notice of Death. Notice is not required when the Department learns of the death of all household members. (6-1-94)

05. Move from Project Area. Notice is not required when the household moves from the project area. (6-1-94)
06. Completion of Restored Benefits. Notice is not required when an increased allotment, due to restored benefits, ends. The household must have been notified in writing when the increase would end. (6-1-94)
07. Joint Public Assistance and Food Stamp Applications. Notice is not required if the household jointly applies for TAFI or AABD and Food Stamps and gets Food Stamps pending TAFI or AABD approval. The household must be notified at certification that Food Stamps will be reduced upon TAFI or AABD approval. (7-1-98)
08. Converting from Repayment to Benefit Reduction. Notice is not required if a household with an IHE or IPV claim fails to repay under the repayment schedule. An allotment reduction is enforced. (6-1-94)
09. Households Getting Expedited Service. Notice is not required if all the following conditions are met: (6-1-94)
- a. The applicant got expedited services. (6-1-94)
  - b. Proof was postponed. (6-1-94)
  - c. A regular certification period was assigned. (6-1-94)
  - d. Written notice, stating future Food Stamps depend on postponed proof, was given at approval. (6-1-94)
10. Residents of a Drug or Alcoholic Treatment Center or a Group Living Arrangement Center. Notice is not required when the Department ends Food Stamps to residents of a drug or alcoholic treatment center or group living arrangement center if: (6-1-94)
- a. The Department revokes the center's certification. (6-1-94)
  - b. FCS disqualifies the center as a retailer. (7-1-98)

**(BREAK IN CONTINUITY OF SECTIONS)**

**703. COMPUTING IPV CLAIMS.**

Compute the difference between the Food Stamps the household received and the Food Stamps they should have received. The twenty percent (20%) earned income deduction cannot be deducted for nonreported earned income overissuances. Compute the claim back to the month the IPV occurred. Do not compute back more than six (6) years before the overissuance discovery date. The first month of the overissuance is the first month the change would have been effective if reported as required. ~~If the unreported change was more than ten (10) days from the end of the month, the first IPV month is the next month.~~ The first overissuance month must never be later than two (2) months after the IPV occurred. Offset the claim against any amounts not yet restored to the household. ~~(6-1-94)~~(10-1-98)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**774. EXCLUDED HOUSEHOLD MEMBERS.**

Persons may be excluded from Food Stamps for an IPV, for failure to comply with JSAP requirements ~~if the person is not the head of household~~, a voluntary quit or reduction of work hours ~~if the person is not the head of household~~, or for failure or refusal to provide a SSN. Persons may be excluded from Food Stamps for failure to sign a citizenship or legal noncitizen status declaration or because the member is an ineligible legal noncitizen or an ineligible sponsored

legal noncitizen. A person who has received Food Stamps for three (3) months in a three (3) year period in which he did not meet the ABAWD work requirement is excluded from Food Stamps. Fugitive felons and, probation or parole violators are excluded from Food Stamps. A person convicted; of a felony committed after August 22, 1996, ~~of a felony~~ which has as an element the possession, use, or distribution of a controlled substance is excluded from Food Stamps. (7-1-98)(10-1-98)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**776. ~~NON-HEAD-OF-HOUSEHOLD MEMBER~~ DISQUALIFIED FOR JSAP, WORK REGISTRATION REQUIREMENTS, VOLUNTARY QUIT OR REDUCTION OF WORK.**

Food Stamp eligibility and benefit level for households containing members disqualified for failure to comply with JSAP, work registration requirements, voluntary quit or reduction of work must be computed using steps in Subsections 776.01 through 776.08. (7-1-98)

01. Step 1. Count all resources of the disqualified members as resources to the household. (6-1-94)
02. Step 2. Do not count the disqualified member as part of the household to compute the resource limit. (6-1-94)
03. Step 3. Count all income of the disqualified members as income to the household. (6-1-94)
04. Step 4. Do not count the disqualified member when computing household size for the gross and net income limit tests. (6-1-94)
05. Step 5. The entire household's allowable earned income, standard, medical, dependent care, child support, and excess shelter deductions apply to the remaining household members. (7-1-97)
06. Step 6. Count the disqualified member to compute medical deduction. (6-1-94)
07. Step 7. Count the disqualified member to compute uncapped shelter deduction. (6-1-94)
08. Step 8. Do not count the disqualified member to compute household size for Food Stamp issuance. (6-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**793. NARCOTIC ADDICT AND ALCOHOLIC TREATMENT CENTERS.**

Narcotic addicts and their children residing in a treatment center may qualify for Food Stamps. Alcoholics and their children residing in a treatment center may qualify for Food Stamps. Food Stamp rules for residents in a drug addiction or alcohol treatment and rehabilitation program lasting at least thirty (30) days are listed below: (9-1-94)

01. Optional Appointment of Authorized Representative. Unless the household requests it, the center will not be made authorized representative on the household's own EBT card for months of benefits received while not in the center. (10-1-98)T

042. Center Provides Certification List. Each month, each center must give the Field Office a list of current client residents. The list's accuracy must be certified in writing by the center manager or designee. The Department must conduct random on-site visits to assure list accuracy. If the list is not accurate, or the Department fails to act on the change, the Department may transfer the Food Stamp amount from the center's account to the household's Food Stamp account, for the months the household was not living in the center. (6-1-94)(10-1-98)T

023. Resident and Nonresident Clients. Eligible narcotic addicts or alcoholics must be certified as one

(1) person households. Eligible narcotic addicts with children or alcoholics with children residing in a center must be certified as one (1) household. Clients not residing at the treatment center are certified under normal procedures.

(9-1-94)

034. Food Stamp Basis. Eligibility and Food Stamp amounts must be based on income and resources.

(6-1-94)

045. Work Registration. Resident clients are exempt from work registration.

(6-1-94)

056. Expedited Processing. When the application needs expedited processing, Food Stamps must be received by the seventh calendar day after the application date.

(7-1-98)

067. Normal Processing. If processing under normal procedures, the Department must verify circumstances before determining eligibility. Changes and recertifications are processed using the standards for all other households. Resident clients have the same rights to adverse action notices, fair hearings and lost Food Stamps as all other households.

(6-1-94)

078. Center Misusing Food Stamps. The Department must promptly notify FCS if it believes a center is misusing coupons. The Department must not take action before FCS takes action against the center.

(7-1-98)

**(BREAK IN CONTINUITY OF SECTIONS)**

**850. FOOD STAMP RIGHTS.**

The Food Stamp household has rights protected by Federal and State laws and Department rules. The Department must inform clients of their rights during the application process and eligibility reviews. Food Stamp rights are listed below:

(6-1-94)

01. Application. The right to get an application on the date requested.

(6-1-94)

02. Application Registered. The right to have the signed application accepted right away.

(6-1-94)

03. Representative. The right to have an authorized representative if the applicant cannot get to the Food Stamp office. The authorized representative must have knowledge of the applicant's situation.

(6-1-94)

04. Home Visit or Telephone Interview. The right to have a home visit or telephone interview. The applicant must be:

(6-1-94)

a. Age sixty (60) or older; or

(6-1-94)

b. Disabled and unable to come to the Food Stamp office.

(6-1-94)

c. The Department may also allow a home visit or telephone interview because of transportation difficulties or other hardships.

(6-1-94)

05. Thirty (30) Day Processing. The right to have the application processed and Food Stamps issued within thirty (30) days.

(6-1-94)

06. Expedited Service. The right to get Food Stamps within five (5) days if eligible for expedited service.

(6-1-94)

07. Fair and Equal Treatment. The right to fair and equal treatment, regardless of age, ~~sex~~ gender, race, color, handicap, religious creed, national origin ~~or~~ political belief, ~~sexual orientation, or marital or family status.~~

~~(6-1-94)~~(10-1-98)T

08. Case Record and Food Stamp Rules Available. The right to look at the client's case file. The right to look at a copy of the Food Stamp program rules. (6-1-94)
09. Notification. The right to be told in writing of: (6-1-94)
- a. The reasons for the Department's action if the application is rejected. (6-1-94)
- b. The reasons for the Department's action if Food Stamps are reduced or stopped. (6-1-94)
10. Fair Hearing. The right to request a fair hearing about the Department's decision. The right to request a fair hearing if the household feels discrimination has taken place in any way. Food Stamp fair hearings must be requested within ninety (90) days from the day notice is mailed. In certain situations, Food Stamps may continue if a fair hearing is requested. (6-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**861. NO DISCRIMINATION IN FOOD STAMP PROGRAM.**

The Department must not allow human rights discrimination in the Food Stamp Program. The Department will administer the Food Stamp program so no applicant or recipient in Idaho is discriminated for or against due to race, color, ~~sex~~ gender or age. The Department will administer the Food Stamp program so no applicant or recipient in Idaho is discriminated for or against, due to political or religious belief or affiliation, national origin, handicap or disability, sexual orientation, or marital or family status. (~~6-1-94~~)(10-1-98)T

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.09 - RULES GOVERNING MEDICAL ASSISTANCE**  
**DOCKET NO. 16-0309-9806**  
**NOTICE OF TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** These temporary rules are effective November 1, 1998.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 56-209h, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than November 18, 1998.

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

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

The Fraud, Abuse, and Misconduct Rules were modified to be consistent with Section 56-209h, Idaho Code, which was enacted July 1, 1998. The Recipient Utilization Control Program rules were also modified to clarify the criteria for the Lock-in Program.

**TEMPORARY RULE JUSTIFICATION:** Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to protect public health, safety and welfare.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact Mond D. Warren at (208) 364-1817.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before November 25, 1998.

DATED this 4th day of November 1998.

Sherri Kovach  
Administrative Procedures Coordinator  
DHW - Division of Legal Services  
450 West State Street, 10th Floor  
P.O. Box 83720  
Boise, Idaho 83720-0036  
(208) 334-5564 phone, (208) 334-5548 fax

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**THE FOLLOWING IS TEXT OF DOCKET NO. 16-0309-9806**

~~186--189: (RESERVED):~~

~~190: PROGRAM INTEGRITY.~~

~~01. Purpose. This section is intended to protect the integrity of the state plan by identifying instances of fraud, abuse, over-utilization and other misconduct by providers and their employees, and recipients, and by providing that appropriate action be taken to correct the problem. Action will be taken to protect both program recipients and the financial resources of the plan. Where minimum federal requirements are exceeded, it is the Department's intent to provide additional protections. Nothing contained herein shall be construed to limit the Department from taking any other action authorized by law, including, but not limited to, seeking damages under Idaho Code Section 56-227B.~~ (11-6-93)

~~02. Authority.~~ (11-6-93)

~~a. 42 CFR, Part 455, requires states to identify, investigate and refer suspected cases of fraud and abuse.~~ (11-6-93)

~~b. 42 CFR, Part 1002, requires states to adopt procedures which enable it to exclude a person for any reason for which the secretary of HHS could exclude such person. Additionally, it authorizes states to identify its own reasons and periods for imposing sanctions.~~ (11-6-93)

~~c. Idaho Code, 15-134 authorizes the Director to deny, suspend, or revoke provider status, and to impose monetary penalties against certain providers in specific instances.~~ (11-6-93)

~~d. 42 CFR, Part 456, requires states to implement programs to safeguard against unnecessary or inappropriate use of services, excessive payments, and to assure the quality of services.~~ (11-6-93)

~~e. 42 CFR, Part 433, imposes requirements on states to collect overpayments made to providers.~~ (11-6-93)

~~f. Idaho Code, 56-202(b) and 56-135 require the Department to promulgate, adopt and enforce rules and methods of administration to carry out the purposes of the state plan.~~ (11-6-93)

~~g. Idaho Code, 56-227(e) requires the Department to establish and operate a fraud control program to monitor public assistance programs.~~ (11-6-93)

~~h. 42 CFR Section 431.54(e) authorizes states to restrict recipients to designated providers when the recipients have utilized services at a frequency or amount that is not medically necessary, or in accordance with utilization guidelines established by the state.~~ (11-6-93)

~~03. Definitions. For purposes of this section, unless the context clearly requires otherwise, the following words and terms shall have the following meanings:~~ (11-6-93)

~~a. Abuse. Provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the Medicaid program, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes recipient practices that result in unnecessary cost to the Medicaid program.~~ (11-6-93)

~~b. Claim. An application submitted by a person to the Department, or an agent thereof, for payment of an item or service under the state plan for medical assistance, including, but not limited to, those forms identified in Subsection 003.10 of this chapter.~~ (11-6-93)

~~c. Exclusion. A specific provider will be precluded from providing services and receiving reimbursement under Medicaid.~~ (11-6-93)

~~d. False claim. Any incorrect claim for items or services, including any misstatement or misrepresentation of a material fact on a cost report, without regard to the intent of the maker. This includes, but is not limited to, reporting costs as allowable which were disallowed in previous audits, unless clearly noted.~~ (11-6-93)

~~e. Fraud or Fraudulent. An intentional deception or misrepresentation made by a person with the~~

knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable federal or state law. (11-6-93)

f. ~~Item or Service. Includes (a) any item, device, medical supply or service claimed to have been provided to a patient and listed in an itemized claim for program payment or a request for payment, and (b) in the case of a claim based on costs, any entry or omission in a cost report, books of account or other documents supporting the claim.~~ (11-6-93)

g. ~~Medical Assistance. Shall mean payments for part or all of the cost of such care and services allowable within the scope of Title XIX of the federal Social Security Act as amended as may be designated by Department rules.~~ (11-6-93)

h. ~~Owner. A person having five percent (5%) or more interest in the facility or provider organization.~~ (11-6-93)

i. ~~Person. An individual, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private.~~ (11-6-93)

j. ~~PRO. Any peer review organization.~~ (11-6-93)

k. ~~Program. The Medicaid Program or any part thereof, including Idaho's state plan.~~ (11-6-93)

l. ~~Recoup and Recoupment. That payment of provider claims will be withheld for the purpose of recovering funds which have been paid for items or services the Department has subsequently determined should not have been paid.~~ (11-6-93)

m. ~~Sanction. Any abatement or corrective action taken by the Department which is appealable under Subsection 190.05 of this section.~~ (11-6-93)

n. ~~State plan. The Medicaid program as it exists in Idaho.~~ (11-6-93)

o. ~~Suspension. The temporary barring of a person from participation in the Medicaid program pending further or additional action.~~ (11-6-93)

04. ~~Methodology. The Department will identify potential instances of fraud, abuse, over-utilization and other misconduct by any person related to involvement in the program. Methods may include, but are not limited to, review of computerized reports, referrals from other agencies, health care providers or persons, or conducting audits. Reviews may occur on either prepayment or postpayment basis.~~ (11-6-93)

a. ~~Surveillance and Utilization Review (S/UR) Committee. Instances of suspected fraud, abuse, over-utilization and other misconduct may be referred to a review committee organized by the Department. The committee shall be chaired by the Director's designee, and shall consist of health professionals and other staff nominated to and accepted by the committee. The committee may also consult with other professionals as necessary. The function of the committee will be to review recommendations concerning corrective action.~~ (11-6-93)

b. ~~Corrective Action. When an instance of fraud, abuse, over-utilization or other misconduct is identified, the Department will take action to correct the problem as provided in this section. Such action may include, but is not limited to, exclusion, suspension, recoupment, denial of payment, imposition of civil monetary penalties, termination of provider agreement, provider lock in, and referral for prosecution and/or to state licensing boards.~~ (11-6-93)

05. ~~Provider Review.~~ (11-6-93)

a. ~~Denial of Payment and Recoupment. The Department shall refuse to pay any and all claims it determines are for items or services.~~ (11-6-93)

i. ~~Not provided or not medically necessary.~~ (11-6-93)



- ii. ~~Not documented to be provided or medically necessary;~~ (11-6-93)
- iii. ~~Not provided in accordance with professionally recognized standards of health care;~~ (11-6-93)
- iv. ~~Not covered by the state plan; or~~ (11-6-93)
- v. ~~Provided contrary to the Rules Governing Medical Assistance, the Provider Reimbursement manual, or the provider agreement. If payment has been made, the Department shall recoup the amount paid for these items or services. If recoupment is impracticable, the Department may pursue any available legal remedies it may have.~~ (11-6-93)
- b. ~~Mandatory Exclusions. The Department shall exclude any person that:~~ (11-6-93)
  - i. ~~Has committed a criminal offense related to the delivery of an item or service under Medicare or any State health care program, including the performance of management or administrative services relating to the delivery of items or services under any such program;~~ (11-6-93)
  - ii. ~~Has been convicted, under federal or state law, of a criminal offense related to the neglect or abuse of a patient, in connection with the delivery of a health care item or service, including any offense that the Department concludes entailed, or resulted in, neglect or abuse of patients. The conviction need not relate to a patient who is a program beneficiary; or~~ (11-6-93)
  - iii. ~~Is identified by HCFA as having been excluded by another state or the Office of Inspector General or any person HCFA directs the Department to exclude. No mandatory exclusion imposed pursuant to paragraphs i or ii, will be for less than ten (10) years. The exclusion may exceed ten (10) years aggravating factors are present. For purposes of Subsection 190.05.b.i., a person has committed a criminal offense if he has committed an act defined as a criminal offense under any federal, state or local law, whether or not he/she has been convicted of said offense in a criminal proceeding.~~ (11-6-93)
- e. ~~Permissive Exclusions. The Department may exclude any person:~~ (11-6-93)
  - i. ~~That has had action taken against them by a state licensing board, including, but not limited to suspension, in which case, the period of the exclusion shall not be less than the period of suspension by the licensing board;~~ (11-6-93)
  - ii. ~~That has been identified by a peer review group or organization as endangering the health and/or safety of a patient;~~ (11-6-93)
  - iii. ~~That has failed or refused to disclose or make available to the Department, or its authorized agent, or any licensing board, any records maintained by the provider or required of the provider to be maintained the Department deems relevant to determining the appropriateness of payment except for records privileged under Idaho Code Section 39-1392b; or~~ (11-6-93)
  - iv. ~~For any reason for which the Secretary of Health and Human Services, or his designee, could exclude under parts 1001 or 1003, 42 CFR. Permissive exclusions will be for a period of five (5) years, unless aggravating or mitigating factors form a basis for lengthening or shortening that period.~~ (11-6-93)
- d. ~~Aggravating and Mitigating Factors. For purposes of lengthening the period of mandatory exclusions and lengthening or shortening the period of permissive exclusions, the following factors will be considered:~~ (11-6-93)
  - i. ~~Aggravating Factors.~~ (11-6-93)
    - (1) ~~The acts resulting in the conviction, or similar acts, resulted in financial loss to the program of one thousand five hundred dollars (\$1,500) or more. (The entire amount of financial loss to such program will be considered, including any amounts resulting from similar acts not adjudicated, regardless of whether full or partial~~

- restitution has been made to the programs);- (11-6-93)
- (2) The acts that resulted in the conviction, or similar acts, were committed over a period of one (1) year or more;- (11-6-93)
- (3) The acts that resulted in the conviction, or similar acts, had a significant adverse physical, mental or financial impact on one (1) or more program recipients or other individuals; (11-6-93)
- (4) Any sentence imposed by the court related to the same act;- (11-6-93)
- (5) The excluded person has a prior criminal, civil or administrative sanction record; or- (11-6-93)
- (6) The person has at any time been overpaid a total of one thousand five hundred dollars (\$1,500) or more by Medicare or state health care programs as a result of improper billings;- (11-6-93)
- ii. Mitigating Factors.- (11-6-93)
- (1) The person committed a misdemeanor offense, or the entire amount of financial loss to Medicare and the State health care programs due to the acts that resulted in the conviction, and similar acts, is less than one thousand five hundred dollars (\$1,500);- (11-6-93)
- (2) The record demonstrates that the person had a mental, emotional or physical condition before or during the commission of the offense that reduced the individual's culpability (the fact that such a condition existed does not necessarily reduce the individual's culpability); or- (11-6-93)
- (3) The person's cooperation with federal or state officials resulted in administrative sanctions or criminal charges being filed against other persons.- (11-6-93)
- e. Civil Monetary Penalties. The Department may assess, in lieu of exclusion, or in addition thereto, monetary penalties of a civil nature against any provider, facility, owner, officer, director or managing employee, who:- (11-6-93)
- i. Fails or refuses to comply with the rules and regulations governing medical assistance; (11-6-93)
- ii. Knowingly, or with reason to know, makes a false statement of a material fact in any record required to be filed under the state plan; each false statement shall be considered a separate violation, even if included in the same submission;- (11-6-93)
- iii. Refuses to allow representatives or agents of the Department to inspect any record, book, or file maintained by the provider or required of the provider to be maintained which, in the Department's judgment, is necessary to determine appropriateness of payments;- (11-6-93)
- iv. Willfully prevents, interferes with or attempts to impede in any way the work of any duly authorized representative or agent of the Department; or- (11-6-93)
- v. Willfully destroys any evidence of any violation of the rules governing medical assistance. Assessments shall be one thousand dollars (\$1000) per violation unless reduced by mitigating factors. Mitigating factors may include, but are not limited to, the nature and circumstances of the incident, the degree of culpability, lack of prior offenses or other wrongful conduct, and the financial condition of the offender.- (11-6-93)
- f. Miscellaneous Corrective Actions. The Department may take lesser action to investigate, monitor and correct suspected instances of fraud, abuse, over utilization, and other misconduct, including, but not limited to: (11-6-93)
- i. Issuance of a warning letter describing the nature of suspected violations, and requesting an explanation of the problem and/or a warning that additional action may be taken if the action is not justified or discontinued;- (11-6-93)

- ~~ii. Prepayment review of all or selected claims submitted by the provider with notice that claims failing to meet written guidelines will be denied; (11-6-93)~~
- ~~or-~~
- ~~iii. Referral to state licensing boards for review of quality of care and professional and ethical conduct; (11-6-93)~~
- ~~iv. Termination of provider agreements. (11-6-93)~~
- ~~g. Immediate Action. (11-6-93)~~
- ~~i. Suspension of payments pending investigation. In the event the Department identifies a suspected case of fraud, abuse, over utilization, or other misconduct which requires further investigation, and determines that a substantial possibility exists that payments made during the investigation will be difficult or impractical to recover, the Department may suspend or withhold payments on any pending or subsequent claims while the provider continues to participate in the program. (11-6-93)~~
- ~~ii. Interim Suspension. In the event the Department identifies a suspected case of fraud, abuse, over utilization, or other misconduct, the Department may summarily suspend a provider or employee of a provider if it determines that it is necessary to prevent or avoid immediate danger to the public health, safety, or welfare. Such a finding will be incorporated in the order. The provider shall be given notice but the order is effective when issued. (11-6-93)~~
- ~~iii. Appeal of Immediate Action. Whenever action is taken under Subsection 190.01.g., a hearing will be held within thirty (30) days of receipt of any duly filed notice of appeal, if any appeal is made. (11-6-93)~~
- ~~h. Disclosure of Certain Persons. Prior to entering into or renewing a provider agreement, or at any time upon written request by the Department, a provider must disclose to the Department the identity of any person described at 42 CFR 1001.1001. The Department may refuse to enter into or renew an agreement with any provider associated with any person so described. The Department may also refuse to enter into, or terminate, a provider agreement if it determines that the provider did not fully and accurately make any disclosure required under this subsection. (11-6-93)~~
- ~~i. Notification of Exclusions. (11-6-93)~~
- ~~i. Provider Notification. When the Department determines exclusion is appropriate, it will send written notice of the decision to the person so excluded. The notice will state the basis for the exclusion, the length of the exclusion, the effect of the exclusion on that person's ability to provide services under state and federal programs, and the person's appeal rights. (11-6-93)~~
- ~~ii. Notice to State Licensing Authorities. The Department will promptly notify all appropriate licensing authorities having responsibility for licensing or certification of a person excluded from participation of the facts and circumstances of the exclusion. The Department may request certain action be taken and that the Department be informed of actions taken. (11-6-93)~~
- ~~iii. Public Notice. The Department will give notice of the exclusion and the effective date to the public, appropriate beneficiaries, and may give notice as appropriate, including, but not limited to, related providers, the PRO, institutional providers, professional organizations, contractors, other health insurance payors, and other agencies or Departmental divisions. (11-6-93)~~
- ~~iv. Department of Health and Human Services. The Department shall notify the OIG within fifteen (15) days after it learns a person has been convicted of a criminal offense related to participation in the delivery of health care items or services under the program. (11-6-93)~~
- ~~j. Appeals. Any exclusion, suspension, recoupment, denial of payment, civil monetary penalty, or termination of provider agreement for cause, may be appealed as a contested case pursuant to the IDAPA 16.05.03, "Rules Governing Contested Cases and Declaratory Rulings". Unless action is taken pursuant to Subsection~~

- ~~190.05.g., an appeal stays the action until the time to appeal the Department's final order has expired.~~ (11-6-93)
- ~~06. Recipient Utilization Control Program.~~ (11-6-93)
- ~~a. Purpose. The Recipient Utilization Control program is designed to promote improved and cost efficient medical management of essential health care by monitoring recipient activities and taking action to correct abuses.~~ (11-6-93)
- ~~b. Lock-in Defined. Lock-in is the process of restricting the access of a recipient to a specific provider or providers.~~ (11-6-93)
- ~~e. Criteria for Lock-in.~~ (11-6-93)
- ~~i. The Department shall review recipients to determine if services are being utilized at a frequency or amount that results in a level of utilization or a pattern of services which is not medically necessary. Evaluation of utilization patterns can include, but is not limited to, review by the Department staff of medical records and/or computerized reports generated by the Department reflecting claims submitted for physician visits, drugs/prescriptions, outpatient and emergency room visits, lab and/or diagnostic procedures, hospital admissions, and referrals.~~ (11-6-93)
- ~~ii. Recipients demonstrating unreasonable patterns of utilization and/or exceeding reasonable levels of utilization shall be reviewed for restriction.~~ (11-6-93)
- ~~iii. Since it is impossible to identify all possible patterns of over-utilization, and since a particular pattern may be justified based on individual conditions, no specific criteria for lock-in will be developed. However, the S/UR Committee may develop guidelines for purposes of uniformity. The guidelines will not be binding on the Department and will not limit or restrict the ability of the Department to impose lock-in when any pattern of over-utilization is identified.~~ (11-6-93)
- ~~d. Notification and Procedures of Lock-in.~~ (11-6-93)
- ~~i. A recipient who has been designated by the S/UR Committee for the Recipient Utilization Control Program will be contacted by the Regional Programs Manager or designee.~~ (11-6-93)
- ~~ii. The recipient shall have the opportunity to select designated provider(s) in each area of misuse and so specify on the Utilization Control Agreement form.~~ (11-6-93)
- ~~iii. The Department shall not implement the continued recipient restriction if a valid appeal is noted pursuant to Subsection 190.06.f.~~ (11-6-93)
- ~~iv. The Department shall restrict recipients to their designated providers for a time period determined by the S/UR Committee. Upon review at the end of that period, lock-in may be extended for an additional period determined by the S/UR Committee.~~ (11-6-93)
- ~~v. Payment to provider(s) other than those specified on the Utilization Control Agreement form is limited to: Documented emergencies; or written referrals from the primary physician as designated on the Utilization Control Agreement form.~~ (11-6-93)
- ~~vi. During the initial interview with the Regional Programs Manager or his designee, the recipient will be given written notification of the Department's decision to place the recipient on the Recipient Utilization Control Program which will:~~ (11-6-93)
- ~~(1) Clearly describe the recipient's appeal rights in accordance with the provisions in Subsection 190.06.f.;~~ (11-6-93)
- ~~(2) Specify the primary physician and the effective date of the restriction;~~ (11-6-93)

- (3) Verify the recipient's choice of provider(s); and (11-6-93)
- (4) Provide the original or a copy of the Utilization Control Agreement form to the recipient. (11-6-93)
- vii. Upon return of the notification from the Regional Programs Manager or their designee, the Department will contact the provider(s) selected to assure the provider is willing to provide the service. (11-6-93)
- viii. Following confirmation from the provider, the medical restriction will become effective on the first day of the following month when the MA eligibility card is issued with the restrictions noted. (11-6-93)
- e. Penalties for Noncompliance. (11-6-93)
- i. If a recipient fails to respond to the regional notification of medical restriction(s), fails to sign the Utilization Control Agreement form, or select a primary physician within the specified time period, the Medicaid benefits will be restricted to documented emergencies only. (11-6-93)
- ii. If a recipient continues to abuse and/or over-utilize items or services after being identified for lock-in, the Department may terminate medical assistance benefits for a specified period of time as determined by the Department. (11-6-93)
- f. Appeal of Lock-in. Department determinations to lock-in a recipient may be appealed in accordance with the fair hearings provisions of the Department's "Rules Governing Contested Cases and Declaratory Rulings," IDAPA 16.05.03. (11-6-93)
- 07. Recipient Explanation of Medicaid Benefits (REOMBs). (11-6-93)
- a. The Department will conduct monthly surveys of services rendered to MA recipients using REOMBs. (11-10-81)
- b. A MA recipient is required to respond to the Department's explanation of medical benefits survey whenever he is aware of discrepancies. (11-10-81)
- e. If the recipient is unable, because of medical or physical limitations, to respond to the survey personally, then a responsible family member or friend can respond on his behalf. (11-10-81)
- d. Medicare to Medicaid Cross-over Claims. All claims processed through the cross-over system will be subject to these rules. All providers submitting cross-over claims must comply with the terms of their provider agreements. (11-10-81)

~~191. -- 194. (RESERVED).~~

~~1986. -- 199. (RESERVED).~~

**200. FRAUD, ABUSE, AND MISCONDUCT.**

This section is intended to protect the integrity of the state plan by identifying instances of fraud, abuse, and other misconduct by providers and their employees, and recipients, and by providing that appropriate action be taken to correct the problem. Action will be taken to protect both program recipients and the financial resources of the plan. Where minimum federal requirements are exceeded, it is the Department's intent to provide additional protections. Nothing contained herein shall be construed to limit the Department from taking any other action authorized by law, including, but not limited to, seeking damages under Section 56-227B, Idaho Code. (11-1-98)T

**201. -- 299. (RESERVED) DEFINITIONS.**

For purposes of Sections 200 through 233, unless the context clearly requires otherwise, the following words and terms shall have the following meanings: (11-1-98)T

01. Abuse or Abusive. Provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the Medicaid program, in reimbursement for services that are not

medically necessary or that fail to meet professionally recognized standards for health care, or in physical harm, pain or mental anguish to a medical assistance recipient. It also includes recipient practices that result in unnecessary cost to the Medicaid program, or recipient utilization practices which may endanger their personal health or safety.

(11-1-98)T

02. Claim. Any request or demand for payment of items or services under the state's medical assistance program, whether under a contract or otherwise.

(11-1-98)T

03. Exclusion. A specific person or provider will be precluded from directly or indirectly providing services and receiving reimbursement under Medicaid.

(11-1-98)T

04. Fraud or Fraudulent. An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person.

(11-1-98)T

05. Knowingly, Known, or With Knowledge. A person, with respect to information or an action, who: has actual knowledge of the information or an action; acts in deliberate ignorance of the truth or falsity of the information or the correctness or incorrectness of the action; or acts in reckless disregard of the truth or falsity of the information or the correctness or incorrectness of the action.

(11-1-98)T

06. Managing Employee. A general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of an institution, organization, or agency.

(11-1-98)T

07. Medical Assistance. Shall mean payments for part or all of the cost of such care and services allowable within the scope of Title XIX and XXI of the federal Social Security Act as amended as may be designated by Department rules.

(11-1-98)T

08. Ownership or Control Interest. A person or entity that: has an ownership interest totaling twenty-five percent (25%) or more in an entity; is an officer or director of an entity that is organized as a corporation; is a partner in an entity that is organized as a partnership; or is a managing member in an entity that is organized as a limited liability company.

(11-1-98)T

09. Person. An individual, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private.

(11-1-98)T

10. PRO. Any peer review organization.

(11-1-98)T

11. Program. The Medicaid Program or any part thereof, including Idaho's state plan.

(11-1-98)T

12. Recoup and Recoupment. That payment of provider claims will be withheld for the purpose of recovering funds which have been paid for items or services the Department has subsequently determined should not have been paid.

(11-1-98)T

13. Sanction. Any abatement or corrective action taken by the Department which is appealable under Section 224 of these rules.

(11-1-98)T

14. State Plan. The Medicaid Program as it exists in Idaho.

(11-1-98)T

15. Provider Suspension. The temporary barring of a person from participation in the Medicaid program pending further investigation or additional action.

(11-1-98)T

**202. DOCUMENTATION OF SERVICES.**

Providers shall generate documentation at the time of service sufficient to support each claim or service, and as required by rule, statute, or contract. Documentation shall be legible and consistent with professionally recognized standards. Documentation shall be retained for a period of five (5) years from the date the item or service was provided. The Department or its authorized agent shall be given immediate access to such documentation upon written request.

(11-1-98)T

**203. INVESTIGATION.**

Pursuant to Section 56-227(e), Idaho Code, the Department shall investigate and identify potential instances of fraud, abuse, or other misconduct by any person related to involvement in the program. Methods may include, but are not limited to, review of computerized reports, referrals to or from other agencies, health care providers or persons, or conducting audits and interviews, and issuing subpoenas to compel testimony or the production of records. Reviews may occur on either prepayment or postpayment basis. (11-1-98)T

**204. SURVEILLANCE AND UTILIZATION REVIEW (S/UR) COMMITTEE.**

Instances of suspected fraud, abuse, or other misconduct may be referred to a review committee organized by the Department. The committee shall consist of health professionals and other staff appointed by the Director or his designee. The committee may also consult with other professionals as determined necessary by the committee. The function of the committee will be to review and make recommendations concerning corrective action. (11-1-98)T

**205. DEPARTMENT ACTIONS.**

When an instance of fraud, abuse, or other misconduct is identified, the Department shall take action to correct the problem as provided in this section. Such corrective action may include, but is not limited to, denial of payment, recoupment, payment suspension, provider suspension, termination of provider agreement, imposition of civil monetary penalties, exclusion, recipient lock-in, referral for prosecution, or referral to state licensing boards. (11-1-98)T

**206. DENIAL OF PAYMENT.**

The Department shall refuse to pay any and all claims it determines are for items or services: (11-1-98)T

01. Not Provided or Not Medically Necessary. Not provided or not found by the Department to be medically necessary. (11-1-98)T

02. Documentation. Not documented to be provided or medically necessary. (11-1-98)T

03. Recognized Standards. Not provided in accordance with professionally recognized standards of health care. (11-1-98)T

04. Prohibited Physician Referral. Provided as a result of a prohibited physician referral under 42 CFR Part 411, Subpart J. (11-1-98)T

05. Rules or Provider Agreement. Provided contrary to these rules, IDAPA 16.03.10, "Rules Governing Medicaid Provider Reimbursement in Idaho," or the provider agreement. (11-1-98)T

**207. RECOUPMENT.**

The Department shall recoup the amount paid for items or services listed in Section 206 of these rules. If recoupment is impracticable, the Department may pursue any available legal remedies it may have. Interest shall accrue on overpayments at the statutory rate set forth in Section 28-22-104, Idaho Code, from the date of the final determination of the amount owed for items or services until the date of recovery. (11-1-98)T

**208. SUSPENSION OF PAYMENTS PENDING INVESTIGATION.**

In the event that the Department identifies a suspected case of fraud or abuse and the Department has reason to believe that payments made during the investigation may be difficult or impractical to recover, the Department may suspend or withhold payments on any pending or subsequently submitted claims while the provider continues to participate in the program. (11-1-98)T

**209. INTERIM SUSPENSION.**

In the event that the Department identifies a suspected case of fraud or abuse and it determines that it is necessary to prevent or avoid immediate danger to the public health or safety, the Department may summarily suspend a provider or employee of a provider pending investigation. Such a finding will be incorporated in the order. The provider shall be given notice but the order is effective when issued. (11-1-98)T

**210. APPEAL OF IMMEDIATE ACTION.**

When payments have been suspended or withheld or the provider's agreement is suspended pending investigation, the Department shall provide for a hearing within thirty (30) days of receipt of any timely filed notice of appeal.

(11-1-98)T

**211. TERMINATION OF PROVIDER STATUS.**

Pursuant to Section 56-209h, Idaho Code, the Department may terminate the provider agreement of, or otherwise deny provider status for a period of five (5) years from the date the Department's action becomes final to, any individual or entity who:

(11-1-98)T

01. Submits an Incorrect Claim. Submits a claim with knowledge that the claim is incorrect, including reporting costs as allowable which were known to be disallowed in a previous audit, unless the provider clearly indicates that the item is being claimed to establish the basis for an appeal and each disputed item or amount is specifically identified.

(11-1-98)T

02. Fraudulent Claim. Submits a fraudulent claim.

(11-1-98)T

03. Knowingly Makes a False Statement. Knowingly makes a false statement or representation of material fact in any document required to be maintained or submitted to the Department.

(11-1-98)T

04. Medically Unnecessary. Submits a claim for an item or service known to be medically unnecessary.

(11-1-98)T

05. Immediate Access to Documentation. Fails to provide, upon written request by the Department, immediate access to documentation required to be maintained.

(11-1-98)T

06. Non-Compliance With Rules and Regulations. Fails repeatedly or substantially to comply with the rules and regulations governing medical assistance payments.

(11-1-98)T

07. Violation of Material Term or Condition. Knowingly violates any material term or condition of its provider agreement.

(11-1-98)T

08. Failure to Repay. Has failed to repay, or was a managing employee or had an ownership or control interest in any entity that has failed to repay, any overpayments or claims previously found to have been obtained contrary to statute, rule, regulation, or provider agreement.

(11-1-98)T

09. Fraudulent or Abusive Conduct. Has been found, or was a managing employee in any entity which has been found, to have engaged in fraudulent conduct or abusive conduct in connection with the delivery of health care items or services.

(11-1-98)T

10. Failure to Meet Qualifications. Fails to meet the qualifications specifically required by rule or by any applicable licensing board.

(11-1-98)T

**212. CIVIL MONETARY PENALTIES.**

Pursuant to Section 56-209h, Idaho Code, the Department may assess civil monetary penalties against a provider, any officer, director, owner, and/or managing employee for conduct identified in Subsections 211.01 through 211.09 of these rules. The amount of penalties shall be up to one thousand dollars (\$1,000) for each item or service improperly claimed, except that in the case of multiple penalties the Department may reduce the penalties to not less than twenty-five percent (25%) of the amount of each item or service improperly claimed if an amount can be readily determined. Each line item of a claim, or cost on a cost report is considered a separate claim. These penalties are intended to be remedial, recovering costs of investigation and administrative review, and placing the costs associated with non-compliance on the offending provider.

(11-1-98)T

**213. MANDATORY EXCLUSIONS.**

The Department shall exclude any person that:

(11-1-98)T

01. Conviction of a Criminal Offense. Has been convicted of a criminal offense related to the delivery



of an item or service under a federal or any state health care program, including the performance of management or administrative services relating to the delivery of items or services under any such program. (11-1-98)T

02. Conviction of a Criminal Offense Related to Patient Neglect or Abuse. Has been convicted, under federal or state law, of a criminal offense related to the neglect or abuse of a patient, in connection with the delivery of a health care item or service, including any offense that the Department concludes entailed, or resulted in, neglect or abuse of patients. The conviction need not relate to a patient who is a program beneficiary. (11-1-98)T

03. Other Exclusions. Is identified by HCFA as having been excluded by another state or the Office of Inspector General or any person HCFA directs the Department to exclude. (11-1-98)T

**214. TERMS OF MANDATORY EXCLUSIONS.**

No mandatory exclusion imposed pursuant to Subsections 213.01 and 213.02 of these rules, will be for less than ten (10) years. The exclusion may exceed ten (10) years if aggravating factors are present. In the case of any mandatory exclusion of any person, if the individual has been convicted on two (2) or more previous occasions of one (1) or more offenses for which an exclusion may be effected under this section, the period of exclusion shall be permanent.

(11-1-98)T

**215. PERMISSIVE EXCLUSIONS.**

The Department may exclude any person or entity for a period of not less than one (1) year: (11-1-98)T

01. Endangerment of Health or Safety of a Patient. Where there has been a finding by the Department or peer review group or organization of endangering the health or safety of a patient. (11-1-98)T

02. Failure to Disclose or Make Available Records. That has failed or refused to disclose or make available to the Department, or its authorized agent, or any licensing board, any records maintained by the provider or required of the provider to be maintained, which the Department deems relevant to determining the appropriateness of payment. (11-1-98)T

03. Other Exclusions. For any reason for which the Secretary of Health and Human Services, or his designee, could exclude under 42 CFR Parts 1001 or 1003, unless otherwise provided in State Law. (11-1-98)T

**216. AGGRAVATING FACTORS.**

For purposes of lengthening the period of mandatory exclusions and permissive exclusions, the following factors may be considered. This is not intended to be an exhaustive list of factors which may be considered: (11-1-98)T

01. Financial Loss. The acts resulted in financial loss to the program of one thousand five hundred dollars (\$1,500) or more. The entire amount of financial loss to such program will be considered, including any amounts resulting from similar acts not adjudicated, regardless of whether full or partial restitution has been made to the program. (11-1-98)T

02. Time Acts Were Committed. The acts were committed over a period of one (1) year or more. (11-1-98)T

03. Adverse Impact. The acts had a significant adverse physical, mental or financial impact on one (1) or more program recipients or other individuals. (11-1-98)T

04. Length of Sentence. The length of any sentence imposed by the court related to the same act. (11-1-98)T

05. Prior Record. The excluded person has a prior criminal, civil or administrative sanction record. (11-1-98)T

**217. REFUSAL TO ENTER INTO AN AGREEMENT.**

The Department may refuse to enter into a provider agreement if the provider has been convicted of a felony under federal or state law or an offense or act which the Department determines is inconsistent with the best interests of the Medicaid recipients, or has failed to re-pay the Department monies which had been previously determined to have

been owed to the Department.

(11-1-98)T

**218. MISCELLANEOUS CORRECTIVE ACTIONS.**

The Department may take lesser action to investigate, monitor and correct suspected instances of fraud, abuse, over utilization, and other misconduct, including, but not limited to:

(11-1-98)T

01. Issuance of a Warning. Issuance of a warning letter describing the nature of suspected violations, and requesting an explanation of the problem and/or a warning that additional action may be taken if the action is not justified or discontinued.

(11-1-98)T

02. Review. Prepayment review of all or selected claims submitted by the provider with notice that claims failing to meet written guidelines will be denied.

(11-1-98)T

03. Referral. Referral to state licensing boards for review of quality of care and professional and ethical conduct.

(11-1-98)T

**219. DISCLOSURE OF CERTAIN PERSONS.**

Prior to entering into or renewing a provider agreement, or at any time upon written request by the Department, a provider must disclose to the Department the identity of any person described at 42 CFR 1001.1001. The Department may refuse to enter into or renew an agreement with any provider associated with any person so described. The Department may also refuse to enter into, or terminate, a provider agreement if it determines that the provider did not fully and accurately make any disclosure required under this Section.

(11-1-98)T

**220. PROVIDER NOTIFICATION.**

When the Department determines actions defined in Sections 205 through 217 of these rules are appropriate, it will send written notice of the decision to the provider or person. The notice will state the basis for the action, the length of the action, the effect of the action on that person's ability to provide services under state and federal programs, and the person's appeal rights.

(11-1-98)T

**221. NOTICE TO STATE LICENSING AUTHORITIES.**

The Department will promptly notify all appropriate licensing authorities having responsibility for licensing or certification of a Department action, and the facts and circumstances of that action. The Department may request certain action be taken and that the Department be informed of actions taken.

(11-1-98)T

**222. PUBLIC NOTICE.**

The Department will give notice of the action taken and the effective date to the public, appropriate beneficiaries, and may give notice as appropriate, including, but not limited to, related providers, the PRO, institutional providers, professional organizations, contractors, other health insurance payors, and other agencies or Departmental divisions.

(11-1-98)T

**223. DEPARTMENT OF HEALTH AND HUMAN SERVICES.**

The Department shall notify the Office of Inspector General within fifteen (15) days after a final action in which a person has been excluded or convicted of a criminal offense related to participation in the delivery of health care items or services under the program.

(11-1-98)T

**224. APPEALS.**

Any department action, may be appealed as a contested case pursuant to the IDAPA 16.05.03, "Rules Governing Contested Cases Proceedings and Declaratory Rulings". Unless action is taken pursuant to Sections 208 or 209 of these rules, an appeal stays the action until the time to appeal the Department's final order has expired.

(11-1-98)T

**225. RECIPIENT UTILIZATION CONTROL PROGRAM.**

This Program is designed to promote improved and cost efficient medical management of essential health care by monitoring recipient activities and taking action to correct abuses. Recipients demonstrating unreasonable patterns of utilization and/or exceeding reasonable levels of utilization shall be reviewed for restriction. The Department may require a recipient to designate a primary physician and/or a single pharmacy for exclusive provider services in an effort to protect the individual's health and safety, provide continuity of medical care, avoid duplication of services by providers, avoid inappropriate or unnecessary utilization of Medical Assistance, and avoid excessive utilization of

prescription medications. (11-1-98)T

**226. LOCK-IN DEFINED.**

Lock-in is the process of restricting the access of a recipient to a specific provider or providers. (11-1-98)T

**227. DEPARTMENT EVALUATION FOR LOCK-IN.**

The Department shall review recipients to determine if services are being utilized at a frequency or amount that results in a level of utilization or a pattern of services which is not medically necessary. Evaluation of utilization patterns can include, but is not limited to, review by the Department staff of medical records and/or computerized reports generated by the Department reflecting claims submitted for physician visits, drugs/prescriptions, outpatient and emergency room visits, lab and/or diagnostic procedures, hospital admissions, and referrals. (11-1-98)T

**228. CRITERIA FOR LOCK-IN.**

Since it is impossible to identify all possible patterns of over utilization, and since a particular pattern may be justified based on individual conditions, no specific criteria for lock-in will be developed. However, the Department may develop guidelines for purposes of uniformity. The guidelines will not be binding on the Department and will not limit or restrict the ability of the Department to impose lock-in when any pattern of over utilization is identified. The following utilization patterns may be considered abusive, not medically necessary, potentially endangering the recipient's health and safety, or over utilization of Medicaid services, and may result in the restriction of Medicaid reimbursement for a recipient to a single provider or providers: (11-1-98)T

01. Unnecessary Use of Providers or Services. Unnecessary use of providers or Medicaid services, including excessive provider visits. (11-1-98)T

02. Demonstrated Abusive Patterns. Recommendation from a medical professional or the recipient's primary care physician that the recipient has demonstrated abusive patterns and would benefit from the lock-in program. (11-1-98)T

03. Use of Emergency Room Facilities. Frequent use of emergency room facilities for non-emergent conditions. (11-1-98)T

04. Multiple Providers. Use of multiple providers. (11-1-98)T

05. Controlled Substances. Use of multiple controlled substances. (11-1-98)T

06. Prescribing Physicians or Pharmacies. Use of multiple prescribing physicians and/or pharmacies. (11-1-98)T

07. Prescription Drugs and Therapeutic Classes. Overlapping prescription drugs with the same therapeutic class. (11-1-98)T

08. Drug Abuse. Drug abuse and/or drug withdrawal diagnosis. (11-1-98)T

09. Drug Behavior. Drug seeking behavior as identified by a medical professional. (11-1-98)T

10. Other Abusive Utilization. Use of drugs or other Medicaid services determined to be abusive by the Department's medical or pharmacy consultant. (11-1-98)T

**229. LOCK-IN RECIPIENT NOTIFICATION.**

A recipient who has been designated by the Department for the Recipient Utilization Control Program will be notified in writing by the Department of the action and the recipient's right of appeal by means of a fair hearing. (11-1-98)T

**230. LOCK-IN PROCEDURES.**

01. Recipient Responsibilities. The recipient will be given thirty-five (35) days to contact the Regional Program Manager or designee and complete and sign the lock-in agreement form and select designated provider(s) in each area of misuse. (11-1-98)T

02. Appeal Stays Restriction. The Department shall not implement the recipient restriction if a valid appeal is noted pursuant to Section 232 of these rules. (11-1-98)T

03. Lock-In Duration. The Department shall restrict recipients to their designated providers for a time period determined by the Department. Upon review at the end of that period, lock-in may be extended for an additional period determined by the Department. (11-1-98)T

04. Payment to Providers. Payment to provider(s) other than the designated lock-in physician or pharmacy is limited to documented emergencies or written referrals from the primary physician. (11-1-98)T

05. Regional Programs Manager. The Regional Programs Manager, or designee will: (11-1-98)T

a. Clearly describe the recipient's appeal rights in accordance with the provisions in Section 232 of these rules; (11-1-98)T

b. Specify the effective date and length of the restriction; (11-1-98)T

c. Have the recipient choose a designated provider or providers; and (11-1-98)T

d. Mail the completed lock-in agreement to the Surveillance and Utilization Unit. Upon receipt of the lock-in agreement, the recipient's Medicaid services will be immediately restricted to the designated provider(s). (11-1-98)T

**231. PENALTIES FOR LOCK-IN NONCOMPLIANCE.**

If a recipient fails to respond to the notification of medical restriction(s), fails to sign the lock-in agreement, or fails to select a primary physician within the specified time period, the Medicaid benefits will be restricted to documented emergencies only. If a recipient continues to abuse and/or over utilize items or services after being identified for lock-in, the Department may terminate medical assistance benefits for a specified period of time as determined by the Department. (11-1-98)T

**232. APPEAL OF LOCK-IN.**

Department determinations to lock-in a recipient may be appealed in accordance with the fair hearings provisions of IDAPA 16.05.03, "Rules Governing Contested Cases Proceedings and Declaratory Rulings," of the Department. (11-1-98)T

**233. RECIPIENT EXPLANATION OF MEDICAID BENEFITS (REOMBS).**

01. Monthly Surveys. The Department will conduct monthly surveys of services rendered to Medical Assistance recipients using REOMBs. (11-1-98)T

02. Recipient Response. A Medical Assistance recipient is required to respond to the Department's explanation of medical benefits survey whenever he is aware of discrepancies. (11-1-98)T

03. Recipient Unable to Respond. If the recipient is unable, because of medical or physical limitations, to respond to the survey personally, then a responsible family member or friend can respond on his behalf. (11-1-98)T

04. Medicare-to-Medicaid Cross-over Claims. All claims processed through the cross-over system will be subject to these rules. All providers submitting cross-over claims must comply with the terms of their provider agreements. (11-1-98)T

**234. -- 299. (RESERVED).**

**495300. UTILIZATION CONTROL -- HOSPITALS.**

The policy, rules and regulations to be followed will be those cited in 42 CFR 456.50 through 42 CFR 456.145. (11-10-81)

**301. -- 399. (RESERVED).**

**~~200~~310. UTILIZATION CONTROL -- NURSING FACILITIES.**

The policy, rules and regulations to be followed must be those cited in 42 CFR 456.250 through 42 CFR 456.281.  
(7-1-94)

**311. -- 349. (RESERVED).**

**3050. UTILIZATION CONTROL -- INTERMEDIATE CARE FACILITIES/FOR THE MENTALLY RETARDED.**

The policy, rules and regulations to be followed must be those cited in 42 CFR 456.350 through 42 CFR 456.438.  
(7-1-94)

**351. -- 399. (RESERVED).**

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.06.03 - RULES AND MINIMUM STANDARDS GOVERNING ALCOHOL/DRUG ABUSE**  
**PREVENTION AND TREATMENT PROGRAMS**

**DOCKET NO. 16-0603-9801**

**NOTICE OF TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** These temporary rules are effective October 1, 1998.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 39-303 through 306 and 39-309, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than November 18, 1998.

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

**DESCRIPTIVE SUMMARY:** Temporary and proposed rule amendments adding prevention programs and services, requirements, standards and definitions and treatment program changes and deletions. The treatment program amendments are additional definitions, inclusion of services and financial eligibility requirements and reimbursement schedule, deletion of vocational program agreement requirement, change in program renewal period.

**TEMPORARY RULE JUSTIFICATION:** Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to protect public health, safety, or welfare and to confer a benefit.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact Patricia Getty at, (208) 334-6680.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before November 25, 1998.

DATED this 4th day of November, 1998.

Sherri Kovach  
Administrative Procedures Coordinator  
DHW - Division of Legal Services  
450 West State Street, 10th Floor  
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**THE FOLLOWING IS TEXT OF DOCKET NO. 16-0603-9801**

**IDAPA 16**  
**TITLE 06**  
**Chapter 03**

**16.06.03 - RULES AND MINIMUM STANDARDS GOVERNING**  
**ALCOHOL/DRUG ABUSE PREVENTION AND TREATMENT PROGRAMS**

**000. LEGAL AUTHORITY.**

Under authority vested in the Board of Health and Welfare by Title 39, Chapter 3, Idaho Code, and pursuant to the regulations issued by the United States Department of Health and Human Services concerning Alcohol and Drug Abuse and Mental Health Services, the Board of Health and Welfare adopts these rules and minimum standards for approval of alcohol/drug prevention and treatment programs in the state of Idaho, the establishment of services and financial eligibility criteria for persons applying for public treatment services, including early intervention, and the reimbursement of service fees. (4-26-95)(10-1-98)T

**001. TITLE, SCOPE, AND POLICY.**

01. Title. These rules are to be known as Idaho Department of Health and Welfare Rules, IDAPA 16.06.03, "Rules and Minimum Standards Governing Alcohol/Drug Abuse Prevention and Treatment Programs". (4-26-95)(10-1-98)T

02. Scope. These rules and minimum standards apply to programs in the state of Idaho that treat persons who use or are addicted to alcohol or drugs, including prescription drugs, to the extent that their health is impaired or endangered, or their social or economic functioning is disrupted. The purpose of this chapter is to set forth rules for the approval, denial, suspension or revocation of approval of alcohol/drug abuse treatment programs; to fix fees to be charged by the Department for inspections of approved programs or programs seeking approval; to set forth rules for the acceptance of persons by treatment programs; and to establish minimum standards of health, safety and quality for alcohol/drug abuse treatment programs. Section 165, "Prevention Services," addresses minimum requirements for prevention program approval. (4-26-95)(10-1-98)T

03. Policy. It is the policy of this State that alcoholics, intoxicated persons or drug addicts may not be subjected to criminal prosecution or incarceration solely because of their consumption of alcoholic beverages or addiction to drugs, but rather should be afforded treatment so that they may lead normal lives as productive members of society. The legislature continues to recognize the need for criminal sanctions for those who violate the provisions of the uniform controlled substances act, Section 39-301, Idaho Code. (4-26-95)

**(BREAK IN CONTINUITY OF SECTIONS)**

**003. ADMINISTRATIVE APPEALS.**

All contested cases shall be governed by the provisions of the IDAPA ~~04.11.01, "Idaho Rules of Procedure of the Office of the Attorney General"~~ 16.05.03, "Rules Governing Contested Cases Proceedings and Declaratory Rulings". (4-26-95)(10-1-98)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

The following terms are defined as they are used in these rules. Nothing in any of these definitions shall be read as being in conflict with definitions stated in Section 39-302, Idaho Code. (4-26-95)

01. Active Client. A client receiving services from an alcohol/drug abuse treatment program, who has had face to face contact with a qualified professional of the program within the preceding thirty (30) days. (4-26-95)

02. Aftercare. Services to provide support to an individual who is in a recovery program. (4-26-95)
03. Alternative Activities. Prevention services that provide opportunities for persons at risk for substance abuse to participate in activities that exclude alcohol, tobacco, and other drugs. (10-1-98)T
- ~~034.~~ Applicant. A person, agency, or organization who has filed an application to become an approved alcohol/drug treatment program under these rules. (4-26-95)
- ~~045.~~ Appropriate. A term used to indicate that a particular procedure, treatment, test or service is effective, is clearly indicated, is adequate in quantity and is provided in the best setting to meet the client's needs. (4-26-95)
- ~~056.~~ Approved Alcohol/Drug Abuse Treatment Program. An alcohol/drug abuse treatment program which provides activities to treat problems related to alcohol and drug use, which is approved in accordance with Section 39-305, Idaho Code, and these rules and minimum standards. Approved alcohol/drug abuse treatment programs in Idaho may be private for profit, private nonprofit, or operated by a governmental unit. (4-26-95)
- ~~067.~~ Assessment. The collection of data necessary to develop an individualized treatment strategy aimed at eliminating or reducing alcohol/drug consumption by a thorough evaluation of the person's physical, psychological, and social status, a determination of the environmental forces that contribute to the alcohol/drug using behavior, and examination of the person's support system and resources. (4-26-95)
- ~~078.~~ CARF. The Commission on Accreditation of Rehabilitation Facilities, 101 North Wilmot Road, Suite 500, Tucson, Arizona 85711. (4-26-95)
- ~~089.~~ Certificate of Approval. A certificate issued by the Department of Health and Welfare to an alcohol/drug abuse treatment program and facilities which it deems to be in compliance with these rules and minimum standards. ~~(4-26-95)~~(10-1-98)T
- ~~0910.~~ Certified, Credentialed or Licensed Alcohol/Drug Counselor. A counselor possessing voluntary certification or licensure by a recognized state or national alcohol/drug abuse/addiction counselor credentialing or certifying organization. Knowledge and skills may be acquired through a combination of specialized training, education and experience. (4-26-95)
11. Certified Prevention Specialist. A person recognized by the Idaho Board of Alcohol/Drug Counselor's Certification as a specialist in substance abuse education and the prevention of alcohol/drug abuse. This level of certification does not give authority to provide any form of counseling. (10-1-98)T
- ~~102.~~ Certified Chemical Dependency ~~Technician~~ Trainee (CDT). A person possessing voluntary apprentice-level certification or licensure by a recognized state or national alcohol/drug abuse/addiction credentialing or certifying organization. They are persons who do not meet the requirements for a certified or licensed alcohol/drug counselor, but do have sufficient alcohol/drug education and training to enable them to work with clients under the supervision of a qualified professional. ~~(4-26-95)~~(10-1-98)T
- ~~143.~~ Clinical Director. The program staff member responsible for oversight of all clinical aspects of the treatment services provided. (4-26-95)
- ~~124.~~ Client. A person receiving treatment for alcohol/drug use, abuse, or addiction. The term is synonymous with patient, resident, consumer or recipient of treatment. (4-26-95)
15. Community-based Process. Prevention services to involve and assist communities and social institutions to incorporate prevention into their existing services/work and to transfer the knowledge and skills required for them to deliver prevention services. (10-1-98)T
- ~~136.~~ Contract. A formal agreement with any organization, agency or individual specifying the services, personnel, products or space to be provided by, to or on behalf of the program and the consideration to be expended in



exchange. (4-26-95)

147. Counselor. A licensed professional counselor under Title 54, Chapter 34, Idaho Code, or an individual holding a masters degree in counseling from an approved college or university and who, for the purposes of these rules and minimum standards, also shall have specialized training, education, or experience in the treatment of persons with problems related to alcohol/drug use. (4-26-95)

158. Current. Any license, permit, certificate or other documentation of review or inspection of the program, its staff or facility sites which is dated within the preceding ~~twelve~~ twenty-four (~~12~~24) months. (4-26-95)(10-1-98)T

169. Department. The Idaho Department of Health and Welfare. (4-26-95)

~~17~~20. Detoxification Services. Services necessary to monitor individuals who are undergoing the systematic reduction of a toxic agent from the body during withdrawal. (4-26-95)

~~18~~21. Director. The Director of the Department of Health and Welfare. (4-26-95)

~~19~~22. Discharge. The point at which the client's active involvement in treatment is terminated, and the program no longer maintains active responsibility for the care of the client. (4-26-95)

23. Early Intervention Prevention Services. Organized activities that are designed for individuals within indicated populations who are experimenting with alcohol, tobacco, or other drugs or exhibit other risk related behaviors. The goal of services for these populations is to modify the risk behavior to prevent the need for substance abuse treatment. (10-1-98)T

24. Early Intervention Treatment Services. Services which may be delivered in a treatment setting and are designed to explore and address problems or risk factors that appear to be related to an individual's substance use. The goal of the service is to assist the individual in recognizing the harmful consequences of inappropriate substance use. (10-1-98)T

205. Education. Strategies that teach people critical information about alcohol and other drugs and the physical, emotional and social consequences of their use. (4-26-95)

246. Emergency Treatment. The immediate resolution of an acute physical, social, or psychological emergency caused by excessive or chronic alcohol/drug use. (4-26-95)

27. Environmental Activities. Services that focus on institutional and community change to prevent or reduce substance abuse within given geographical areas. (10-1-98)T

228. Executive Director. The individual appointed by the governing body to act on its behalf in the overall management of the program. Other job titles may include administrator, director, superintendent, program administrator, president, vice-president and executive vice-president. (4-26-95)

239. Facility. The building(s) including furnishings and fixtures, where persons with alcohol or drug problems receive services. This is synonymous with offices, clinic, or physical plant. (4-26-95)

~~24~~30. Governing Body. The individual(s), board of directors, group or agency that has ultimate authority and responsibility for the overall operation of an alcohol/drug abuse treatment program. (4-26-95)

~~25~~31. Guardian. A parent, trustee, conservator, committee or other individual or agency empowered by law to act on behalf of, or have responsibility for, a client or applicant for treatment services. (4-26-95)

~~26~~32. Halfway House Facility. A setting for services provided to persons who need the support of an alcohol/drug-free environment to maintain recovery. (4-26-95)

~~27~~33. Incapacitated. As a result of alcohol or drug use, a person is unconscious or his judgment is

otherwise so impaired that he is incapable of making a rational decision with respect to his need for treatment, or is incompetent to consent to treatment. (4-26-95)

~~2834.~~ Incompetent Person. A person who has been adjudged incompetent by a court of law having jurisdiction in the state of Idaho. (4-26-95)

~~2935.~~ Indirect Provision of Services. Services provided to clients through agreements a program has made with self-employed individuals or outside agencies/organizations. These agreements may be verbal commitments, contractual arrangements, letters of agreement, or memorandum of understanding. The services may be provided at the program's facility or at another location. (4-26-95)

~~306.~~ Individualized Treatment Plan. A written action plan, based on assessment data, that identifies the client's clinical needs, the strategy for providing services to meet those needs, treatment goals and objectives and the criteria for terminating the specified interventions. (4-26-95)

~~37.~~ Information Dissemination. Prevention services that inform the general public and others about the nature and extent of alcohol and other drug use, abuse and addition, its effect on individuals, families and communities, and available prevention and treatment programs and other resources. (10-1-98)T

~~348.~~ Inpatient Treatment Facility. A setting for the treatment of alcohol/drug problems that is also a licensed hospital as defined by Title 39, Chapter 13, Idaho Code. (4-26-95)

~~329.~~ Intoxicated Person. A person whose mental or physical functioning is impaired as a result of alcohol or drug use, including the inappropriate use of prescription drugs. (4-26-95)

~~3340.~~ Inventory of Services. The various program activities intended to cause or support the reduction or elimination of alcohol or drug use. These activities may include, but are not limited to, education, individual, group or family counseling, vocational rehabilitation services, medical and psychological services, and self-help groups. These services may include activities provided by the program through contractual arrangement with an outside organization. (4-26-95)

~~341.~~ JCAHO. The Joint Commission of American Health Care Organizations, 875 North Michigan Avenue, Chicago, Illinois 60611. (4-26-95)

~~3542.~~ Medically Trained Personnel. A licensed nurse, nurse practitioner, physician's assistant or licensed physician. (4-26-95)

~~3643.~~ Medical Screening. An examination done by a licensed nurse, nurse practitioner, physician's assistant or a licensed physician. (4-26-95)

~~3744.~~ Medical Supervision. Care provided under the direction of a licensed physician. (4-26-95)

~~3845.~~ NFPA. The National Fire Protection Association Batterymarch Park, Quincy, Massachusetts 02269. (4-26-95)

~~3946.~~ Nurse. A licensed professional nurse (R.N.), licensed practical nurse (L.P.N.) or nurse practitioner as defined by Title 54, Chapter 14, Idaho Code, and who, for the purposes of these rules and minimum standards, also shall have specialized training, education, and experience treating persons with problems related to alcohol/drug use or abuse. (4-26-95)

~~407.~~ Outpatient Treatment Facility. A setting for treatment activities of alcohol/drug problems that does not provide twenty-four (24) hour per day care. (4-26-95)

~~448.~~ Person. Any individual, firm, partnership, corporation, company, association, joint stock association, governmental unit or legal successor thereof. (4-26-95)

~~429.~~ Pharmacist. An individual licensed under Title 54, Chapter 17, Idaho Code, to prepare, preserve,

compound and dispense drugs and chemicals. (4-26-95)

4350. Physician. A person who is licensed to practice medicine in the state of Idaho in accordance with the provisions of the "Medical Practice Act", Section 54-1801, et seq., Idaho Code, and who, for the purposes of these rules and minimum standards, also shall have specialized training, education, and experience in alcohol/drug treatment. (4-26-95)

4451. Physician Assistant. A person who is licensed to render patient services under the direction of a physician in the State of Idaho in accordance with the provisions of the "Medical Practice Act," Section 54-1801, et seq., Idaho Code, and who, for the purposes of these rules and minimum standards, also shall have specialized training, education, and experience in alcohol/drug treatment. (4-26-95)

452. Policies. The rules adopted by the alcohol/drug abuse treatment program for the regulation of its internal affairs and its dealings with others. (4-26-95)

53. Prevention Services. Activities through programs to inform, educate, impart skills, and provide appropriate referrals. The prevention strategies used include information dissemination, education, alternatives, problem identification and referral, community-based process, and environmental. (10-1-98)T

54. Problem Identification and Referral. Prevention services to identify and assess those who are engaging in age inappropriate alcohol and tobacco use or the use of illicit drugs for the first time. The purpose of the services is to determine if their behavior can be reversed through education. This strategy does not include a determination of the need for treatment. (10-1-98)T

4655. Program. Refers to the organization offering alcohol/drug treatment services. It includes the organization's facilities, management, staffing pattern, and activities. A program receives a certificate of approval from the Department of Health and Welfare. (4-26-95)

4756. Program Evaluation. Processes primarily used by the program's administration to assess and monitor, on a regular or continuous basis, program operation, service delivery, quality assurance, and client outcome. (4-26-95)

4857. Provisional Approval. A temporary certificate of approval issued to a alcohol/drug abuse treatment program in operation at the time of promulgation of new rules, in order to afford reasonable time to comply with the new rules and to obtain approval, or which, while not in full compliance with rules, has no deficiencies which would endanger the health, safety and welfare of clients and is in the process of making the necessary changes to comply fully. (4-26-95)

4958. Psychologist. A person who is licensed in accordance with Title 54, Chapter 23, Idaho Code, to practice psychology and who, for the purposes of these rules and minimum standards, also shall have specialized training, education, and experience in alcohol/drug treatment. (4-26-95)

509. Qualified Professional. A member of one of the following professional disciplines, as defined herein: certified, credentialed or licensed alcohol and drug counselor, licensed professional counselor, licensed nurse, licensed physician, psychologist, counselor holding a master's degree from an approved college or university, licensed or certified social worker, or a person holding an associate degree in chemical dependency counseling who has applied for the Certified Alcohol/Drug Counselor (CADC), pending successful completion of the next testing cycle. (4-26-95)

5160. Quality Assurance. An ongoing evaluative process that not only ensures compliance with minimum standards but provides for continuous improvements in the quality of services. (4-26-95)

5261. Residential Treatment Facility. A setting for the treatment of alcohol/drug problems that provides twenty-four (24) hour per day living accommodations for clients. (4-26-95)

5362. Retrospective Care Review. Evaluative activities of the client file conducted when the individual is no longer an active client. (4-26-95)

~~5463.~~ Screening. A brief process conducted prior to admission to the drug/alcohol treatment program to determine if the individual meets the program's admission criteria. (4-26-95)

~~5564.~~ Service. The activities of a treatment program grouped according to a common goal or purpose. Examples of services are Treatment Services, Food Services, Social Services, Nursing Services, and Vocational Rehabilitation Services. (4-26-95)

~~565.~~ Social Worker. A person who is licensed to practice social work under the "Social Work Licensing Act", Title 54, Chapter 32, Idaho Code, and who, for the purposes of these rules and minimum standards also shall have specialized training, education, and experience in alcohol/drug treatment. (4-26-95)

~~5766.~~ Staff Member. A person who is directly employed by or assigned to the program on either a full-time or part-time basis. (4-26-95)

~~5867.~~ State Alcohol/Drug Authority. The Idaho Department of Health and Welfare is designated as the State Alcohol/Drug Authority in Section 39-303, Idaho Code. (4-26-95)

~~5968.~~ Treatment. Provision of individual therapy, group therapy, assessment, education, and other appropriate services. (4-26-95)

~~609.~~ Treatments. The activities of a program that have as a desired outcomes the elimination or reduction of alcohol and drug use and arresting, reversing, or retarding of problems associated with alcohol or drug abuse, or both. (4-26-95)

~~6470.~~ Treatment Supervisor. The person responsible for the overall management of all aspects of the provision of a treatment service or multiple treatment services. Examples of this are: adolescent treatment supervisor, adult treatment supervisor, residential treatment supervisor. (4-26-95)

~~6271.~~ Uniform Fire Code. Refers to the latest edition of the "Uniform Fire Code" according to Sections 41-253 and 41-254, Idaho Code, as minimum standards for the protection of life and property from fire and explosions. (4-26-95)

**(BREAK IN CONTINUITY OF SECTIONS)**

**020. GENERAL REQUIREMENTS.**

01. Certificate of Approval Required. A certificate of approval is required for an alcohol/drug abuse treatment program to directly or indirectly provide alcohol/drug treatment in the state of Idaho. A director or owner of a program must submit a completed application to the Department on forms provided by the Department along with an application fee prior to the date of the initial operation or expiration of the certificate of approval. Approval is required for an alcohol/drug abuse treatment program to be included on the Department's list of programs which meet the standards specified in these rules. Programs must be on the list in order to receive referrals from the Department or any law enforcement officer and to receive any kind of state or federal reimbursement. (4-26-95)

02. Approved Alcohol/Drug Abuse Treatment Programs. Pursuant to these rules, the Department may approve facilities that provide substance abuse treatment. These shall not be interpreted as being in conflict with Section 39-304, Idaho Code. These facilities include: (4-26-95)

- a. Inpatient Facility; (4-26-95)
- b. Residential Facility; (4-26-95)
- c. Outpatient Facility; (4-26-95)

d. Halfway House Facility; (4-26-95)

e. Detoxification Facility. (4-26-95)

03. Approval for a Program With Multiple Facilities. An alcohol/drug treatment program may be approved for more than one (1) facility type when that program complies with the specific requirements of each. Failure of any one (1) facility type to receive approval shall not affect the approval of other facility types. (4-26-95)

04. Approval for Multiple Facilities Attached to One (1) Program. An alcohol/drug abuse treatment program with more than one (1) facility type may submit one (1) application for all facilities located in the same Department region. (4-26-95)

a. The application shall ~~state the facility type for each site or sites~~ list each facility by type. (4-26-95)(10-1-98)T

b. A certificate of approval will be issued for each facility site. (4-26-95)

c. Failure of any one facility to receive approval shall not affect the approval of other facilities listed in the application. (4-26-95)

05. Programs Serving Adolescents. Any alcohol/drug abuse treatment program which provides treatment for persons under the age of eighteen (18) shall meet the following standards: (4-26-95)

a. Any alcohol/drug abuse treatment program which provides services to adolescents shall require all staff members having contact with adolescents to submit to a criminal history check in accordance with the provisions of the Idaho Department of Health and Welfare Rules, IDAPA 16.06.02, Section 611, "Rules Governing Standards for Child Care Licensing". (4-26-95)

b. Shall provide separate treatment activities for adults and adolescents. (4-26-95)

c. Any alcohol/drug abuse treatment program which provides twenty-four (24) hour per day residential care as an alternative to parental care and outpatient treatment for persons under the age of eighteen (18) shall also be licensed under the "Child Care Licensing Act", Title 39, Chapter 12, Idaho Code. (4-26-95)

i. Application for child care licensure is made to the Department of Health and Welfare. (4-26-95)

ii. Facilities licensed as hospitals under Title 39, Chapter 13, Idaho Code, are exempt from this requirement. (4-26-95)

06. Out-of-State Program and Facilities Approval. The Department will accept the approval and certification by the state in which a treatment program and facilities are located and utilized by Idaho clients. Programs operated within the state of Idaho, irrespective of the program headquarters, must meet the Department's approval and certification requirements. (10-1-98)T

**021. APPLICATION AND RENEWAL.**

01. Application for Approval. Application for approval of an alcohol/drug program shall be made to the State Alcohol/Drug Authority at least ninety (90) days prior to the planned opening date and shall include the following: (4-26-95)

a. Completed application form as required by the Department. Only one (1) application is required when an applicant is applying for approval of a program with multiple facilities, Subsection 020.03 of these rules, at multiple sites, Subsection 020.04 of these rules, as long as all facilities are located within the same Department region. (4-26-95)

b. Disclosure of ownership as required in Subsection 030.01 of these rules. (4-26-95)

- c. A copy of the most recent annual report. (4-26-95)
  - d. Copies of current, valid certificates, permits, or licenses as appropriate which may include:
    - i. Certificate of occupancy from the local building authority utilizing the latest edition of the Uniform Building Code according to Section 39-4109, Idaho Code, with a determination of either a Group R-1, Congregate Residence of more than ten (10) persons or a Group R-3, Congregate Residence of ten (10) persons or less for each facility site. (4-26-95)
    - ii. Certificate of fire inspection in accordance with the Uniform Fire Code as adopted by the state fire marshal, with authority delegated to the local fire chief. If an inspection cannot be provided by the local fire department, it is the responsibility of the program to arrange for and, if necessary, to pay for the inspection. (4-26-95)
    - iii. Food service permit from the district health department, if food is prepared and served at the facility. (4-26-95)
    - iv. Child care facility license, if required by Subsection 020.05 of these rules. (4-26-95)
    - v. JCAHO certificate, if accredited. (4-26-95)
    - vi. CARF certificate, if accredited. (4-26-95)
  - e. Documentation that the menus have been reviewed and approved by a registered dietician within the preceding twelve (12) months. (4-26-95)
  - f. The written plan for an inventory of treatments as described in Section 040 of these rules. (4-26-95)
  - g. If the real property in which the program is located is leased, a copy of the lease. (4-26-95)
  - h. Proof of insurance. Required insurance as specified by the Office of Insurance Management - Risk Management shall be in force and documented. The minimum insurance required for all programs is professional liability, commercial general liability, and comprehensive liability for all program vehicles. (10-1-98)T
02. Expiration. Approval of an alcohol/drug treatment program will, unless earlier suspended or revoked, expire on the date designated on the certificate of approval. (4-26-95)
03. Renewal. Application for renewal of approval of an alcohol/drug treatment program shall be made to the State Alcohol/Drug Authority at least ninety (90) days prior to the expiration date on the current certificate of approval and shall include the following: (4-26-95)
- a. Completed application and report forms as required by the Department. Only one (1) application and report form are required when an applicant is applying for approval of a program with multiple facilities, Subsection 020.03 of these rules, or sites as long as the facilities are located within the same Department region. (4-26-95)
  - b. Disclosure of any changes in ownership, governing body or administration not previously made known to the Department as required in Section 030 of these rules. (4-26-95)
  - c. A copy of the most recent annual report. (4-26-95)
  - d. Copies of current, valid certificates, permits, licenses or documentation, as listed in Subsection 021.01.d. of these rules. (4-26-95)
  - e. The written plan for an inventory of treatments and annual review as described in Section 040 of these rules. (4-26-95)

- f. If the real property in which the program is located is leased, a copy of the lease. (4-26-95)
  - g. Completed report form as required by the Department. (4-26-95)
  - h. Proof of insurance. Required insurance as specified by the Office of Insurance Management - Risk Management must be in force and documented. The minimum insurance required for all programs is professional liability, commercial general liability, and comprehensive liability for all program vehicles. (10-1-98)T
04. Acceptance of JCAHO Accreditation. The Department may accept JCAHO accreditation as satisfaction of approval requirements. (10-1-98)T
- 04~~5~~. Fee. A fee of one hundred dollars (\$100) shall be submitted with each application for approval or renewal. (4-26-95)

**022. REVIEW OF APPLICATION AND INSPECTION PROCESS.**

01. Departmental Review of Application. Upon receipt of the completed application for approval or renewal of an alcohol/drug abuse treatment program, the Department will review and advise the applicant within thirty (30) days if the application meets the requirements of Subsection 021.01 or 021.03 of these rules, whichever is appropriate. (4-26-95)
- a. If the application meets those requirements, the Department will schedule an inspection of the program at its site(s) to be conducted prior to the expiration date on the current certificate of approval. (4-26-95)
  - b. If the application does not meet those requirements, it will be returned to the applicant, with written recommendations for correction and completion. Reapplication may be filed as soon as the application is corrected, completed, or both. (4-26-95)
02. Program Facility Inspection. The program's facility(ies) inspection will be conducted by a ~~team of reviewers~~ person or persons appointed by the State Alcohol/Drug Authority. ~~(4-26-95)~~(10-1-98)T
- a. The facility(ies) of any applicant shall be open to Departmental inspection at any reasonable time necessary to determine compliance with these rules and with the "Alcoholism and Intoxication Treatment Act", Sections 39-301, et seq., Idaho Code. Inspections may be made without prior notice to the applicant. (4-26-95)
  - b. The applicant shall provide for review of, in compliance with federal and state confidentiality requirements, any and all client records, administrative records, financial statements, other state and local inspection reports, and other such documents required by the Department to make its determination, including any information that might have changed since the time the application was submitted. (4-26-95)
  - c. The applicant shall arrange for Departmental inspection of the premises of any of its contractors to determine compliance with applicable requirements of these rules and with the "Alcoholism and Intoxication Treatment Act", Sections 39-301, et seq., Idaho Code. (4-26-95)
03. Responsibility of the Department. Within thirty (30) days of the date of the inspection, a written report of findings shall be submitted to the applicant. (4-26-95)

**023. APPROVAL.**

01. Issuance of a Certificate of Approval. If the inspection shows that the program is in compliance with these rules and minimum standards, the Department will issue a certificate of approval for each ~~site~~ facility. ~~(4-26-95)~~(10-1-98)T
- a. The certificate shall specify the facility(ies). (4-26-95)
  - b. The certificate shall be valid for ~~one (1) year~~ twenty-four (24) months from the date of issuance,

unless earlier suspended or revoked.

~~(4-26-95)~~(10-1-98)T

02. Issuance of Provisional Certificate of Approval. The Department may issue a provisional certificate of approval for a period not to exceed six (6) months to the entire program or one of its facilities which, although there are deficiencies in relation to the standards, the program: (4-26-95)

a. Is in operation at the time of promulgation of new rules or is an applicant for renewal of approval and is benefiting its clients and is protecting their health, safety and welfare; or (4-26-95)

b. Is an applicant for initial approval and does not have deficiencies which would impair the health, safety and welfare of clients; or (4-26-95)

c. Had been approved at its last application, but has subsequently been found to be deficient in relation to the standards. (4-26-95)

d. Within thirty (30) days, the program must produce a written plan for achieving compliance with all requirements within the six (6) month period. (4-26-95)

e. Only one (1) provisional certificate of approval per facility shall be issued to a program within a twelve (12) month period. (4-26-95)

i. The facility being issued the provisional certificate of approval shall be clearly specified. (4-26-95)

ii. The issuance of a provisional certificate of approval for a facility, shall not affect the standing of any of the other approved facilities of the program. (4-26-95)

f. Programs issued a provisional certificate of approval, who fail to achieve compliance at the specified facility within the six (6) month period, shall have approval for that facility revoked. (4-26-95)

03. Posting of the Certificate of Approval. The alcohol/drug abuse treatment program certificate of approval or provisional certificate of approval shall be posted in a conspicuous place at each of the program's ~~sites~~ facilities. ~~(4-26-95)~~(10-1-98)T

04. Return of the Certificate of Approval. The certificate of approval or provisional certificate of approval issued to a alcohol/drug program is the property of the state of Idaho and shall be returned to the Department immediately upon the suspension or revocation of the approval, if the operation is discontinued by the voluntary action of the program or upon expiration of the certificate. (4-26-95)

#### **024. DENIAL, SUSPENSION, REVOCATION OF APPROVAL.**

01. Emergency Denial, Suspension, Revocation of Approval. The Department will deny approval or suspend approval, without prior notice, of any alcohol/drug program when persuaded by evidence that such conditions exist as to endanger the health or safety of any client. (4-26-95)

a. When a program holds multiple certificates of approval for facilities, the facility having the certificate of approval denied, suspended or revoked shall be clearly specified. (4-26-95)

b. The denial, suspension or revocation of a facility, shall not affect the approval of any of the other facilities of the program with multiple certificates of approval. (4-26-95)

02. Standard Denial, Suspension, Revocation of Approval. The Department may deny or suspend approval, giving fifteen (15) days notice prior to the effective date, to any alcohol/drug program when: (4-26-95)

a. The program or one or more of its facilities are not in compliance with applicable provisions of the Idaho Code, these rules and minimum standards, or any condition of a provisional certificate of approval. (4-26-95)

b. The applicant or the person proposed as administrator: (4-26-95)



i. Without good cause, fails to furnish any data, statistics, records or information requested by the Department, or files fraudulent returns thereof; or (4-26-95)

ii. Has been found guilty of or is under investigation for fraud, deceit, misrepresentation or dishonesty associated with the operation of an alcohol/drug abuse treatment program; or (4-26-95)

iii. Has been found guilty of or is under investigation for the commission of any felony, or alcohol/drug-related misdemeanor; or (4-26-95)

iv. Has failed to exercise fiscal accountability toward a client or the Department regarding payment for services; or (4-26-95)

v. Has knowingly permitted, aided or abetted the commission of any illegal act on the premises of an alcohol/drug abuse treatment program. (4-26-95)

c. The program changed location from the building identified in the application. Any change in location from the building requires the program to notify the Department and submit required documentation, thirty (30) days prior to the move, so the Department can inspect the new site facility. Failure to do so, renders the certificate of approval null and void, and the Department shall suspend it, pending submission of a new application and approval of the new site facility. ~~(4-26-95)~~(10-1-98)T

03. Hearings. Before denial or revocation of approval is final, the Department shall provide opportunity for a hearing as set forth in IDAPA 16.05.03, "Rules Governing Contested Cases Proceedings and Declaratory Rulings," at which time the applicant or executive director of the program may appear and show cause as to why the certificate of approval should not be denied or revoked. ~~(4-26-95)~~(10-1-98)T

a. The applicant or administrator will be notified by certified mail of the action to deny or revoke the certificate of approval and the reasons for denial or revocation. (4-26-95)

b. A hearing will be provided by the Director or his designee, if requested by the applicant or executive director within fifteen (15) days after receipt of the Department's notice that it intends to deny, suspend or revoke approval. (4-26-95)

c. On the basis of such a hearing, or upon failure of the applicant or executive director to present himself, the Director or his designee shall make known and specify by certified mail to the applicant his final decision to deny, revoke or grant the certificate of approval. (4-26-95)

d. The program may appeal the hearing decision by filing an appeal action with the district court within a twenty-eight (28) day period following the notification of the action by the Department. (4-26-95)

e. Pending final action, the status quo of the program shall be preserved, except: (4-26-95)

i. When conditions exist as to endanger the health or safety of any client in accordance with Subsection 024.01.a. of these rules; or (4-26-95)

ii. As the court otherwise orders in the public interest. (4-26-95)

04. Penalty. Upon notice of intent to deny, suspend or revoke approval of any alcohol/drug facility, for any of the reasons listed in Subsection 025.01 of these rules, the Department shall remove the program's facility from the list of approved treatment program facilities, pending a hearing. (4-26-95)

05. Notification of Action. The Department shall notify the public of the denial, suspension or revocation of approval of a program's facility. (4-26-95)

06. Reapplication for Approval. Following denial or revocation of approval of an alcohol/drug treatment program, the same applicant may reapply no sooner than one (1) year after the effective date of the action.

(4-26-95)

**(BREAK IN CONTINUITY OF SECTIONS)**

**050. STAFF COMPOSITION.**

The alcohol/drug treatment program shall have a sufficient number of treatment staff, qualified professionals, administrative and support staff to provide for the care and treatment of clients, in accordance with the standards set forth in this section. (4-26-95)

01. Supervision. Unless otherwise specified, programs providing treatment services shall provide for the following supervisory staff: (4-26-95)

a. Program Administrator. The program shall provide for a Program Administrator who is responsible for oversight of all services provided by the program. (4-26-95)

b. Treatment Supervisor. The program shall provide for a Treatment Supervisor who shall be located on-site at the treatment facility. The individual may supervise more than one treatment activity. This position can also be the Clinical Director, Program Administrator, or both. In those instances where these positions are combined, standards shall be met for all positions. (4-26-95)

c. Clinical Director. The program shall provide for a Clinical Director who can be the same individual or position as the Program Administrator, Treatment Supervisor, or both. In those instances where these positions are combined, all standards shall be met. (4-26-95)

02. Qualifications. Qualifications of the supervisory staff shall be verified through written documentation of work experience, education and classroom instruction. The supervisory staff shall meet the following standards: (4-26-95)

a. Program Administrator. Combination of education and experience as follows: (4-26-95)

i. Five (5) years full-time paid professional experience in alcohol/drug abuse treatment with at least one (1) year in administration; or (4-26-95)

ii. Bachelor's Degree in relevant field and four (4) years paid full-time professional experience with one (1) year in administration; or (4-26-95)

iii. Master's Degree and three (3) years paid full-time professional experience with one (1) year in administration; and (4-26-95)

iv. Knowledge and demonstrated competence in planning, budget, and other administrative duties. (4-26-95)

b. Treatment Supervisor. Combination of education and experience as follows: (4-26-95)

i. Five (5) years full-time paid professional experience in alcohol/drug abuse treatment with at least two (2) years in direct treatment; or (4-26-95)

ii. Bachelor's Degree in relevant field and four (4) years paid full-time professional experience with two (2) years in direct treatment; or (4-26-95)

iii. Master's Degree and three (3) years paid full-time professional experience with two (2) years in direct treatment; and (4-26-95)

iv. One (1) year paid full-time experience in supervision. (4-26-95)

- v. Knowledge and experience in treatment including client evaluation, counseling techniques, relapse prevention, case management, and family therapy. (4-26-95)
- c. Clinical Director. Combination of education and experience as follows: (4-26-95)
- i. Master's Degree and five (5) years paid full-time professional experience with three (3) years in direct alcohol-drug abuse treatment and one (1) year paid full-time experience in supervision; and (4-26-95)
- ii. Knowledge and experience demonstrating competence in treatment including client evaluation, counseling techniques, relapse prevention, case management, and family therapy. (4-26-95)
03. Clinical Supervision. The alcohol/drug abuse treatment program shall provide for supervision of all clinical activities by qualified professionals. (4-26-95)
- a. The written plan for an inventory of treatments provides and defines the procedure for the supervision of all clinical activities by qualified professionals. (4-26-95)
- b. All members of the treatment team who have been assigned specific treatment responsibilities shall be qualified by training or experience and demonstrated competence. (4-26-95)
- c. All members of the treatment team shall be supervised by qualified professionals who have a combination of education and experience sufficient to supervise such treatment. (4-26-95)
04. Sufficient Personnel Required. The alcohol/drug program shall employ the number and variety of staff necessary to provide the services and treatments offered by the program as a multidisciplinary team. (4-26-95)
- a. The program shall employ at least one (1) certified/ credentialed alcohol/drug counselor, or other qualified professional for each facility; or ~~(4-26-95)~~(10-1-98)T
- b. If the program arranges for the provision of counseling services, it shall have a valid written agreement or contract with a certified/credentialed alcohol/drug counselor. (4-26-95)
- c. When qualified professionals are not available or needed on a full-time basis, arrangements shall be made to obtain qualified professionals on an attending, continuing consultative or part-time basis. (4-26-95)
- d. Qualified administrative and support staff shall be sufficient in number and variety to support the operations of the program. (4-26-95)
05. Certified Prevention Specialist. By July 1, 2000, at least one (1) Certified Prevention Specialist shall be employed or under contract to supervise or coordinate and monitor prevention services provided directly or indirectly by the program. (10-1-98)T
06. JCAHO Accreditation. The Department may approve programs with JCAHO accreditation with the following provisions: (10-1-98)T
- a. Organization chart with proof that staff meet minimum credential or certification standards; (10-1-98)T
- b. Criminal history checks; (10-1-98)T
- c. TB checks; and (10-1-98)T
- d. Payment of fee. (10-1-98)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**071. --079: ~~(RESERVED)~~ APPLICATION FOR SERVICES.**

Any person may apply for public treatment services. The application shall be made in the manner and on forms specified by the Department. The determination of service and financial eligibility shall be made within ten (10) working days. The applicant may appeal the decision not to provide services or discontinue services within thirty-five (35) days from receipt of the denial notice. The applicant shall request a fair hearing in accordance with IDAPA 16.05.03, "Rules Governing Contested Cases Proceedings and Declaratory Rulings". (10-1-98)T

**072. SERVICE ELIGIBILITY.**

The need for services shall be determined in accordance with assessment criteria approved by the Department. The ability and willingness to utilize available services and other resources to meet treatment outcomes agreed upon by the applicant and program shall also be considered for continued eligibility. Availability of public treatment services will be determined by local, state and federal priorities and resources. (10-1-98)T

**073. FINANCIAL ELIGIBILITY.**

The determination of financial eligibility shall take into consideration the income, savings and other personal and real property of the person required to pay, as well as any support being furnished by him to any person whom he may be required by law to support. The determination shall be made for the month prior to application for services and as changes in income, resources or support obligations are reported but no less often than every six (6) months. Income shall not exceed one hundred seventy-five percent (175%) of the Federal Poverty Guidelines adjusted for household size. Applicants that provide information that is knowingly false may become ineligible for services for up to one (1) year. (10-1-98)T

01. Income. All income available to the person responsible for payment shall be considered unless exempt by law. (10-1-98)T

02. Resource. All savings, personal or real property available to the person responsible for payment shall not exceed five thousand dollars (\$5,000) with the following exclusions: (10-1-98)T

a. Personal residence. (10-1-98)T

b. One (1) vehicle used for transportation to and from work. (10-1-98)T

03. Support Payments. Any support payments ordered by the court and made by the person required to pay for treatment shall be subtracted from income. (10-1-98)T

**074. DEPARTMENT REIMBURSEMENT SCHEDULE.**

Programs shall be reimbursed for treatment services in accordance with the Department's reimbursement schedule. The schedule is based on one hundred percent (100%) to one hundred seventy-five percent (175%) of the current Federal Poverty Guidelines adjusted for the number of persons in the family household unit. The Department's reimbursement of treatment program fees ranges from ninety-five percent (95%) to thirty percent (30%) in increments of ninety-five percent (95%), ninety percent (90%), eighty percent (80%), seventy percent (70%), sixty percent (60%), fifty percent (50%), forty percent (40%), thirty-five percent (35%), and thirty percent (30%) by income. The treatment program shall collect the client's share of the fee. The reimbursement schedule shall be updated with each revision of the Federal Poverty Guidelines. (10-1-98)T

**075. PRIOR AUTHORIZATION OF SERVICES.**

No reimbursement of service fees shall be made unless treatment services have been authorized prior to their provision and in accordance with Department approved procedures with the following exceptions: (10-1-98)T

01. Screening. Authorization is not required. (10-1-98)T

02. Detoxification. Authorization is required by the close of business the day following admission. (10-1-98)T

**076. BILLING THIRD PARTIES FIRST.**

The treatment program shall bill insurance or other source of third party payments first before billing the Department. The proceeds shall be applied to the clients portion of the fee before billing the remaining balance to the Department.  
(10-1-98)T

**077. -- 079. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**110. CLIENT RECORDS.**

All alcohol/drug treatment facilities shall meet the client records standards set forth in this section. (4-26-95)

01. Written Client Record Required. The alcohol/drug abuse treatment program shall maintain a written client record on each client. All entries in the client record shall be signed and dated. Symbols and abbreviations shall be used only if they have been approved by the professional staff and only when there is an explanatory legend. Symbols and abbreviations shall not be used in the recording of diagnoses. (4-26-95)

a. The client record shall describe the client's situation at the time of admission and include the services provided, all progress notes, and the client's status at the time of discharge. At a minimum the record shall contain: (4-26-95)

i. Identifying data recorded on standardized forms including the client's name, home address, home telephone number, date of birth, gender, marital status, race or ethnic origin, next of kin or person to contact, educational level, type and place of employment, date of initial contact or admission to the program, source of any referral, legal status including relevant legal documents, name of personal physician, record of any known drug reactions or allergies, and other identifying data as indicated. These forms shall be dated with the date the information was gathered and signed by the staff member gathering the information. (4-26-95)

ii. All assessments completed with the client shall be dated, signed by the person providing the assessment, and give a full accounting of the findings of such assessments. (4-26-95)

iii. ~~All #Notes for each treatment session charting the client's progression through treatment.~~  
(4-26-95)(10-1-98)T

iv. All staffing notes pertaining to the client. (4-26-95)

v. All medical records regarding the client. These may include documentation of a medical examination, results of any medical tests, including urine tests performed by the program, and results of any medical tests reported to the program which were performed outside the program. (4-26-95)

b. The client record shall contain information on any unusual occurrences, such as: (4-26-95)

i. Treatment complications. (4-26-95)

ii. Accidents or injuries to the client. (4-26-95)

iii. Serious illness. (4-26-95)

iv. Procedures that place the client at risk or cause unusual pain. (4-26-95)

v. Death of the client. In the event of a client's death, the person must be pronounced dead in accordance with the provisions of Idaho law and a summation statement shall be entered in the record in the form of a discharge summary. (4-26-95)

c. The client record shall contain correspondence concerning the client's treatment and signed and dated notations of telephone calls concerning the client's treatment. (4-26-95)

d. The client record shall contain a plan for aftercare. (4-26-95)

e. A discharge summary shall be entered in the client record within a reasonable period of time not to exceed fifteen (15) days following discharge, as determined by the professional staff and policies or standards. (4-26-95)

02. Maintenance of Client Records. The executive director or designee shall maintain, control and supervise client records and is responsible for maintaining their quality in accordance with these standards. (4-26-95)

a. The active client's records shall be kept at the facility site where the client is being treated. (4-26-95)

b. Written policies and procedures govern the compilation, storage, dissemination and accessibility of client records. (4-26-95)

i. The policies and procedures shall be designed to assure that the program fulfills its responsibility to safeguard and protect client records against loss, unauthorized alteration or disclosure of information. (4-26-95)

ii. The policies and procedures shall be designed to assure that each client record contains all required information. (4-26-95)

iii. The policies and procedures shall be designed to assure uniformity in the format and forms used in client records. (4-26-95)

iv. The policies and procedures shall require entries in client records to be dated and signed. (4-26-95)

v. The program shall provide adequate facilities for the storage, processing and handling of client records, including suitably locked and secured rooms and files. (4-26-95)

vi. When a program stores client data in electronic or other types of automated information systems, adequate security measures shall prevent inadvertent or unauthorized access to such data. (4-26-95)

vii. Client records shall be maintained for a minimum of five (5) years from the date they are officially closed. (4-26-95)

c. A written policy shall govern the disposal of client records. Methods of disposal shall be designed to assure the confidentiality of client information. (4-26-95)

03. Confidentiality and Disclosure of Information. The program shall have written policies and procedures that protect the confidentiality of client records and govern the disclosure of information in the records. (4-26-95)

a. The policies and procedures shall specify the conditions under which information on applicants or clients may be disclosed and the procedures for releasing such information in accordance with public law. (4-26-95)

b. The program shall comply with federal regulations 42 CFR, Subchapter A, Part 2, regarding confidentiality of the records of alcohol and drug abuse clients. (4-26-95)

c. Nothing in any law or rule shall prevent the proper disclosure of information regarding child abuse, abandonment or neglect. Any suspected incidents of child abuse, abandonment or neglect shall be reported to the proper law enforcement agency or to the Department within twenty-four (24) hours in accordance with Idaho Child Protective Act, Section 16-1619 of the Idaho Code. (4-26-95)

**(BREAK IN CONTINUITY OF SECTIONS)**

**143. OUTPATIENT FACILITY.**

Alcohol/drug abuse treatment programs seeking approval for this facility type shall meet the standards set forth in this section, in addition to all other rules and minimum standards. (4-26-95)

01. Treatment Service. (4-26-95)
  - a. Services in outpatient facilities shall be provided at designated times. (4-26-95)
  - b. Counseling services shall be provided through the outpatient program on an individual, family or group basis. (4-26-95)
  - c. The services shall include educational instruction and written materials on the nature and effects of alcohol/drug use and abuse and the recovery process. (4-26-95)
  - d. The program shall provide or refer to adjunct services as indicated by client need. (4-26-95)
  - e. ~~There shall be in effect a current written agreement with a community vocational rehabilitation agency or private practitioner who is a vocational rehabilitation counselor.~~ (4-26-95)
02. Supervision. The program shall provide supervisory staff as described in Section 050 of these rules. (4-26-95)
03. Staffing. There shall be adequate, qualified staff to maintain appropriate client/staff ratios. (4-26-95)
  - a. There shall be one (1) qualified professional staff person for every thirty (30) clients. (4-26-95)
  - b. There shall be other staff sufficient to provide necessary support to the professional staff. (4-26-95)

**(BREAK IN CONTINUITY OF SECTIONS)**

**165. ~~996.~~ (RESERVED) PREVENTION SERVICES PROGRAMS.**

Prevention programs that contract with the Department must, at a minimum, meet the following standards and requirements: (10-1-98)T

01. Outcome Based. Prevention programs shall encompass current research, theory, and practice-based strategies that are outcome based. (10-1-98)T
02. Staff Experience and Training Requirements. Staff delivering prevention services shall meet the experience and knowledge requirements specified by the Department and be thoroughly oriented and trained to the program's policies, procedures, code of conduct, and expected practices. (10-1-98)T
03. Prevention Activities Shall Be Planned and Documented. All prevention activities shall be provided in accordance with a plan for each strategy and documented. (10-1-98)T
04. Evaluation of Programs Effectiveness. Prevention programs shall evaluate the effectiveness of their services, utilizing criteria such as consumer satisfaction, participant evaluations, consumer awareness of addiction and behavioral health, knowledge of resources and services, and service utilization. Program evaluation shall include the development and reporting of outcome measures related to demonstration of risk reduction and positive individual and community behavioral change. (10-1-98)T

**166. -- 996. (RESERVED).**

**IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE**  
**18.01.70 - RULE TO IMPLEMENT THE SMALL EMPLOYER HEALTH**  
**INSURANCE AVAILABILITY ACT PLAN DESIGN**

**DOCKET NO. 18-0170-9801**

**NOTICE OF TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** These temporary rules are effective July 1, 1998.

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rule making. These rules are proposed pursuant to the authority vested in the Director of the Department of Insurance under Title 41, Chapter 2, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than November 18, 1998.

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

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

To amend Appendix F, Preventive Services (Benefit Area A) to delete a reference to vision benefit. The reference to a vision benefit in Appendix F was the result of a clerical error.

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

Protection of the public health, safety and welfare.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning these proposed rules, contact Joan Krosch, Health Insurance Coordinator, at (208) 334-4250.

Anyone may submit written comments regarding these rules. All written comments and data concerning the rule must be directed to the undersigned and must be received on or before November 25, 1998

Dated this 18th day of September 1998.

Mary L. Hartung, Acting Director  
Idaho Department of Insurance  
700 West State Street - 3rd Floor  
P.O. Box 83720  
Boise, ID 83720-0043  
Telephone No. (208) 334-4250

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**THE FOLLOWING IS TEXT OF DOCKET NO. 18-0170-9801**



**APPENDIX F**  
**CATASTROPHIC BENEFIT PLAN**

**Schedule of Benefits**

<b>ALL BENEFIT AREAS</b>	
<b>Calendar Year Individual Benefit Maximum</b>	\$200,000
<b>Calendar Year Deductible</b>	
-Individual	\$2,000 or \$5,000
-Family	\$4,000 or \$10,000
Benefit Percentage	50%
Coinsurance Percentage	50%
<b>Calendar Year Out-of-Pocket Expense Limit</b>	
-Individual	\$10,000 for \$2,000 deductible \$13,000 for \$5,000 deductible
-Family	\$20,000 for \$4,000 deductible \$26,000 for \$10,000 deductible

Change to Higher Deductible - Charges previously applied to deductible amount for the same year are applied to the new deductible amount. New covered charges are applied to the new deductible amount. Change to lower deductible is not permitted. Charges applied to the deductible amount are not carried over to the next calendar year.

<b>Benefit Area A</b>	
<b>Preventive Services</b>	
Annual Benefit Maximum*	\$500
<del>Vision Annual Benefit Sub-cap*</del>	<del>\$75</del>
<b>Benefit Areas B2, C, D, E, F</b>	
<b>Emergency Ambulance Service</b>	
Annual Benefit Maximum*	\$750
<b>Durable Medical Equipment</b>	
Annual Benefit Maximum*	\$15,000
<b>Psychiatric and Substance Abuse Services</b>	
Annual Benefit Maximum*	\$5,000
<b>Benefit Area G</b>	
<b>Pharmacy Benefits</b>	
Copayment per Prescription	\$10
Benefit Percentage	100%**
Coinsurance	0%**

\* Maximum benefit payable during any twelve (12) month period.

\*\* 100% of the cost of the generic substitute (when available) is paid. The insured must pay the difference between the cost of a brand name drug and the generic substitute if a brand name drug is selected when a generic is available. If a generic substitute is not available, 100% of the cost of the brand name drug after the copayment is payable.

**IDAPA 20 - DEPARTMENT OF LANDS**  
**20.01.02 - ENVIRONMENTAL AUDIT PROTECTION RULES**  
**DOCKET NO. 20-0102-9601**  
**NOTICE OF RESCISSION OF RULE-MAKING**

**AUTHORITY:** In compliance with Section 67-5226, et seq., Idaho Code, notice is hereby given that this agency has rescinded the temporary rule-making previously initiated under this docket. The action is authorized pursuant to Section 67-5226(1(b)), Idaho Code, and Section 9-810(1).

**DESCRIPTIVE SUMMARY:** The following is a summary of the reasons for the rescindment:

In 1995 the Idaho Legislature enacted the Idaho Environmental Audit Protection Act (EAPA), prohibiting state environmental agencies from disclosing, or under certain circumstances compelling disclosure of, a qualifying environmental audit, and providing for limited immunity for violations of state environmental law identified in an audit. As directed by the EAPA, the Department of Lands adopted Environmental Audit Protection Rules. Under a sunset clause, the EAPA became null and void on December 31, 1997. Because there is no longer underlying statutory authority for the rules, this rulemaking action proposes the rescission of the Environmental Audit Protection Rules.

Negotiated rulemaking was not conducted because the nature of this rulemaking does not lend itself to the negotiated rulemaking process.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rescission, contact:

Perry Whittaker, Chief  
Bureau of Real Estate  
954 West Jefferson Street  
P.O. Box 83720  
Boise, Idaho 83720-0050  
(208) 334-0200 – Telephone  
(208) 334-3698 – Fax

DATED this 29th day of June 1998.

Stanley F. Hamilton, Director  
Idaho Department of Lands  
954 West Jefferson Street  
P.O. Box 83720  
Boise, Idaho 83720-0050  
(208) 334-0200 – Telephone  
(208) 334-2339 – Fax

**IDAPA 20 – DEPARTMENT OF LANDS**  
**20.01.02 - ENVIRONMENTAL AUDIT PROTECTION RULES**  
**DOCKET NO. 20-0102-9601**  
**NOTICE OF VACATION OF RULE-MAKING**

**AUTHORITY:** In compliance with Section 67-5226, et seq., Idaho Code, notice is hereby given that this agency has vacated the proposed rule-making previously initiated under this docket. The action is authorized pursuant to Section 67-5226(1(b)), Idaho Code, and Section 9-810(1).

**DESCRIPTIVE SUMMARY:** The following is a summary of the reasons for the vacation:

In 1995 the Idaho Legislature enacted the Idaho Environmental Audit Protection Act (EAPA), prohibiting state environmental agencies from disclosing, or under certain circumstances compelling disclosure of, a qualifying environmental audit, and providing for limited immunity for violations of state environmental law identified in an audit. As directed by the EAPA, the Department of Lands adopted Environmental Audit Protection Rules. Under a sunset clause, the EAPA became null and void on December 31, 1997. Because there is no longer underlying statutory authority for the rules, this rulemaking action proposes the vacation of the Environmental Audit Protection Rules.

Negotiated rulemaking was not conducted because the nature of this rulemaking does not lend itself to the negotiated rulemaking process.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this vacation, contact:

Perry Whittaker, Chief  
Bureau of Real Estate  
954 West Jefferson Street  
P.O. Box 83720  
Boise, Idaho 83720-0050  
(208) 334-0200 – Telephone  
(208) 334-3698 – Fax

DATED this 29th day of June 1998.

Stanley F. Hamilton, Director  
Idaho Department of Lands  
954 West Jefferson Street  
P.O. Box 83720  
Boise, Idaho 83720-0050  
(208) 334-0200 – Telephone  
(208) 334-2339 – Fax

**IDAPA 20 - DEPARTMENT OF LANDS**  
**20.03.04 - THE REGULATION OF BEDS, WATERS AND AIRSPACE OVER**  
**NAVIGABLE LAKES IN THE STATE OF IDAHO**

**DOCKET NO. 20-0304-9801**

**NOTICE OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective upon adjournment of the legislature, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 58-104(9) and 58-1301, et seq., Idaho Code.

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

The pending rule adopts the previously proposed rule with additional amendments in response to public comments to make typographical, transcriptional, and clerical corrections to the rules pursuant to Sections 67-5227 and 67-5228, Idaho Code. These corrections are being made to Sections 010, 015, 025, 030, 055, and 060, and are published in this Bulletin.

Only those sections that have corrections are printed in this Bulletin. The original text of the proposed rule was published in the Idaho Administrative Bulletin, July 1, 1998, Volume No. 98-7, pages 150 through 156.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact: Carl Washburn, Navigable Waters Specialist, Idaho Department of Lands, 1910 NW Boulevard, Suite 201, Coeur d'Alene, Idaho 83814-2615, (208) 769-1535 -- Telephone, (208) 769-1557 -- Fax.

Dated this 14th day of September, 1998.

Stanley F. Hamilton, Director  
Idaho Department of Lands  
954 West Jefferson Street  
P.O. Box 83720-0050  
Boise, Idaho 83720  
(208) 334-0200 -- Telephone  
(208) 334-3698 -- Fax

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**IDAPA 20**  
**TITLE 03**  
**Chapter 04**

**THE REGULATION OF BEDS, WATERS AND AIRSPACE OVER**  
**NAVIGABLE LAKES IN THE STATE OF IDAHO**

**There are substantive changes  
from the proposed rule text.**

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

**The complete original text was published in the  
Idaho Administrative Bulletin, Volume 98-7, July 1, 1998,  
pages 150 through 156.**

**This rule has been adopted as Final by the Agency  
and is now pending review by the  
1999 Idaho State Legislature  
for final adoption.**

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**THE FOLLOWING IS TEXT OF DOCKET NO. 20-0304-9801**

**010. DEFINITIONS.**

01. Adjacent. Contiguous or touching, and with regard to land or land ownership having a common boundary. (7-1-98)
02. Artificial High Water Mark. The high water elevation above the natural or ordinary high water mark resulting from construction of man-made dams or control works and impressing a new an higher vegetation line. (9-13-90)
03. Beds of Navigable Lakes. The lands lying under or below the "natural or ordinary high water mark" of a navigable lake and, for purposes of these rules only, the lands lying between the natural or ordinary high water mark and the artificial high water mark, if there be one. (9-13-90)
04. Board. The Board of Land Commissioners of the State of Idaho or its authorized representative. (9-13-90)
05. Commercial Navigational Encroachment. A navigational encroachment for the use of which patrons pay a fee. (9-13-90)
06. Community Docks. Structures that provide moorage facilities for more than two (2) adjacent riparian owners, or for a homeowners' association that is a riparian owner owning a riparian common area including riparian rights. A community dock shall not have less than fifty (50) feet combined shoreline frontage. A community dock shall be considered a commercial navigational aid for purposes of processing the application. (7-1-98)T
07. Contested Case Hearing. A formal hearing conducted pursuant to these rules, Idaho Code, Title 67, Chapter 52, and IDAPA 20.01.01, "Rules of Practice and Procedure Before the State Board of Land Commissioners". This type of hearing requires the formal designation of parties as set forth in the board's Rules of Practice and Procedure, IDAPA 20.01.01, and is conducted like a trial. Members of the public not wishing to formally intervene in contested case hearings as a party may nevertheless participate in such hearings as public witnesses pursuant to IDAPA 20.01.01. (7-1-98)
08. Department. The Department of Lands. (9-13-90)

09. Director. The director of the Department of Lands or his designee. (9-13-90)
10. Encroachments in Aid of Navigation. ~~And it~~ Includes docks, piers, floats, pilings, breakwaters, boat ramps, channels or basins, and other such aids to navigability on, in or above the beds or waters of a navigable lake. The term "encroachments in aid of navigation" may be used interchangeably herein with the term "navigational encroachments". (9-13-90)(\_\_\_\_)
11. Encroachments Not in Aid of Navigation. Includes all other encroachments on, in or above the beds or waters of a navigable lake, including landfills, bridges, utility and power lines, or other structures not constructed primarily for use in aid of navigation. It shall also include float homes moored permanently or in any one (1) place for a substantial period of time and used as either a permanent or temporary place of abode or residence. (9-13-90)
12. Line of Navigability. The dock line established by existing docks or if no dock line exists then such distance below the low water mark as will afford sufficient draft for water craft customarily in use on that particular body of water. (7-1-98)
13. Low Water Mark. That line or elevation on the bed of a lake marked or located by the average low water elevations over a period of years. (7-1-98)
14. Natural or Ordinary High Water Mark. The high water elevation in a lake over a period of years, uninfluenced by man made dams or works, at which elevation the water impresses a line on the soil by covering it for sufficient periods to deprive the soil of its vegetaiton and destroy its value for agricultural purposes. (9-13-90)
15. Navigable Lake. Any permanent body of relatively still or slack water, not privately owned and not a mere marsh and capable of accommodating boats or canoes and includes man-made reservoirs except where the jurisdiction thereof is asserted and exclusively assumed by a federal agency. (9-13-90)
16. Party. Each person or agency named or admitted as a party, or property seeking and entitled as of right to be admitted as a party to a hearing on an application for an encroachment. (9-13-90)
17. Person. Any individual, partnership, association, company, corporation, municipality, county, state or federal agency, or other entity. (9-13-90)
18. Plans. Maps, sketches, engineering drawings, aerial and other photographs, word descriptions, and specifications sufficient to describe the extent, nature and approximate location of the proposed encroachment and the proposed method of accomplishing the same. (9-13-90)
19. Public Meeting Hearing. The type of hearing where members of the public are allowed to comment, in written or oral form, on the record at a public meeting held at a set time and place and presided over by a designated representative of the Department who shall act as the hearing coordinator. This type of hearing is an informal opportunity for public comment and does not involve the presentation of witnesses, cross examination, oaths, or the rules of evidence. A record of any oral presentations at such hearings will be taken by the department by tape recorder. The hearing coordinator shall exercise such control at hearings as necessary to maintain order, decorum and common courtesy among the participants. (7-1-98)
20. Public Trust Doctrine. The duty of the State to its people to ensure that the use of public trust resources is consistent with identified public trust values. This common law doctrine has been interpreted by decisions of the Idaho Appellate Courts and is codified at Title 58, Chapter 12, Idaho Code. (7-1-98)T
21. Riparian or Littoral Rights. Only the rights of owners or lessees of land adjacent to navigable lakes and to maintain their adjacency to the lake and to make use of their rights as riparian or littoral owners or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters or to remove bed materials from state-owned lake. (9-13-90)
22. Riparian Owner. The fee owner of land immediately adjacent to a navigable lake, or his lessee, or the owner of riparian rights that have been segregated from the fee specifically by deed or grant. (7-1-98)

23. Single-family Dock. A structure providing moorage facilities that serves one (1) waterfront lot having frontage of no less than twenty-five (25) feet. (7-1-98)

24. Submerged Lands. The state-owned beds of navigable lakes, rivers and streams below the natural or ordinary high water marks. (9-13-90)

25. Two (2) family Dock. A structure providing moorage facilities that serves two (2) adjacent waterfront lots having a combined frontage of no less than fifty (50) feet. Usually the structure is located on the common riparian property line. (7-1-98)

26. Uplands. The land bordering on navigable lakes, rivers and streams. (9-13-90)

**(BREAK IN CONTINUITY OF SECTIONS)**

**015. DOCK STANDARDS AND FLOAT HOME REQUIREMENTS.**

01. Single-family and Two-family Docks. The following parameters govern the size and dimensions of single-family docks and two-family docks. (7-1-98)

a. No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark shall exceed ten (10) feet in width. (7-1-98)T

b. Total surface area waterward of the natural or ordinary or artificial high water mark shall not exceed seven hundred (700) square feet, including approach ramp and walkway for a single-family dock and shall not exceed one thousand one hundred (1,100) square feet, including approach ramp and walkway for a two-family dock. (7-1-98)

c. No portion of the docking facility shall extend more than one hundred (100) feet waterward of the natural or ordinary high water mark or if applicable the artificial high water mark or further than three (3) feet of water depth at low water. Shorter docks are encouraged whenever practical and new docks normally will be installed within the waterward extent of existing docks. (7-1-98)

d. Where feasible, all docks, piers or similar structures shall be constructed to protrude as nearly as possible perpendicular to the general shoreline. (7-1-98)

02. Variance. A variance to the standards contained in Subsection 015.01 may be approved by the director where it can be justified by site specific considerations such as the distance to the established line of navigation. (7-1-98)

03. Community Docks. (7-1-98)

a. No part of the structure waterward of the natural or ordinary high water mark of artificial high water mark shall exceed ten (10) feet in width. No part of the fixed portion of the dock shall exceed ten (10) feet in width. This includes fixed piers and approach ramps. (7-1-98)T

b. Moorage facilities will be limited to in size as a function of the length of shoreline dedicated to the community dock. The surface decking area of the community dock shall be limited to the product of the length of shoreline multiplied by seven (7) square feet per lineal feet or a minimum of seven hundred (700) square feet. However, the department, at its discretion, may limit the ultimate size when evaluating the proposal and public trust values. (7-1-98)(\_\_\_\_\_)

04. Breakwater. The breakwater shall be designed to counter wave actions of known wave heights and wave lengths. (7-1-98)

05. Mooring Buoys. Buoys shall be installed a minimum of thirty (30) feet away from riparian right lines of adjacent riparian owners. One (1) mooring buoy per riparian owner shall be allowed. (7-1-98)T
06. Float Home Construction, Alteration or Relocation. (7-1-98)
- a. Applications for permits to construct new float homes will not be accepted. (7-1-98)
- b. Applications for relocation of float homes existing prior to April 5, 1974, shall be subject to the following requirements: (7-1-98)
- i. Proof of ownership or long term lease of the uplands adjacent to the relocation site must be furnished to the department. (7-1-98)
- ii. The applicant must show that all wastes and waste water will be transported to shore disposal systems by a method approved by the Idaho Department of Health and Welfare or the appropriate local health authority. (7-1-98)
- c. Applications and approved local permits are required for replacement or enlargement of float homes. Adding another story to a float home shall require a permit. (7-1-98)

**(BREAK IN CONTINUITY OF SECTIONS)**

**025. PROCESSING OF APPLICATIONS FOR NONCOMMERCIAL SINGLE-FAMILY AND JOINT TWO-FAMILY NAVIGATIONAL ENCROACHMENTS WITHIN LINE OF NAVIGABILITY.**

01. Noncommercial Navigational Encroachments. Applications for navigational encroachments not extending beyond the line of navigability will be processed with a minimum of procedural requirements and shall not be denied except in the most unusual of circumstances. No newspaper publication, formal appearance by the applicant, or hearing is contemplated. (7-1-98)
02. Adjacent Riparian Owners. If a proposed encroachment referred to in Subsection 025.01 may infringe upon the riparian or littoral rights of an adjacent riparian owner, the director shall require the applicant to secure the written consent of the adjacent riparian owner. (7-1-98)
03. Notification of Adjacent Riparian Owners. If the signature of the adjacent riparian owner is not required, the department shall provide a copy of such application to the riparian owners immediately adjacent the applicant's property. Such adjacent riparian owner shall have twenty-one (21) days from the date of the mailing to provide comments to the department. This notice will be sent by regular mail to the adjacent riparian owners usual place of address, which, if not known, shall be the address shown on the records of the county treasurer or assessor. The applicant may submit the adjacent riparian owners' signatures as concurring with the application in lieu of the twenty-one (21) day notice period. (7-1-98)T
04. Written Objections. If an adjacent riparian owner files written objections to the application with the director within twenty-one (21) days from the date of service or receipt of notice of the completed application, the director shall fix a time and a place for hearing. In computing the time to object, the day of service or receipt of notice of the application shall not be counted. Objections must be received within the twenty-one (21) day period by mail or hand delivery in the office of the department in Coeur d'Alene. If the last day of the period is Saturday, Sunday or a legal holiday, the time within which to object shall run until the end of the first business day thereafter. (7-1-98)
05. Unusual Circumstances. Even though no objection is filed by an adjacent riparian owner to a noncommercial navigational encroachment, if the director deems it advisable because of the existence of unusual circumstances, he may require a hearing. (7-1-98)
06. Hearings. Hearings fixed by the director following an objection pursuant to Subsection 025.03 or



the Director's own determination pursuant to Subsection 025.04~~5~~ shall be fixed as to time and place, but no later than sixty (60) days from date of acceptance for filing of the application. At the hearing the applicant and any adjacent riparian owner filing timely objections may appear personally or through an authorized representative and present evidence. Said hearing shall be in the nature of a formal contested case hearing as defined herein by Subsection 010.07. In such hearings the Department shall act as the fact finder and not a party. The Director, at his discretion, shall designate a Department representative to sit as the hearing officer. Provided, however, that the parties may agree to informal disposition of an application by stipulation, agreed settlement, consent order, or other informal means.

(7-1-98)( )

07. Decision. The director shall, within forty-five (45) days after close of the hearing provided for in Subsections 025.04 or 025.05 render a final decision and give notice thereof to the parties appearing before him either personally or by certified or registered mail. The final decision shall be in writing.

(7-1-98)

08. Reconsideration. The applicant, if dissatisfied with the Director's decision, or other aggrieved party who participated at a hearing, shall have twenty (20) days from the date of the Director's decision to ~~request~~ request reconsideration thereof. If reconsideration is requested, the director shall set a time and place for a reconsideration hearing, not to exceed thirty (30) days from receipt of the request, at which time and place the person requesting reconsideration and the applicant may appear in person or through an authorized representative and present briefing and oral argument. Upon conclusion of reconsideration, the director shall by personal service or by registered or certified mail notify the applicant of his decision.

(7-1-98)( )

09. Judicial Review. Any applicant aggrieved by the Director's final decision on reconsideration, or other aggrieved party appearing at a reconsideration hearing, shall have a right to have the proceedings and final decision reviewed by the district court in the county where the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of the final decision. An adjacent riparian owner shall be required to deposit with the court a five hundred dollars (\$500) appeal bond insuring payment to the applicant of damages caused by delay and costs and expenses, including reasonable attorney fees, incurred on the appeal in the event the district court sustains the action of the director. The applicant need post no bond with the court to prosecute an appeal.

(7-1-98)( )

10. Disposition Without Hearing. In the event no objection to the proposed encroachment and request for hearing is filed with the director by an adjacent riparian owner under Subsection 025.04, or hearing ordered by the director under Subsection 025.05, then the director shall act upon an application filed under Subsection 025.01 as expeditiously as possible but no later than sixty (60) days from acceptance of the application and failure to act within such time shall constitute approval of the application.

(7-1-98)

**(BREAK IN CONTINUITY OF SECTIONS)**

**030. PROCESSING OF APPLICATIONS FOR ALL OTHER TYPES OF ENCROACHMENTS.**

01. Nonnavigational, Community and Commercial Navigational Encroachments. Upon receipt of an application for a nonnavigational encroachment, a community dock, or a commercial navigational encroachment, or for a navigational encroachment extending beyond the line of navigability, the director shall, within ten (10) days of acceptance for filing of the application, cause notice of the application to be published once a week for two (2) consecutive weeks in a newspaper of general circulation in the county in which the encroachment is proposed, however, that if the director orders a hearing on the application in the first instance within the time for publication of the notice, the director shall dispense with publication of the notice of the application and shall proceed instead to publish notice of the hearing as provided in Subsection 025.06. Applications for installation of buried or submerged water intake lines and utility lines shall be exempt from the newspaper publication process unless it is of a size that it requires an easement from the state of Idaho.

(7-1-98)

02. Encroachments Not in Aid of Navigation. Encroachments not in aid of navigation in navigable lakes will normally not be approved by the department and will be considered only in cases involving major environmental, economic, or social benefits to the general public. Approval under these circumstances is authorized only when consistent with the public trust doctrine and when there is not other feasible alternative with less impact on

public trust values.

(7-1-98)

03. Agency Comments. Upon request or when the director deems it appropriate, the director may furnish copies of the application and plans to federal, state and local agencies and to adjacent riparian owners, requesting comment on the likely effect of the proposed encroachment upon adjacent riparian property and lake value factors of navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty or water quality. Within thirty (30) days following receipt of a copy of the application and plans, such agencies shall notify the director of their opinions and recommendation, if any, for alternate plans determined by such agencies to be economically feasible to accomplish the purpose of the proposed encroachment without adversely affecting unreasonably adjacent riparian property or other lake value factors and public trust values.

(7-1-98)

04. Written Objections. Any resident of the state of Idaho, or a nonresident owner or lessee of real property adjacent to the lake in question, or any state, federal or local agency may, within thirty (30) days of the first date of publication file with the director written objections to the proposed encroachment and a request for a public hearing on the application. Any person or agency requesting a hearing on the application shall deposit and pay to the director an amount sufficient to cover the cost of publishing notice of hearing provided in Subsection ~~025-13~~ 030.05.

(7-1-98)( )

05. Hearing. Notice of the time and place of public hearing on the application shall be published by the director once a week for two (2) consecutive weeks in a newspaper in the county in which the encroachment is proposed, which hearing shall be held within ninety (90) days from the date the application is accepted for filing.

(7-1-98)

06. Hearing Participants. Any person may appear at the public hearing and present oral testimony. Written comments shall also be received by the Department.

(7-1-98)

07. Decision After Hearing. The director shall render a decision within forty-five (45) days after close of the public hearing. A copy of his decision shall be mailed to the applicant and to each person or agency appearing at the hearing and giving oral or written testimony in support of or in opposition to the proposed encroachment.

(7-1-98)

08. Decision Where No Hearing. In the event no objection to the proposed encroachment is filed with the director and no hearing is requested under Subsection 030.04, or ordered by the director under Subsection 030.01, the director, based upon his investigation and considering the economics of the navigational necessity, justification or benefit, public or private, of such proposed encroachment as well as its detrimental effects, if any, upon adjacent real property, lake value factors and public trust values such as navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty or water quality, shall prepare and forward to the applicant either personally or by registered or certified mail, his decision.

(7-1-98)

09. Reconsideration. The applicant, if dissatisfied with the Director's decision, or other aggrieved persons who appeared at a the public hearing and gave oral or written testimony, shall have twenty (20) days from the date of the Director's decision to ~~requires request~~ request reconsideration thereof. If reconsideration is required, the director shall set a time and place for a reconsideration hearing, not to exceed thirty (30) days from receipt of the request, at which time and place the person requesting reconsideration and the applicant may appear in person or through an authorized representative and present briefing and oral argument. Upon conclusion of reconsideration, the director shall by personal service or by registered or certified mail notify the applicant of his decision.

(7-1-98)( )

10. Judicial Review. Any applicant aggrieved by the Director's final decision on reconsideration or other aggrieved party appearing at a reconsideration hearing shall have the right to have the proceedings and final decision of the director reviewed by the district court in the county in which the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of the final decision. The applicant need post no bond with the court to prosecute an appeal. Any other aggrieved party shall be required to deposit with the court a five hundred dollar (\$500) appeal bond insuring payment to the applicant of damages caused by delay and costs and expenses, including reasonable attorney fees, incurred on the appeal in the event the district court sustains the action of the director.

(7-1-98)

11. Factors in Decision. In recognition of continuing private property ownership of lands lying between

the natural or ordinary high water mark and the artificial high water mark, the director shall consider unreasonable adverse effect upon adjacent property and undue interference with navigation the most important factors to be considered in granting or denying an application for either a nonnavigational encroachment or a commercial navigational encroachment not extending below the natural or ordinary high water mark. If no objections have been filed to the application and no hearing has been requested or ordered by the director, or, if upon reconsideration of a decision disallowing a permit, or following a hearing, the director determines that the benefits, whether public or private, to be derived from allowing such encroachment exceed its detrimental effects, he shall grant the permit.

(9-13-90)

**(BREAK IN CONTINUITY OF SECTIONS)**

**055. LEASES AND EASEMENTS.**

01. Lease or Easement Required. As a condition of the permit, the director may require a lease or easement for use of any part of the state-owned bed of the lake where such lease or easement is required in accordance with "Rules Governing Leases on State-owned Submerged Lands and Formerly Submerged Lands," IDAPA 20.03.17, or "Rules For Easements On State-owned Submerged Lands And Formerly Submerged Lands," IDAPA 20.03.09. A lease or easement may be required for uses including, but not limited to, commercial uses. Construction of an encroachment authorized by permit without first obtaining the required lease or easement shall constitute a trespass upon state-owned public trust lands. This rule is intended to grant the state recompense for the use of the state-owned bed of a navigable lake where reasonable and it is not intended that the director withhold or refuse to grant such lease or easement if in all other respects the proposed encroachment would be permitted.

(7-1-98)( )

02. Seawalls, Breakwaters, Quays. Seawalls, breakwaters and quays on or over state-owned beds, designed primarily to create additional land surface, will be authorized, if at all, by a permit and lease or easement, upon determination by the director to be an appropriate use of submerged lands.

(9-13-90)

**(BREAK IN CONTINUITY OF SECTIONS)**

**060. INSTALLATION.**

01. Installation Only After Permit Issued. Installation or construction of an encroachment may commence only when the permit is issued or when the director notifies the applicant in writing that installation may be commenced or when the director has failed to act in accordance with Subsection 025.0910.

(9-13-90)( )

02. Construction. Where feasible, all docks, piers or similar structures shall be constructed so as to protrude as nearly as possible at right angles to the general shoreline and shall be constructed so as not to interfere with docks, piers, or similar structures presently existing or likely to be installed to serve adjacent properties.

(9-13-90)

03. Water Access. Docks, piers or other works may extend to a length that will provide access to a water depth that will afford sufficient draft for water craft customarily in use on the particular body of water during the normal low water period, except that no structure may extend beyond the normal accepted line of navigability established through use unless additional length is authorized by permit or order of the director. If a normally accepted line of navigability has not been established through use, the director may from time to time as he deems necessary, after public hearing, designate a line of navigability for the purpose of effective administration of these rules.

(9-13-90)

04. Excavated or Dredged Channels. An excavated or dredged channel or basin to provide access to navigable waters may be authorized only when the applicant can show that it will provide a clear environmental, economic, or social benefit to the people of the state and will not result in any appreciable environmental degradation.

A channel or basin shall not be approved if it appears that the cumulative effect of the proposed channel or basin plus all reasonably foreseeable future basins or channels in the same navigable lake would be adverse to fisheries or water quality. Whenever practical, such channels or basins shall be located to serve more than one (1) riparian owner; provided, however, that no basin or channel will be approved that will provide access for watercraft to nonriparian owners. (7-1-98)

05. Presumed Adverse Effect. It will be presumed, subject to rebuttal, that commercial navigational encroachments, community docks or nonnavigational encroachments will have an adverse effect upon adjacent riparian property if located closer than twenty-five (25) feet to adjacent riparian property lines and that single-family and two-family navigational encroachments will have a like adverse effect upon adjacent riparian property if located closer than ten (10) feet from adjacent riparian property lines. Consent of the adjacent owner or owners will automatically rebut the presumption. (7-1-98)

06. Upland Vehicle Parking. Commercial navigational encroachments shall provide upland vehicle parking equivalent to one parking space per two (2) watercraft moorages. Local city or county ordinances governing parking requirements for marinas will apply if such have been enacted. (7-1-98)

07. Weather Conditions. Encroachments shall be designed and installed to withstand normally anticipated weather conditions in the area. Docks, piers and similar structures shall be adequately secured to pilings or anchors to prevent displacement due to ice, wind and waves. (9-13-90)

08. Markers. If the director determines that an encroachment is not of sufficient size to be readily seen or which poses a hazard to navigation, he shall specify in the permit approved markers be used to identify clearly the extent and size of the encroachment. (7-1-98)

09. Removal of Waste. Pilings, anchors and other structures, or material or waste at the site of the installation or reinstallation and not used as a part of the encroachment shall be removed from the water at the time of the installation or reinstallation to a point above normal flood water levels; provided, however, that this shall not be construed to prevent the use of trash booms for the temporary control of floatable piling ends and other floatable materials in a securely maintained trash boom, but approval for a trash boom shall be required as part of a permit. (9-13-90)

10. Seawalls or Breakwaters. Seawalls or breakwaters built upon the lake for use in aid of navigation will not be authorized below the level of normal low water without an extraordinary showing of need; provided, however that this shall not apply to floating breakwaters secured by piling and used to protect private property from recurring wind, wave or ice damage, or used to control traffic in busy areas of lakes. (9-13-90)

11. Compliance With Permit. All work shall be done in accordance with these rules, and the application submitted, and is subject to any condition specified in the permit. (7-1-98)

12. Overhead Clearance. Overhead clearance between the natural or ordinary high water mark or the artificial high water mark, if there be one, and the structure or wires must be sufficient to pass the largest vessel which may reasonably be anticipated to use the subject waters in the vicinity of the encroachment. In no case will the clearance be required to exceed twenty (20) feet unless the director shall determine after hearing that it is in the overall public interest that the clearance be in excess of twenty (20) feet. Irrespective of height above the water, approval of structures or wires presenting a hazard for boating or other water related activities may be conditioned upon adequate safety marking to show clearance and otherwise to warn the public of the hazard. The director shall specify in the permit the amount of overhead clearance and markings required. (9-13-90)

13. Overhead Clearance; Other Requirements. When the permit provides for overhead clearance or safety markings under Subsection 060.07, the director shall consider the applicable requirements of the U.S. Coast Guard, the Idaho Transportation Department, the Idaho Public Utilities Commission and any other applicable federal, state or local regulations. (7-1-98)

14. Sunset Clause. All activities authorized within the scope of the encroachment permit must be completed within three (3) years of issuance date. If the activities are not completed within three (3) years, the permit shall automatically expire unless it was previously revoked or otherwise extended. (7-1-98)

**IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION**  
**31.42.01 - RULES FOR TELEPHONE CORPORATIONS SUBJECT TO THE**  
**REGULATION OF THE IDAHO PUBLIC UTILITIES COMMISSION**  
**UNDER THE TELECOMMUNICATIONS ACT OF 1988**  
**(THE TITLE 62 TELEPHONE CORPORATION RULES)**

**DOCKET NO. 31-4201-9801**

**NOTICE OF PUBLIC HEARING**

**AUTHORITY:** In compliance with Section 67-5222, Idaho Code, notice is hereby given that this agency has scheduled a public hearing, thereby extending the period of public comment in this matter. The action is authorized pursuant to the Commission's legal authority under the Public Utilities Law, Chapters 1 through 7, Title 61, Idaho Code, and the Idaho Telecommunications Act of 1988, as amended, Chapter 6, Title 62, Idaho Code, and the specific authority of Sections 62-602, 62-606, 62-611, 62-614, 62-615, 62-616 and 62-622, Idaho Code.

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

**Monday, November 16, 1998, at 9:30 a.m.**  
**Public Utility Commission's Hearing Room**  
**472 West Washington Street, Boise, Idaho 83702-5983**

The hearing will be accessible to persons with disabilities. Requests for accommodations must be made to the Commission Secretary no later than five (5) days prior to the hearing at the address set out below.

**DESCRIPTIVE SUMMARY:** The summary of this action is found in Idaho Administrative Bulletin Vol. No. 98-10, October 7, 1998, pages 401 through 404.

**ASSISTANCE ON TECHNICAL QUESTIONS SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rules and the presentation of oral comments at the hearing, contact Cheri C. Copsey, Deputy Attorney General at (208) 334-0314. Anyone may submit written comments regarding this proposed rulemaking. To facilitate the Commission's consideration of oral comments, any written comments shall be filed with the undersigned on or before November 11, 1998. In addition, persons desiring to make an oral presentation at the public hearing may do so.

DATED this 21st day of October 1998.

Myrna J. Walters  
Commission Secretary  
Idaho Public Utilities Commission  
PO Box 83720  
Boise, ID 83720-0074  
Telephone: (208) 334-0338  
FAX: (208) 334-3762

Street Address for Express Mail:  
472 West Washington Street  
Boise, ID 83702-5983

**IDAPA 32 - PUBLIC WORKS CONTRACTORS LICENSE BOARD**  
**32.01.01 - RULES OF THE PUBLIC WORKS CONTRACTORS LICENSE BOARD**

**DOCKET NO. 32-0101-9801**

**NOTICE OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective upon adjournment of the legislature unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1907, Idaho Code.

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

The pending rules are being adopted as proposed. The original text of the proposed rule was published in the Idaho Administrative Bulletin, Volume No. 98-8, August 5, 1998 pages 189 through 199.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Nancy Michael, Registrar at (208) 327-7326.

DATED this 18th day of September, 1998.

Nancy Michael, Registrar  
Public Works Contractors License Board  
355 N. Orchard, Suite 107  
Mailing Address  
Boise, Idaho 83720-0073  
(208) 327-7326

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**IDAPA 32**  
**TITLE 01**  
**Chapter 01**

**RULES OF THE PUBLIC WORKS CONTRACTORS LICENSE BOARD**

**There are no substantive changes  
from the proposed rule text.**

**The original text was published in the Idaho  
Administrative Bulletin, Volume 98-8, August 5, 1998,  
pages 189 through 199.**

**This rule has been adopted as Final by the Agency  
and is now pending review by the  
1999 Idaho State Legislature for final adoption.**

**IDAPA 32 - PUBLIC WORKS CONTRACTORS LICENSE BOARD**

**32.01.02 - GENERAL RULES**

**DOCKET NO. 32-0102-9801**

**NOTICE OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective upon adjournment of the legislature, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 54-1907 and 67-5220 et seq., Idaho Code.

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

Chapter 32.01.02 of the "Public Works Contractors License Board," is being repealed. Many of the rules in Chapter 32.01.02 were duplications of other rules or statutes, were in conflict with other rules or statutes, or were unnecessary. The remaining rules from Chapter 32.01.02 were placed in Chapter 32.01.01 in Docket No. 32-0101-9801.

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the Idaho Administrative Bulletin, Volume No. 98-8, August 5, 1998, page 200.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Nancy Michael, (208) 327-7326.

DATED this 18th day of September, 1998.

Nancy Michael, Registrar  
Public Works Contractors License Board  
355 N. Orchard, Suite 107  
Mailing Address  
Boise, Idaho 83720-0073  
(208) 327-7326

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**IDAPA 32  
TITLE 01  
Chapter 02**

**GENERAL RULES**

**This chapter is being repealed in its entirety.**

**There are no substantive changes from the proposed rule text.**

**The original text was published in the Idaho  
Administrative Bulletin, Volume 98-8, August 5, 1998, page 200.**

**This rule has been adopted as Final by the Agency and is now pending review  
by the 1999 Idaho State Legislature for final adoption.**

**IDAPA 35 - STATE TAX COMMISSION**  
**35.01.01 - INCOME TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0101-9801**  
**NOTICE OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105 and 63-3039, Idaho Code.

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

The proposed rules have been amended in response to public comment and to make typographical, transcriptional, and clerical corrections to the rules, and are being amended pursuant to Section 67-5227, Idaho Code.

Proposed Income Tax Rule **582.05.b.** sentence 3, is amended as follows:

Because such a ~~corporation~~ financial institution is not deemed to be transacting business within Idaho, the ~~corporation~~ financial institution will have zero (0) for its Idaho numerators of the apportionment factors and will not have an Idaho corporate income tax liability.

Only the sections that have changes are printed in this bulletin. The original text of the proposed rules was published in the Idaho Administrative Bulletin, September 2, 1998, Volume No. 98-9, pages 84 through 111.

Various provisions of the State Tax Commission's Income Tax Administrative Rules contain references to the provisions of the Idaho Code upon which the rule is based or refer the reader to provisions of the Idaho Code which may be relevant or useful to more fully inform the reader about the subject the rule addresses. When the legislature amends parts of the Idaho Income Tax Act, the amendments often result in renumbering or relettering (or both) of sections or subsections of the Idaho Code that are referred to in the rule. This renumbering and relettering does not result in any substantive change to the statute, nor does it require any substantive change to the State Tax Commission's related administrative rule. However, the statutory reference in the rule is made obsolete and unhelpful to readers.

Given the non-discretionary and non-substantive nature of these changes the State Tax Commission, with the approval of the Rules Coordinator, is amending the specific references to the Idaho Code as shown in the rules listed below:

35.01.01.108.01 (Rule 108)	Section 63-3022( <del>h</del> ), Idaho Code
35.01.01.255.02 (Rule 255)	Section 63-3022 ( <del>h</del> <del>k</del> ), Idaho Code
35.01.01.255.02.a. (Rule 255)	Section 63-3022 ( <del>h</del> <del>k</del> ), Idaho Code

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Janice Boyd, (208) 334-7530.

DATED this 23rd day of September, 1998.

Janice Boyd, Tax Policy Specialist  
State Tax Commission  
800 Park, Plaza IV  
P. O. Box 36



Boise, ID 83722  
(208) 334-7530 FAX (208) 334-7844

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**IDAPA 35**  
**TITLE 01**  
**Chapter 01**

**INCOME TAX ADMINISTRATIVE RULES**

**There are substantive changes  
from the proposed rule text.**

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

**The complete original text was published in the  
Idaho Administrative Bulletin, Volume 98-9, September 2, 1998,  
pages 84 through 111.**

**This rule has been adopted as Final by the Agency  
and is now pending review by the  
1999 Idaho State Legislature  
for final adoption.**

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**582. SPECIAL RULES -- FINANCIAL INSTITUTIONS (Rule 582).**

Section 63-3027(s), Idaho Code.

(7-1-98)

01. Adoption of MTC Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions. This rule incorporates by reference the Multistate Tax Commission's "Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions" as adopted November 17, 1994, and found in "Model Regulations, Statutes and Guidelines, Uniformity Recommendation to the States," ~~May~~ September, 1996~~7~~ Edition, published by the MTC, 444 N. Capitol Street, NW, Suite 425, Washington, D.C. 20001. A copy of this regulation may be obtained from the Tax Commission offices. (7-1-98)(    )

02. Definition of Financial Institution. For purposes of Section 2(h) of the "Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions" the term financial institution means a person ~~subject to taxation under Chapter 30, Title 63, Idaho Code, which that~~ predominantly deals in money or moneyed capital in substantial competition with the business of national banks. ~~The term financial institution does not include a person described in Section 63-3023(b), Idaho Code.~~ For purposes of this rule, the following definitions apply: (7-1-98)(    )

a. Predominantly means over fifty percent (50%) of a taxpayer's gross income is attributable to dealings in money or moneyed capital in substantial competition with the business of national banks. Generally, the determination of predominance will be made based upon the division of gross income for the year in issue. However, the classification of a taxpayer as a financial institution or as a nonfinancial institution will not be changed based upon an occasional year in which its gross income does or does not exceed the fifty percent (50%) level. For the classification of a taxpayer as a financial or nonfinancial institution to be changed, there must be a shift in the

predominant character of the gross income for two (2) consecutive years and the average of the corporation's gross income in the current and the immediately preceding two (2) years must fail or satisfy the predominance test. If substantial amounts of gross income arise from an incidental or occasional sale of an asset of the taxpayer, such gross income shall be excluded for purposes of this subsection. For example, gross income from the sale of a headquarters building shall be excluded. (7-1-98)

b. Deals in means conducting transactions in the course of a trade or business on its own account as opposed to brokering the capital of others. (7-1-98)

c. Money or moneyed capital includes, but is not limited to, coin, cash, currency, mortgages, deeds of trust, conditional sales contracts, loans, commercial paper, installment notes, credit cards, and accounts receivable. (7-1-98)

d. In substantial competition means that a corporation and national banks both engage in seeking and securing in the same locality capital investment of the same class which are substantial in amount, even though the terms and conditions of the business transactions of the same class are not identical. It does not mean there must be competition as to all phases of the business of national banks, or competition as to all types of loans or all possible borrowers. The activities of a corporation need not be identical to those performed by a national bank in order to constitute substantial competition; It is sufficient if there is competition with some, but not all, bases of the business of national banks, or capital is invested in particular operations or investments like those of national banks. (7-1-98)

03. Entities Presumed to Be Financial Institutions. The following entities are presumed to be financial institutions as defined in Subsection 582.02: (7-1-98)

a. Any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended; (7-1-98)

b. A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, Title 12, Sections 21 et seq., United States Code; (7-1-98)

c. A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, Title 12, Section 1813(b)(1), United States Code; (7-1-98)

d. Any bank or thrift institution incorporated or organized under the laws of any state; (7-1-98)

e. Any corporation organized under the provisions of Title 12, Sections 611 to 631, United States Code; (7-1-98)

f. Any agency or branch of a foreign depository as defined in Title 12, Section 3101, United States Code; (7-1-98)

g. Any corporation whose voting stock is more than fifty percent (50%) owned, directly or indirectly, by any person or business entity described in Subsections 582.03.a. through 582.03.f. other than an insurance company exempted from tax by Section 41-405, Idaho Code; and (7-1-98)

h. A corporation or other business entity that, in the current tax year and immediately preceding two (2) tax years, derived more than fifty percent (50%) of its total gross income for financial accounting purposes from finance leases. For purposes of this subsection, a finance lease shall mean any lease transaction which is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. The phrase shall include any direct financing lease or leverage lease that meets the criteria of Financial Accounting Standards Board Statement No. 13, Accounting for Leases or any other lease that is accounted for as a financing lease by a lessor under generally accepted accounting principles. (7-1-98)

04. Exclusion From Rule. The Tax Commission is authorized to exclude any person from the application of Subsection 582.01 upon such person proving, by clear and convincing evidence, that the income-producing activity of such person is not in substantial competition with those persons described in Subsections

582.03.a. through 582.03.f. and 582.03.h.

(7-1-98)

05. Financial Institutions Described in Section 63-3023(b), Idaho Code. ( )

a. Transacting business. If an entity described in Section 63-3023(b), Idaho Code, does not maintain an office within Idaho and carries on only the activities listed in Section 63-3023(b)(1) through (4), Idaho Code, it is not deemed to be transacting business within Idaho. The fact that the entity is also a financial institution as defined in this rule will not change the result of Section 63-3023(b), Idaho Code. ( )

b. Calculation of apportionment factor attributes. A financial institution described in Section 63-3023(b), Idaho Code, that is a member of a unitary group of corporations with at least one member subject to Idaho income tax, shall include its property, payroll, and sales amounts in the denominators of the unitary group's factors. The calculation of the amount included in the denominators shall be computed as provided in the MTC Recommended Formula for Financial Institutions. Because such a financial institution is not deemed to be transacting business within Idaho, the financial institution will have zero (0) for its Idaho numerators of the apportionment factors and will not have an Idaho corporate income tax liability. A financial institution that is transacting business within Idaho shall compute its Idaho numerator and denominator amounts as provided in the MTC Recommended Formula for Financial Institutions. ( )

06. Act Defined. For purposes of applying the rules applicable to Section 63-3027, Idaho Code, references to [Act] in the MTC Recommended Formula for Financial Institutions refers to the Idaho Income Tax Act. ( )

07. The Apportionment Percentage. References in Section 1(b) of the MTC Recommended Formula for Financial Institutions to the computation of the apportionment percentage being determined by adding the taxpayer's receipts factor, property factor, and payroll factor together and dividing the sum by three (3) shall be replaced with adding two (2) times the taxpayer's sales factor, the taxpayer's property factor, and the taxpayer's payroll factor together and dividing the sum by four (4) as required by Section 63-3027(i), Idaho Code. ( )

**IDAPA 35 - STATE TAX COMMISSION**  
**35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0102-9801**  
**NOTICE OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

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

To facilitate the use of its administrative rules, the State Tax Commission has adopted a practice of using section numbers, for some chapters, as the identifying number of a rule. The State Tax Commission is implementing this practice for the rules associated with the Idaho Sales Tax Act by amending all sections of IDAPA 35.01.02, adding a parenthetical entry in the caption of the sections of the chapter identifying the section as a rule number identical with the section number. These changes are entirely nonsubstantive.

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the Idaho Administrative Bulletin, August 5, 1998, Volume 98-8, pages 201 through 211.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Jim Husted, (208) 334-7530.

DATED this 23rd day of September, 1998.

Jim Husted, Tax Policy Specialist  
State Tax Commission  
800 Park Blvd. Plaza IV  
P. O. Box 36, Boise, ID 83722  
(208) 334-7530, FAX (208) 334-7844

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**IDAPA 35**  
**TITLE 01**  
**Chapter 02**

**IDAHO SALES AND USE TAX ADMINISTRATIVE RULES**

**There are no substantive changes  
from the proposed rule text.**

**The original text was published in the Idaho  
Administrative Bulletin, Volume 98-8, August 5, 1998,  
pages 201 through 211.**

**This rule has been adopted as Final by the Agency  
and is now pending review by the  
1999 Idaho State Legislature for final adoption.**

**IDAPA 35 - STATE TAX COMMISSION**  
**35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0103-9803**  
**NOTICE OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105A, Idaho Code.

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

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the Idaho Administrative Bulletin, September 2, 1998, Volume 98-9, pages 115 through 134.

To facilitate the use of its administrative rules, the State Tax Commission has adopted in some rules' chapters a practice of using Section numbers of chapters of rules as the identifying number of a 'rule' with the number identified as a parenthetical entry following the Section heading of the chapter. The State Tax Commission is implementing this practice for its Idaho Property Tax Laws. Given the nonsubstantive nature of adding these references, the State Tax Commission is amending those sections of IDAPA 35.01.03 relating to Property Taxes by adding a parenthetical entry following the Section heading of the chapter identifying the section as a rule number identical with the section number.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Alan Dornfest, (208) 334-7530.

DATED this 23rd day of September, 1998.

Alan Dornfest, Tax Policy Specialist  
State Tax Commission  
800 Park Blvd. Plaza IV  
P. O. Box 36, Boise, ID 83722  
(208) 334-7530, FAX (208) 334-7844

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**IDAPA 35**  
**TITLE 01**  
**Chapter 03**

**PROPERTY TAX ADMINISTRATIVE RULES**

**There are no substantive changes  
from the proposed rule text.**

**The original text was published in the Idaho  
Administrative Bulletin, Volume 98-9, September 2, 1998,  
pages 115 through 134.**

**This rule has been adopted as Final by the Agency  
and is now pending review by the  
1999 Idaho State Legislature for final adoption.**

**IDAPA 35 - STATE TAX COMMISSION**  
**35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0103-9804**  
**NOTICE OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105A, Idaho Code.

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

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the Idaho Administrative Bulletin, September 2, 1998, Volume 98-9, pages 135 through 154.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Alan Dornfest, (208) 334-7530.

DATED this 23rd day of September, 1998.

Alan Dornfest, Tax Policy Specialist  
State Tax Commission  
800 Park Blvd. Plaza IV  
P. O. Box 36, Boise, ID 83722  
(208) 334-7530, FAX (208) 334-7844

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**IDAPA 35**  
**TITLE 01**  
**Chapter 03**

**PROPERTY TAX ADMINISTRATIVE RULES**

**There are no substantive changes  
from the proposed rule text.**

**The original text was published in the Idaho  
Administrative Bulletin, Volume 98-9, September 2, 1998,  
pages 135 through 154.**

**This rule has been adopted as Final by the Agency  
and is now pending review by the  
1999 Idaho State Legislature for final adoption.**

**IDAPA 35 - STATE TAX COMMISSION**  
**35.01.05 - MOTOR FUELS TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0105-9801**

**NOTICE OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

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

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the Idaho Administrative Bulletin, September 2, 1998, Volume 98-9, pages 155 through 157.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Randy Nilson, (208) 334-7530.

DATED this 23rd day of September, 1998.

Randy Nilson, Tax Policy Specialist  
State Tax Commission  
800 Park Blvd. Plaza IV  
P. O. Box 36, Boise, ID 83722  
(208) 334-7530, FAX (208) 334-7844

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**IDAPA 35**  
**TITLE 01**  
**Chapter 05**

**MOTOR FUELS TAX ADMINISTRATIVE RULES**

**There are no substantive changes  
from the proposed rule text.**

**The original text was published in the Idaho  
Administrative Bulletin, Volume 98-9, September 2, 1998,  
pages 155 through 157.**

**This rule has been adopted as Final by the Agency  
and is now pending review by the  
1999 Idaho State Legislature for final adoption.**

**IDAPA 35 - STATE TAX COMMISSION**  
**35.01.05 - MOTOR FUELS TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0105-9802**  
**NOTICE OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

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

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the Idaho Administrative Bulletin, September 2, 1998, Volume 98-9, pages 158 through 169.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Randy Nilson, (208) 334-7530.

DATED this 23rd day of September, 1998.

Randy Nilson, Tax Policy Specialist  
State Tax Commission  
800 Park Blvd. Plaza IV  
P. O. Box 36, Boise, ID 83722  
(208) 334-7530, FAX (208) 334-7844

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**IDAPA 35**  
**TITLE 01**  
**Chapter 05**

**MOTOR FUELS TAX ADMINISTRATIVE RULES**

**There are no substantive changes  
from the proposed rule text.**

**The original text was published in the Idaho  
Administrative Bulletin, Volume 98-9, September 2, 1998,  
pages 158 through 169.**

**This rule has been adopted as Final by the Agency  
and is now pending review by the  
1999 Idaho State Legislature for final adoption.**



**IDAPA 35 - STATE TAX COMMISSION**  
**35.01.06 - HOTEL/MOTEL ROOM AND CAMPGROUND**  
**SALES TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0106-9801**

**NOTICE OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

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

To facilitate the use of its administrative rules, the State Tax Commission has adopted a practice of using section numbers, for some chapters, as the identifying number of a rule. The State Tax Commission is implementing this practice for the rules associated with the Idaho Hotel/Motel Room and Campground Sales Taxes by amending all sections of IDAPA 35.01.06, adding a parenthetical entry in the caption of the sections of the chapter identifying the section as a rule number identical with the section number. These changes are entirely nonsubstantive.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the Idaho Administrative Bulletin, August 5, 1998, Volume 98-8, pages 212 through 214.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Jim Husted, (208) 334-7530.

DATED this 23rd day of September, 1998.

Jim Husted, Tax Policy Specialist  
State Tax Commission  
800 Park Blvd. Plaza IV  
P. O. Box 36, Boise, ID 83722  
(208) 334-7530, FAX (208) 334-7844

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**IDAPA 35**  
**TITLE 01**  
**Chapter 06**

**HOTEL/MOTEL ROOM AND CAMPGROUND**  
**SALES TAX ADMINISTRATIVE RULES**

**There are no substantive changes**  
**from the proposed rule text.**

**The original text was published in the Idaho**  
**Administrative Bulletin, Volume 98-8, August 5, 1998,**  
**pages 212 through 214.**

**This rule has been adopted as Final by the Agency**  
**and is now pending review by the**  
**1999 Idaho State Legislature for final adoption.**

**IDAPA 35 - STATE TAX COMMISSION**  
**35.02.01 - ADMINISTRATION AND ENFORCEMENT RULES**  
**DOCKET NO. 35-0201-9801**  
**NOTICE OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 1999 Idaho State Legislature for final adoption. The pending rule becomes final and effective July 1, 1999, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105 and 63-3039, Idaho Code.

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

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the Idaho Administrative Bulletin, September 2, 1998, Volume 98-9, pages 170 through 172.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Janice Boyd, (208) 334-7530.

DATED this 23rd day of September, 1998.

Janice Boyd, Tax Policy Specialist  
State Tax Commission  
800 Park Blvd. Plaza IV  
P. O. Box 36, Boise, ID 83722  
(208) 334-7530, FAX (208) 334-7844

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**IDAPA 35**  
**TITLE 02**  
**Chapter 01**

**ADMINISTRATION AND ENFORCEMENT RULES**

**There are no substantive changes  
from the proposed rule text.**

**The original text was published in the Idaho  
Administrative Bulletin, Volume 98-9, September 2, 1998,  
pages 170 through 172.**

**This rule has been adopted as Final by the Agency  
and is now pending review by the  
1999 Idaho State Legislature for final adoption.**

**IDAPA 38 - DEPARTMENT OF ADMINISTRATION**  
**38.05.01 - RULES OF THE DIVISION OF PURCHASING**  
**DOCKET NO. 38-0501-9801**

**NOTICE OF TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** These temporary rules are effective October 1, 1998.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rule-making procedures have been initiated. The action is authorized pursuant to Section(s) 67-2351 et seq., and 67-2356, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than November 18, 1998.

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

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

Create rules to allow Division of Purchasing to use electronic filings and electronic signatures. Rules are required by Electronic Signature and Filing Act, Section 67-2356, Idaho Code. Also makes grammatical corrections to existing rules.

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

Conferring a benefit.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Joanna L. Guilfooy, Deputy Attorney General, at (208) 334-3388.

Anyone may submit written comments regarding this temporary and proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before November 25, 1998.

DATED this 23rd day of September, 1998.

Joanna L. Guilfooy  
Deputy Attorney General  
Department of Administration  
650 W. State Street, Room 100  
P.O. Box 83720  
Boise, ID 83720-0003  
Ph: (208)334-3388  
Fax: (208) 334-2307

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**THE FOLLOWING IS TEXT OF DOCKET NO. 38-0501-9801**

**000. LEGAL AUTHORITY.**

In accordance with Sections 67-5717(10), ~~and 67-5732;~~ and 67-2356(1), Idaho Code, the Administrator for the Division of Purchasing hereby promulgates the following rules implementing the provisions of Chapter 57, Title 67, Idaho Code pertaining to the Division of Purchasing. ~~(3-20-97)~~(10-1-98)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**125. DELIVERY DATE.**

Whenever a specific delivery date has been stated, that date shall be an essential condition of the contract. If a contractor is unable to meet the delivery date, the contractor shall notify the buyer at the earliest possible time. The contractor shall include in such notification the projected revised delivery date. The buyer shall then have the option to accept such revised dates, or ~~cancel the contract and purchase elsewhere without waiving the state's claim for damages~~ provide notice in accordance with IDAPA 38.05.01, Subsection 120. ~~(3-20-97)~~(10-1-98)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**187. SMALL PURCHASES OF LESS THAN ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) OR LESS.**

To facilitate the purchase of minor items of property in the open market, if the property to be acquired can be expected to cost less than one thousand five hundred dollars (\$1,500), such property may be acquired as each agency sees fit, in accordance with good business practice and in the best interest of the state. ~~(3-20-97)~~(10-1-98)T

**188. SMALL PURCHASES OF SERVICES OF PROFESSIONALS AND CONSULTANTS.**

If it is expected that the services of professionals and consultants can be acquired for ~~less than~~ twenty-five thousand dollars (\$25,000) or less, the services may be acquired as each agency sees fit, in accordance with good business practice and in the best interest of the state. ~~(3-20-97)~~(10-1-98)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**261. INFORMATION TECHNOLOGY ACQUISITION PROCEDURES.**

01. Definition. For purposes of these rules, "Information Technology Property" includes, but is not limited to, all present and future forms of computer hardware, computer software, or services used or required for automated data processing, computer related office automation or telecommunications. "Telecommunications" means all present and future forms of hardware, software or services used or required for transmitting voice, data, video or images over a distance. (3-20-97)

02. Purpose. Specialized procedures for the purchase of Information Technology are necessary for several reasons, including: (3-20-97)

a. Information Technology changes so rapidly that product life cycles range from twelve (12) to thirty-six (36) months. (3-20-97)

b. Purchase of Information Technology requires significant technical understanding from both the agency and Purchasing Activity staff. (3-20-97)

c. Information Technology purchases in many cases requires a specialty process due to unique technologies or applications. (3-20-97)

03. Applicability. Unless otherwise indicated, the definitions in Section 67-5716, Idaho Code and these rules apply to these Information Technology acquisition procedures. In particular, these procedures apply to all agencies as the term "agency" is defined by these rules. (3-20-97)

04. Procedures. (3-20-97)

a. To facilitate the timely processing of Information Technology purchases and minimize delays, the requisitioning agency shall have completed the following actions PRIOR to submission of a requisition to the Division: (3-20-97)

i. Financially justified its requirements (including cost/benefit analysis, multi-year financial approvals, and identification of funding sources). (3-20-97)

ii. Ensured that the proposed acquisition meets applicable Information Technology standards, guidelines, conventions, and systems plans as adopted by the Information Technology Resource Management Council. (3-20-97)

iii. Adequately reviewed available functionally equal requirement options and be prepared to provide a justification to defend the specifications in the event of a vendor appeal. The agency will be responsible for hearing officer costs incurred by the Division in the event of any Administrative Procedures Act (APA) actions or appeals. (3-20-97)

iv. Submit with the requisition evidence of approval of the acquisition by the appropriate approving authority within the Department of Administration. (3-20-97)

b. For all Information Technology requirements regardless of dollar value, the Division will attempt to aggregate Information Technology purchases as much as possible. When appropriate it will establish statewide contracts to fulfill multiple agency needs and make these contracts available to local units of government. (3-20-97)

c. For Information Technology property not available through statewide contracts, if the property to be acquired may be reasonably expected to cost less than two thousand five hundred dollars (\$2,500), such property may be acquired as each agency sees fit, in accordance with good business practice and in the best interest of the state. For purchases of property (excluding services) exceeding two thousand five hundred dollars (\$2,500), but less than the limit established by Idaho Code for sealed bidding, the statutory provisions of Section 67-5718, Idaho Code will apply. (3-20-97)

d. For Information Technology services, if the services to be acquired may be reasonably expected to cost ~~less than~~ twenty-five thousand dollars (\$25,000) or less total through a "fixed, not to exceed price" contract not exceeding one (1) year in duration (including renewal or extension options), such services may be acquired as each agency sees fit, in accordance with good business practice and in the best interest of the state. Information Technology services exceeding the previous parameters or exceeding twenty-five thousand dollars (\$25,000) will be acquired in accordance with the statutory provisions of Section 67-5718, Idaho Code. (~~3-20-97~~)(10-1-98)JT

e. A team approach is recommended for all major acquisitions. This team will be composed of employees from different agencies and/or disciplines appropriate to the acquisition and will be convened by the Administrator or authorized designee. At a minimum it will include a representative from the Division and an Information Technology specialist. It will meet as needed to ensure that the most expedient and cost-effective method of purchasing is deployed, not to evaluate the need for, or judge the value of, the property or services requested. (3-20-97)

f. To encourage reductions in processes and administrative costs, solicitation documents, the specifications, and terms and conditions may provide options (e.g. bid expiration time frames, acceptance criteria, dollar thresholds, etc.) that allow other agencies to utilize the Information Technology bids of the original requesting agency without the necessity of issuing additional bids. Adequate notification to potential vendors of these extended use purchases will be included in the solicitation documents. (3-20-97)

g. Upon adequate notice to vendors and development of justifiable conditions, vendor pre-

qualification procedures may be utilized. Only vendors passing the pre-qualification process will be allowed to participate in the individual acquisition. (3-20-97)

05. Multiple Award for Information Technology Property. A multiple award is an award of an indefinite quantity contract for one or more similar items of Information Technology property or services to more than one (1) bidder or offeror, and agencies shall be obligated to order all of their actual, normal requirements for the specified property or services from those contractors. A multiple award contract shall be appropriate if more than one (1) contractor is necessary to furnish the types and quantities of property required by state agencies, to provide expeditious and cost-efficient acquisition of property or to enable state agencies to acquire property which is compatible with previously acquired property. No award of a contract to multiple bidders shall be made unless the Administrator makes a written determination that the multiple award satisfies one (1) or more of the statutory criteria. In making a multiple award, care shall be exercised to protect and promote the principles of competitive solicitation. Multiple awards shall not be made when a single award will meet the agency's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business, making available property or supplier selection to allow for use preference, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of bidders or offerors necessary to meet the valid requirements of using agencies. If a multiple award is anticipated prior to issuing a solicitation, the method of award shall be stated in the solicitation. (3-20-97)

**(BREAK IN CONTINUITY OF SECTIONS)**

**404. AVAILABILITY OF VENDOR REGISTRATION LIST.**

The vendor registration system shall be automated and will be updated no less frequently than once per month. The system will be reproduced accessible both by vendor name and commodity category. Copies of the system data shall be available to various state agencies on a cost basis electronically. All agencies under the jurisdiction of the Division are required to use the official centralized vendor registration system data. (3-20-97)(10-1-98)T

**701. -- 99900. (RESERVED).**

**901. DEFINITIONS.**

For purposes of IDAPA 38.05.01, Sections 901 through 907, and unless the context expressly indicates otherwise, the following terms shall have the definitions ascribed to them: (10-1-98)T

01. Electronically Signed Communication. A message that has been processed by a computer in such a manner that ties the message to the individual that signed the message. (10-1-98)T

02. Message. An electronic representation of information intended to serve as a written communication with the Division. (10-1-98)T

03. Person. A human being or any organization capable of signing a document, either legally or as a matter of fact. (10-1-98)T

04. Signer. The person who signs an electronically signed communication with the use of an acceptable technology to uniquely link the message with the person sending it. (10-1-98)T

05. Technology. The computer hardware or software-based method or process used to create electronic signatures. (10-1-98)T

**902. ELECTRONIC SIGNATURES MUST BE CREATED BY AN ACCEPTABLE TECHNOLOGY.**

For an electronic signature to be valid for use by the Division, it must be created by a technology that is accepted for use by the Division. (10-1-98)T

**903. CRITERIA TO DETERMINE IF AN ELECTRONIC SIGNATURE TECHNOLOGY WILL BE ACCEPTED FOR USE BY THE DIVISION.**

01. Criteria of Section 67-2354, Idaho Code. For a technology to be accepted for use by the Division, it must be capable of creating signatures that conform to requirements set forth in Section 67-2354, Idaho Code: (10-1-98)T

- a. It is unique to the person using it; (10-1-98)T
- b. It is capable of verification; and (10-1-98)T
- c. It conforms to IDAPA 38.05.01, Sections 901 through 903. (10-1-98)T

02. Additional Criteria. To be accepted, a technology must also be capable of creating a signature that: (10-1-98)T

- a. Is under the sole control of the person using it; (10-1-98)T
- b. Is linked to the data in such a manner that if the data are changed, the electronic signature is invalidated; and (10-1-98)T
- c. Meets ISO X.509 standards. (10-1-98)T

**904. PUBLIC KEY CRYPTOGRAPHY.**

The technology known as Public Key Cryptography is an accepted technology for use by the Division, provided that the electronic signature is created consistent with the provisions in this Section. (10-1-98)T

01. Definitions. For purposes of this Section 904, and unless the context expressly indicates otherwise, the following terms shall have the definitions ascribed to them. (10-1-98)T

a. Approved Certification Authority. The Certification Authority authorized and accepted by the State to issue certificates for electronic signature transactions involving the State. (10-1-98)T

b. Asymmetric Cryptosystem. A computer algorithm or series of algorithms that utilize(s) two (2) different keys with the following characteristics: (10-1-98)T

- i. One (1) key signs a given message; (10-1-98)T
- ii. One (1) key verifies a given message; and (10-1-98)T
- iii. The keys have the property that, knowing one (1) key, it is computationally infeasible to discover the other key. (10-1-98)T

c. Certificate. A computer-based record which: (10-1-98)T

i. Identifies the certification authority issuing it; (10-1-98)T

ii. Names or identifies its subscriber; (10-1-98)T

iii. Contains the subscriber's public key; (10-1-98)T

iv. Is electronically signed by the Certification Authority issuing or amending it; and (10-1-98)T

v. Conforms to widely-used industry standards. (10-1-98)T

d. Certification Authority. A person or entity that issues a certificate, or in the case of certain certification processes, certifies amendments to an existing certificate. (10-1-98)T

e. Key Pair. A private key and its corresponding public key in an asymmetric cryptosystem. The keys

have the property that the public key can verify an electronic signature that the private key creates. (10-1-98)T

f. Private Key. The key of a key pair used to create an electronic signature. (10-1-98)T

g. Proof of Identification. The document or documents presented to a Certification Authority to establish the identify of a subscriber. (10-1-98)T

h. Public Key. The key of a key pair used to verify an electronic signature. (10-1-98)T

i. Subscriber. A person who: (10-1-98)T

i. Is the subject listed in a certificate; (10-1-98)T

ii. Accepts the certificate; and (10-1-98)T

iii. Holds a private key which corresponds to a public key listed in that certificate. (10-1-98)T

02. Electronic Signature to Be "Unique". Section 67-2354, Idaho Code, requires that an electronic signature be "unique to the person using it". A public key-based electronic signature may be considered unique to the person using it, if: (10-1-98)T

a. The private key used to create the signature on the document is known only to the signer; (10-1-98)T

b. The electronic signature is created when a person runs a message through a one-way function, creating a message digest, then encrypting the resulting message digest using an asymmetrical cryptosystem and the signer's private key; (10-1-98)T

c. Although not all electronically signed communications will require the signer to obtain a certificate, the signer is capable of being issued a certificate to certify that he or she controls the key pair used to create the signature; and (10-1-98)T

d. It is computationally infeasible to derive the private key from knowledge of the public key. (10-1-98)T

03. Signature is Capable of Verification. Section 67-2354, Idaho Code, requires that an electronic signature be "capable of verification". A public-key based electronic signature is capable of verification if: (10-1-98)T

a. The acceptor of the electronically signed document can verify the document was electronically signed by using the signer's public key; (10-1-98)T

b. If a certificate is a required component of a transaction, that the certificate was valid; and (10-1-98)T

c. If a certificate is a required component of a transaction, the issuing Certification Authority identifies which, if any, form(s) of proof of identification it required of the signer prior to issuing the certificate. (10-1-98)T

04. Control of Electronic Signature. Subsection 903.02.a. requires that the electronic signature remain "under the sole control of the person using it". Whether a signature is accompanied by a certificate or not, the person who holds the key pair, or the subscriber identified in the certificate, assumes a duty to retain control of the private key and prevent its disclosure to any person not authorized to create the subscriber's electronic signature. (10-1-98)T

05. Electronic Signature Linked to the Message. The electronic signature must be linked to the message of the document in such a way that if the data are changed, the electronic signature is invalidated. (10-1-98)T



06. Electronic Signature Must Meet ISO X.509 Standards. The electronic signature must meet ISO X.509 standards. (10-1-98)T

07. Approved Certification Authority. The Division shall only accept certificates from an Approved Certification Authority. (10-1-98)T

**905. CRITERIA FOR THE DIVISION TO USE IN ACCEPTING ELECTRONIC SIGNATURES.**

01. Level of Security Used to Identify the Signer. Prior to accepting an electronic signature, the Division shall ensure that the level of security used to identify the signer of a document is sufficient for the transaction being conducted. (10-1-98)T

02. Level of Security Used to Transmit the Signature. Prior to accepting an electronic signature, the Division shall ensure that the level of security used to transmit the signature is sufficient for the transaction being conducted. (10-1-98)T

03. Certificate Format Used By the Signer. If a certificate is a required component of an electronic signature transaction, the Division shall ensure that the certificate format used by the signer is sufficient for the security and interoperability needs of the Division. (10-1-98)T

**906. RETENTION OF CERTIFICATES.**

All electronically signed messages received by the Division in accordance with this rule, as well as any information resources necessary to permit access to the message and to verify the electronic signature, shall be retained by the Division as necessary to comply with applicable law pertaining to records retention requirements for that message. (10-1-98)T

**907. ELECTRONIC SIGNATURE REPUDIATION.**

It is the responsibility of the rightful holder of the private key to maintain the private key's security. Repudiation of an electronically signed and transmitted message may only occur by the determination of a court of competent jurisdiction that the private key of the rightful holder was compromised through no fault of the rightful holder and without knowledge on the part of the rightful holder. It is the legal prerequisite for a claim of repudiation that the repudiator have filed a notice of revocation with the Certification Authority prior to making the claim of repudiation. (10-1-98)T

**908. -- 999. (RESERVED).**

**IDAPA 39 - DEPARTMENT OF TRANSPORTATION**  
**39.02.77 - RULE GOVERNING SOCIAL SECURITY NUMBERS ON APPLICATIONS FOR DRIVER'S**  
**LICENSES, IDENTIFICATION CARDS, AND INSTRUCTION PERMITS**

**DOCKET NO. 39-0277-9801**

**NOTICE OF TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** These temporary rules are effective September 4, 1998.

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rule-making. The action is authorized pursuant to Sections 67-5226 and 49-201(1), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. The request must be made on or before November 18, 1998.

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

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

This rule addresses a problem encountered by non-working resident aliens who do not have social security numbers. A social security number or verification of their status has been required to obtain an Idaho driver license, identification card, or instruction permit, per Section 49-306, Idaho Code. The rule makes it clear that verification of their status by the Social Security Administration is sufficient and also requires proof of legal presence in the United States.

**FEE SUMMARY:** The following is a specific description to the fee or charge imposed or increased: No fee.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mary York at (208) 334-8812.

Anyone may submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked or delivered on or before November 25, 1998.

DATED this 22nd day of September, 1998

Linda L. Emry  
Administrative Secretary  
Idaho Transportation Department  
P O Box 7129  
Boise ID 83707-1129  
Phone: (208) 334-8810  
Fax: (208) 334-8195

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**THE FOLLOWING IS TEXT OF DOCKET NO. 39-0277-9801**

**IDAPA 39**  
**TITLE 02**  
**Chapter 77**

**39.02.77 - RULE GOVERNING SOCIAL SECURITY NUMBERS ON APPLICATIONS FOR DRIVER'S  
LICENSES, IDENTIFICATION CARDS, AND INSTRUCTION PERMITS**

**000. LEGAL AUTHORITY.**

This rule is adopted under the authority of Sections 67-5226, and 49-201(1), Idaho Code. (9-4-98)T

**001. TITLE AND SCOPE.**

01. Title. The title of this chapter is IDAPA 39.02.77, "Rule Governing Social Security Numbers on Applications for Driver's Licenses, Identification Cards, and Instruction Permits". (9-4-98)T

02. Scope. This rule clarifies the requirement for social security numbers on applications for driver's licenses, identification cards, and instruction permits. (9-4-98)T

**002. WRITTEN INTERPRETATIONS.**

This chapter does not provide for written interpretations. (9-4-98)T

**003. ADMINISTRATIVE APPEALS.**

This chapter does not provide for administrative appeals. (9-4-98)T

**004. -- 009. (RESERVED).**

**010. GENERAL PROVISIONS.**

01. Social Security Requirement on Driver's License, Identification Card or Instruction Permit Applications. The requirement that an application for an Idaho driver's license, identification card, or instruction permit state the applicant's social security number only applies to applicants who have been assigned a social security number. (9-4-98)T

02. Written Verification from the Social Security Administration. An applicant for an Idaho driver's license, identification card, or instruction permit who has not been assigned a social security number must present written verification from the Social Security Administration that the applicant has not been assigned a social security number. (9-4-98)T

03. Proof of Legal Presence. An applicant for an Idaho driver's license, identification card, or instruction permit, who has not been assigned a social security number and who submits a birth certificate or other documentary evidence issued by an entity other than a state or the United States, shall also submit such proof as the department may require that the applicant is lawfully present in the United States. (9-4-98)T

**011. -- 999. (RESERVED).**

**IDAPA 39 - DEPARTMENT OF TRANSPORTATION**

**39.03.62 - RULES GOVERNING LOGO SIGNS**

**DOCKET NO. 39-0362-9801**

**NOTICE OF TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** These temporary rules are effective September 17, 1998.

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rule-making. The action is authorized pursuant to Sections 40-1004 and 40-1011, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. The request must be made on or before November 18, 1998.

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

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

This rule is being amended to revise the publication date of "Signs Giving Specific Information in the Interest of the Traveling Public Along the Interstate Highways and Other Fully Controlled Access Highways".

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: No fee.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Larry VanOver at (208) 334-8558.

Anyone may submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked or delivered on or before November 25, 1998.

DATED this 23rd day of September, 1998

Linda L. Emry  
Administrative Secretary  
Idaho Transportation Department  
P O Box 7129  
Boise ID 83707-1129  
Phone: (208) 334-8810  
Fax: (208) 334-8195

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**THE FOLLOWING IS TEXT OF DOCKET NO. 39-0362-9801**

**000. LEGAL AUTHORITY.**

~~The Idaho Transportation Board adopts this rule Under the authority of Sections 40-312, 40-313, 40-1911(5) and 67-5203A, Idaho Code, and U.S.C. Title 23, Chapter 1, 625 and 655, the Idaho Transportation Board incorporates by reference its May, 1989 publication entitled "Signs Giving Specific Information in the Interest of the Traveling Public Along the Interstate Highways and Other Fully Controlled Access Facilities". (7-20-89)(9-17-98)T~~

**001. TITLE AND SCOPE.**

01. Title. These rules shall be cited as Rules of the Idaho Transportation Department, IDAPA 39.03.62, "Rules Governing Logo Signs". (9-17-98)T

02. Scope. The publication provides regulations for the installation and administration of motorist information signs giving specific information in the interest of the traveling public informing motorists of Gas, Food, Lodging and Camping with their related tourist services which are available at facilities accessible to and from eligible interchanges. (~~2-17-87~~)(9-17-98)T

**002. INCORPORATION BY REFERENCE.**

The Idaho Transportation Board incorporates by reference its September 1998 publication titled "Signs Giving Specific Information in the Interest of the Traveling Public Along the Interstate Highways and Other Fully Controlled Access Highways". (9-17-98)T

**0023. -- 9099. (RESERVED).**

**100. GENERAL.**

Copies of the program and applications for signing may be obtained from the Department's Traffic Supervisor at the Headquarters Office in Boise or from a District Office in Coeur d'Alene, Lewiston, Boise, Shoshone, Pocatello, or Rigby. (9-17-98)T

**101. -- 999. (RESERVED).**

# Subjects Affected Index

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# Bulletin Summary of Proposed Rule-Making

## PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the new issue of the state Administrative Bulletin.

### **IDAPA 05 - DEPARTMENT OF JUVENILE CORRECTIONS** **P. O. Box 83720, Boise, Idaho 83720-0285**

Docket No. **05-0101-9801**, Rules of the Department of Juvenile Corrections. Makes nonsubstantive corrections. Comment By: 11/25/98.

Docket No. **05-0101-9802**, Rules of the Department of Juvenile Corrections. Establishes conditions of care, safety and supervision for juveniles committed to the Department and assigned to private providers. Comment By: 11/25/98.

### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE** **P. O. Box 83720, Boise, ID 83720-0036**

Docket No. **16-0108-9801**, Idaho Rules for Public Drinking Water Systems. Requires that new community and non-transient non-community public water systems provide evidence of financial, technical, and managerial capacity when applying for plan approval; provides criteria for evaluating water system capacity; prohibits construction of new water system until capacity requirements are met and applies to developers of rural subdivisions and business interests for projects not served by an existing public water system. Comment By: 11/25/98.

Docket No. **16-0304-9802**, Rules Governing the Food Stamp Program in Idaho. Sanctions the individual not complying with work requirements rather than household; increases time limited benefits for certain qualified aliens; disqualifies persons convicted of drug felonies if the felony occurred after August 22, 1996; prohibits discrimination; increases excess shelter deduction, monthly gross and net income limits, and monthly thrifty food plan allotment; adds good cause criteria for non-cooperation with Child Support Enforcement; deletes obsolete references. Comment By: 11/25/98.

Docket No. **16-0309-9806**, Rules Governing Medical Assistance. Modifies rule to be consistent with Section 56-209h, Idaho Code and clarifies the criteria for the Lock-in Program. Comment By: 11/25/98.

Docket No. **16-0603-9801**, Rules and Minimum Standards Governing Alcohol/Drug Abuse Prevention and Treatment Programs. Adds prevention programs and services, requirements, standards and definitions and financial eligibility requirements and reimbursement schedule; deletes vocational program agreement requirement; change in program renewal period. Comment By: 11/25/98.

### **IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE** **P. O. Box 83720, Boise, ID 83720-0043**

Docket No. **18-0170-9801**, Rule to Implement the Small Employer Health Insurance Availability Act Plan Design. Amends Appendix F by deleting a reference to vision benefit. Comment By: 1/25/98.

### **IDAPA 38 - IDAHO DEPARTMENT OF ADMINISTRATION** **P. O. Box 83720, Boise, ID 83720-0003**

Docket No. **38-0501-9801**, Rules of the Division of Purchasing. Allows Division to use electronic filings and electronic signatures; makes grammatical corrections. Comment By: 11/25/98.

**IDAPA 39 - IDAHO DEPARTMENT OF TRANSPORTATION****P. O. Box 7129, Boise ID 83707-1129**

Docket No. **39-0277-9801**, Rules Governing Social Security Numbers on Applications for Driver's Licenses and Identification Cards. Clarifies that verification of non-working resident aliens' status by the Social Security Administration is sufficient for obtaining a driver's license or ID card and also requires proof of legal presence in the U.S. Comment By: 11/25/98.

Docket No. **39-0362-9801**, Rules Governing Logo Signs. Updates a document incorporated by reference. Comment By: 11/25/98.

**PUBLIC HEARINGS** - Public Hearings have been scheduled for the following dockets:

**Department of Health and Welfare, DEQ**

Docket No. **16-0108-9801**, Idaho Rules for Public Drinking Water Systems.

**Idaho Public Utilities Commission**

Docket No. **31-4201-9801**, Rules for Telephone Corporations Subject to the Regulation of the Idaho Public Utilities Commission Under the Telecommunications Act of 1988. (The Title 62 Telephone Corporation Rules)

Please refer to the Idaho Administrative Bulletin, **November 4, 1998, Volume 98-11** for notices and text of all rule-makings, public hearing schedules, governor's executives orders, and agency contact names.

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# **ABRIDGED CUMULATIVE RULE-MAKING INDEX OF ADMINISTRATIVE RULES**

*Idaho Department of Administration  
Office of Administrative Rules*

*July 1, 1998 - December 2, 1998*

*(eff. PLR\*) - Final Adoption Pending Legislative Review in 1999 Legislative Session*

*(eff. date)T - Temporary Rule Effective Date*

*(eff. date)L - Denotes Adoption by Legislative Action*

*SCR # - denotes the number of a Senate Concurrent Resolution (Legislative Action)*

*HCR # - denotes the number of a House Concurrent Resolution (Legislative Action)*

*Citations to the Administrative Code Volumes Refer to the July 1, 1998 Edition*

*(This Index includes only those rules being promulgated after July 1, 1998  
and those that have not been adopted as final as of July 1, 1998.)*

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**01-0101-9801,** Proposed Rule, Bulletin Vol. 98-10

## **IDAPA 02 -- IDAHO DEPARTMENT OF AGRICULTURE**

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### **02.03.03, Rules Governing Pesticide Use and Application, Administrative Code Volume 1**

**02-0303-9801,** Temporary and Proposed Rule, Bulletin Vol. 98-7 (eff. 5-1-98)T  
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**02-0303-9802,** Proposed Rule, Bulletin Vol. 98-10

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**02.06.29, Rules Concerning Non-Native Phytophagous Snails, Administrative Code Volume 1**

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- 09-0130-9801,** Temporary and Proposed Rule (Repeal), Bulletin Vol. 98-7 (eff. 7-1-98)T  
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 16-0601-9701, Recission of Temporary Rule, Bulletin Vol. 98-8 (eff. 7-1-98)  
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- 17-0802-9801, Proposed Rule (Repeal), Bulletin Vol. 98-9  
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- 17-0803-9801, Proposed Rule (Repeal), Bulletin Vol. 98-9  
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**17.08.04, Minimum Safety Standards and Practices for Logging - Garages, Machine Shops, and Related Work Areas, Administrative Code Volume 5**

- 17-0804-9801, Proposed Rule (Repeal), Bulletin Vol. 98-9  
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- 17-0805-9801, Proposed Rule (Repeal), Bulletin Vol. 98-9  
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**17.08.07, Minimum Safety Standards and Practices for Logging - Transportation of Employees, Administrative Code Volume 5**

- 17-0807-9801, Proposed Rule (Repeal), Bulletin Vol. 98-9  
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**17.08.08, Minimum Safety Standards and Practices for Logging - Falling and Bucking, Administrative Code Volume 5**

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