

IDAHO ADMINISTRATIVE BULLETIN

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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 monthly compilation of all administrative rulemaking documents in Idaho. The Bulletin publishes the official rulemaking notices and administrative rule text of state agency rulemakings and other official documents as necessary.

State agencies are required to provide public notice of rulemaking activity and invite public input. The public receives notice of a rulemaking 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 Rulemaking Notice published in the Bulletin. 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 rulemaking activities.

CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

The Bulletin is cited by year and issue number. For example, Bulletin 02-1 refers to the first Bulletin issued in calendar year 2002, Bulletin 02-1 refers to the first Bulletin issued in calendar year 2002, 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 2003 is cited as Volume 03-1, the December 2002 Bulletin is cited as Volume 02-12. The March 2001 Bulletin is cited as Volume 01-3.

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 adopted and 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 Rulemaking**, printed in each Bulletin.*

TYPES OF RULEMAKINGS PUBLISHED IN THE ADMINISTRATIVE BULLETIN

The state of Idaho administrative rulemaking process comprises five distinct activities; Negotiated, Proposed, Temporary, Pending, and Final rulemaking. Not all rulemakings consist of all five. At a minimum a rulemaking includes proposed, pending, and final rulemaking. Many rules are adopted as temporary rules when meeting required statutory criteria and agencies often engage in negotiated rulemaking at the beginning of the process to facilitate consensus building in controversial or complex rulemakings. In the majority of cases, the process begins with proposed rulemaking and ends with final rulemaking. The following is a brief explanation of each type of administrative rule.

NEGOTIATED RULEMAKING

Negotiated rulemaking is a process in which all interested parties and the agency seek a consensus on the content of the rule. Agencies are encouraged to proceed through this informal rulemaking whenever it is feasible to do so. Publication of the text in the Administrative Bulletin by the agency is optional. This process should lead the rulemaking to the temporary and/or proposed rule stage.

PROPOSED RULEMAKING

A proposed rulemaking is an action by an agency in which the agency is proposing to amend or repeal an existing rule or to adopt a new rule. Prior to the adoption, amendment, or repeal of a rule, the agency must publish a notice of proposed rulemaking in the Bulletin. The notice of proposed rulemaking must include:

- a) the specific statutory authority for the rulemaking including a citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking;*
- b) a statement in nontechnical language of the substance of the proposed rule, including a specific description of any fee or charge imposed or increased;*
- c) the text of the proposed rule prepared in legislative format;*
- d) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;*
- e) the manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;*
- f) the manner in which persons may request an opportunity for an oral presentation; and*
- g) the deadline for public (written) comments on the proposed rule.*

As stated, the text of the proposed rule must be published in the Bulletin. After meeting the statutory rulemaking criteria for a proposed rule, the agency may proceed to the pending rule stage. A proposed rule does not have an assigned effective date unless published in conjunction with a temporary rule docket. An agency may vacate a proposed rulemaking if it decides not to proceed further with the promulgation process.

TEMPORARY RULEMAKING

Temporary rules may be adopted only when the governor finds that it is necessary for:

- a) the protection of the public health, safety, or welfare; or*
- b) compliance with deadlines in amendments to governing law or federal programs; or*
- c) conferring a benefit.*

If a rulemaking meets any one or all of the above requirements, a rule may become effective before it has been submitted to the legislature for review and the agency may proceed and adopt a temporary rule.

A temporary rule expires at the conclusion of the next succeeding regular session of the legislature unless the rule is approved, amended, or modified by concurrent resolution or when the rule has been replaced by a final rule.

In cases where the text of the temporary rule is the same as that of the proposed rule, the rulemaking can be done concurrently as a temporary/proposed rule. State law requires that the text of a proposed or temporary rule be

published in the Administrative Bulletin. Combining the rulemaking allows for a single publication of the text.

An agency may rescind a temporary rule that has been adopted and is in effect if the rule is being replaced by a new temporary rule or has been published concurrently with a proposed rulemaking that is being vacated.

PENDING RULEMAKING

A pending rule is a rule that has been adopted by an agency under the regular rulemaking process and remains subject to legislative review before it becomes a final, enforceable rule.

When a pending rule is published in the Bulletin, the agency is required to include certain information in the Notice of Pending Rule. This includes:

- a) the reasons for adopting the rule;*
- b) a statement of any change between the text of the proposed rule and the pending rule with an explanation of the reasons for any changes;*
- c) the date the pending rule will become final and effective; and*
- d) an identification of any portion of the rule imposing or increasing a fee or charge.*

Agencies are required to republish the text of the rule when substantive changes have been made to the proposed rule. An agency may adopt a pending rule that varies in content from that which was originally proposed if the subject matter of the rule remains the same, the pending rule is a logical outgrowth of the proposed rule, and the original notice was written so as to assure that members of the public were reasonably notified of the subject. It is not always necessary to republish all the text of the pending rule. With the permission of the Rules Coordinator, only the Section(s) that have changed from the proposed text are republished. If no changes have been made to the previously published text, it is not required to republish the text again and only the Notice of Pending Rule is published.

FINAL RULEMAKING

A final rule is a rule that has been adopted by an agency under the regular rulemaking process and is in effect.

No pending rule adopted by an agency will become final and effective until it has been submitted to the legislature for review. Where the legislature finds that the agency has violated the legislative intent of the statute under which the rule was made, a concurrent resolution will be adopted rejecting, amending, or modifying the rule or any part thereof. A Notice of Final Rule must be published in the Idaho Administrative Bulletin for any rule that is rejected, amended, or modified by the legislature showing the changes made. A rule that has been reviewed by the legislature and has not been rejected, amended, or modified will become final with no further legislative action. No rule shall become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review. However, a rule which is final and effective may be applied retroactively, as provided in the rule.

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, BYU Idaho Library, and Northwest Nazarene College Library.

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 83720-0306, telephone (208) 332-1820.

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 Rulemaking Dockets*, are specific portions of the Bulletin and Administrative Code produced on demand.

Internet Access - The Administrative Code and Administrative Bulletin, individual chapters and dockets, are available on the Internet at the following address: <http://www2.state.id.us/adm/adminrules/>

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) 332-1820.

HOW TO USE THE IDAHO ADMINISTRATIVE BULLETIN

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

IDAPA 38.05.01.060.02.c.ii.

"IDAPA" refers to Administrative Rules in general that are subject to the Administrative Procedures Act and are required by this act to be published in the Idaho Administrative Code and the Idaho Administrative Bulletin.

"IDAPA 38." refers to the Idaho Department of Administration.

"05." refers to Title 05 which is the Department of Administration's Division of Purchasing.

"01." refers to Chapter 01 of Title 05, "Rules of the Division of Purchasing".

"060." refers to Major Section 060, "Content of the Invitation to Bid".

"02." refers to Subsection 060.02.

"c." refers to Paragraph 060.02.c.

"ii." refers to Subparagraph 060.02.c.ii.

DOCKET NUMBERING SYSTEM

Internally, the Bulletin is organized sequentially using a rule docketing system. All rulemaking actions (documents) are assigned a "DOCKET NUMBER". The "Docket Number" is a series of numbers separated by a hyphen "-", (38-0501-0101). 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. 38-0501-0101"

"38-" denotes the agency's IDAPA number; in this case the Department of Administration.

"0501-" refers to the TITLE AND CHAPTER numbers of the agency rule being promulgated; in this case the Division of Purchasing (TITLE 05), "Rules of the Division of Purchasing" (Chapter 01).

"0101" denotes the year and sequential order of the docket submitted and published during the year; in this case the first rulemaking action of the chapter published in calendar year 2001.

Within each Docket, only the affected sections of chapters are printed. (See **Sections Affected Index** in each Bulletin for a listing of these.) The individual sections affected are printed in the Bulletin sequentially (e.g. Section "200" appears before Section "345" and so on). Whenever the sequence of the numbering is broken the following statement will appear:

"(BREAK IN CONTINUITY OF SECTIONS)"

INTERNAL AND EXTERNAL CITATIONS TO ADMINISTRATIVE RULES IN THE CODE AND BULLETIN

When making a citation to another Section or Subsection that is part of the same rule, a typical internal citation may appear as follows:

"...as found in Section 201 of this rule." OR "...in accordance with Subsection 201.06.c. of this rule."

It may also be cited to include the IDAPA, Title, and Chapter number also, as follows:

"...in accordance with IDAPA 38.05.01.201."

"38" denotes the IDAPA number of the agency.

"05" denotes the TITLE number of the agency rule.

"01" denotes the Chapter number of the agency rule.

"201" references the main Section number of the rule that is being cited.

Citations made within a rule to a different rule chapter (external citation) should also include the name of the Department and the name of the rule chapter being referenced, as well as the IDAPA, Title, and Chapter numbers. The following is a typical example of an external citation to another rule chapter:

"...as outlined in the Rules of the Department of Administration, IDAPA 38.04.04, 'Rules Governing Capitol Mall Parking.'"

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2003

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
03-1	January, 2003	*November 13, 2002	January 1, 2003	January 22, 2003
03-2	February, 2003	December 18, 2002	February 5, 2003	February 26, 2003
03-3	March, 2003	January 22, 2003	March 5, 2003	March 26, 2003
03-4	April, 2003	February 19, 2003	April 2, 2003	April 23, 2003
03-5	May, 2003	March 26, 2003	May 7, 2003	May 28, 2003
03-6	June, 2003	April 23, 2003	June 4, 2003	June 25, 2003
03-7	July, 2003	May 21, 2003	July 2, 2003	July 23, 2003
03-8	August, 2003	June 25, 2003	August 6, 2003	August 27, 2003
03-9	September, 2003	July 23, 2003	September 3, 2003	September 24, 2003
03-10	October, 2003	**August 20, 2003	October 1, 2003	October 22, 2003
03-11	November, 2003	September 24, 2003	November 5, 2003	November 26, 2003
03-12	December, 2003	October 22, 2003	December 3, 2003	December 24, 2003

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2004

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
04-1	January, 2004	*November 12, 2003	January 7, 2004	January 28, 2004
04-2	February, 2004	December 24, 2002	February 4, 2004	February 25, 2004
04-3	March, 2004	January 21, 2004	March 3, 2004	March 24, 2004
04-4	April, 2004	February 18, 2004	April 4, 2004	April 25, 2004
04-5	May, 2004	March 24, 2004	May 5, 2004	May 26, 2004
04-6	June, 2004	April 21, 2004	June 2, 2004	June 22, 2004
04-7	July, 2004	May 26, 2004	July 7, 2004	July 28, 2004
04-8	August, 2004	June 23, 2004	August 4, 2004	August 25, 2004
04-9	September, 2004	July 21, 2004	September 1, 2004	September 22, 2004
04-10	October, 2004	**August 25, 2004	October 6, 2004	October 27, 2004
04-11	November, 2004	September 22, 2004	November 3, 2004	November 24, 2004
04-12	December, 2004	October 20, 2004	December 1, 2004	December 22, 2004

****Last day to submit proposed rulemaking before moratorium begins and last day to submit pending rules to be reviewed by the legislature.***

*****Last day to submit proposed rules in order to complete rulemaking for review by legislature.***

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IDAPA 11	IDAHO STATE POLICE (Law Enforcement)	VOLUME 2
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THE OFFICE OF THE GOVERNOR

EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE

EXECUTIVE ORDER NO. 2002-09

REDUCTION OF GENERAL FUND SPENDING AUTHORITY

WHEREAS, article 7, section 11, of the Idaho Constitution provides that except in extraordinary or emergency circumstances, expenditures of state government shall not exceed state government revenue; and

WHEREAS, I have determined that expenditures from the General Fund authorized by the Legislature for the current fiscal year will exceed anticipated state revenue to meet those authorized expenditures for the current fiscal year.

NOW, THEREFORE, I, Dirk Kempthorne, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of this state, and pursuant to Section 67-3512A, Idaho Code, do hereby order:

01. That Executive Order 2002-08 be revoked.
02. That the General Fund spending authority on file in the Office of the State Controller be reduced for all departments, offices and institutions of the state by three and a half percent (3.5%) of their Fiscal Year 2003 General Fund Appropriation with the exception of public schools support, colleges and universities, community colleges, School for the Deaf and Blind, Professional Technical Education, Special Education Programs, Agriculture Research and Extension, Health Education Programs, and the Human Rights Commission.
03. That the General Fund spending authority on file in the Office of the State Controller be reduced for the Department of Health and Welfare by \$9,550,900 and for the Idaho State Library by \$64,400.
04. That the holdbacks of each department, office and institution on file with the Office of the State Controller and the Division of Financial Management of the Executive Office of the Governor pursuant to Executive Order 2002-08 shall constitute material compliance with this Executive Order.
05. That elected State Constitutional officials are requested to reduce General Fund expenditures for Fiscal Year 2003 to reflect the realities of the projected revenue shortfall without impairing the discharge of their constitutional duties.
06. That officers of the legislative and judicial branches are requested to assess and evaluate a reduction in General Fund expenditures for Fiscal Year 2003 to reflect similar revenue shortfalls in the executive branch of state government.

This order shall take effect immediately upon its execution and shall continue in effect until January 31, 2003, unless revoked or modified by the Governor, or until the Legislature or the Board of Examiners takes further action.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this twenty fourth day of September in the year of our Lord two thousand and two and of the Independence of the United States of America the two hundred twenty-fifth and of the Statehood of Idaho the one hundred eleventh.

DIRK KEMPTHORNE
GOVERNOR

PETE T. CENARRUSA
SECRETARY OF STATE

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

02.02.15 - IDAHO ORGANIC FOOD PRODUCTS RULES

DOCKET NO. 02-0215-0101 - (REPEAL OF CHAPTER)

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 22-1103, 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.

IDAPA 02.02.15, "Idaho Organic Food Products Rules," were repealed in their entirety and replaced by a new rule, IDAPA 02.06.33, "Organic Food Products Rules." The responsibility for the organic program was transferred from the Idaho State Department of Agriculture, Division of Agricultural Inspection to the Division of Plant Industries.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the December 5, 2001, Idaho Administrative Bulletin Volume 01-12, page 17.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Michael E. Cooper, Acting Administrator or Margaret Misner, Program Manager at (208) 332-8620.

DATED this 17th day of October, 2002.

Patrick A. Takasugi
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790, Boise, Idaho 83701
Phone: (208) 332-8503
Fax: (208) 334-2170

IDAPA 02, TITLE 02, Chapter 15

IDAHO ORGANIC FOOD PRODUCTS RULES

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 01-12, December 5, 2001, page 17.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

02.02.16 - IDAHO DEPARTMENT OF AGRICULTURE RULES GOVERNING ORGANIC LIVESTOCK

DOCKET NO. 02-0216-0101 - (REPEAL OF CHAPTER)

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 22-1103, 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.

IDAPA 02.02.16, "Idaho Department of Agriculture Rules Governing Organic Livestock," were repealed in their entirety and replaced by a new rule, IDAPA 02.06.33, "Organic Food Products Rules." The responsibility for the organic program was transferred from the Idaho State Department of Agriculture, Division of Agricultural Inspection to the Division of Plant Industries.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the December 5, 2001, Idaho Administrative Bulletin Volume 01-12, page 18.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Michael E. Cooper, Acting Administrator or Margaret Misner, Program Manager at (208) 332-8620.

DATED this 17th day of October, 2002.

Patrick A. Takasugi
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790, Boise, Idaho 83701
Phone: (208) 332-8503
Fax: (208) 334-2170

IDAPA 02, TITLE 02, Chapter 16

IDAHO DEPARTMENT OF AGRICULTURE RULES GOVERNING ORGANIC LIVESTOCK RULES

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 01-12, December 5, 2001, page 18.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

02.04.03 - RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING ANIMAL INDUSTRY

DOCKET NO. 02-0403-0204

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending 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 25-203, 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.

This pending rule is being adopted to update and amend the rules relating to poultry and ratites. It updates sections of IDAPA 02.04.03, and provides for the regulation of the poultry and ratite industries pursuant to the National Poultry Improvement Plan. It provides for certification, inspections, and record keeping. The Department received no comments on the proposed rule and is not making any changes between the text of the proposed rule and the text of the pending rule.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the October 2, 2002 Idaho Administrative Bulletin, Volume 02-10, pages 22 through 25.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule or temporary rule, contact John Chatburn, Idaho Department of Agriculture, at (208) 332-8540.

DATED this 24th day of October, 2002.

Patrick A. Takasugi, Director
Idaho State Department of Agriculture
P.O. Box 790, Boise, Idaho 83701-0790
(208) 332-8500
(208) 334-4062 FAX

IDAPA 02, TITLE 04, Chapter 03

RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING ANIMAL INDUSTRY

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-10, October 2, 2002, pages 22 through 25.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

02.04.03 - RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING ANIMAL INDUSTRY

DOCKET NO. 02-0403-0205

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending 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 25-203, 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.

This pending rule is being adopted to update and amend the rules relating to Trichomoniasis. It establishes timeframes and deadlines regarding Trichomoniasis testing and reporting. The Department conducted a public hearing, but received no comments on the proposed rule and is not making any changes between the text of the proposed rule and the text of the pending rule.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the October 2, 2002 Idaho Administrative Bulletin, Volume 02-10, pages 26 through 33.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule or temporary rule, contact John Chatburn, Idaho Department of Agriculture, at (208) 332-8540.

DATED this 24th day of October, 2002.

Patrick A. Takasugi, Director
Idaho State Department of Agriculture
P.O. Box 790, Boise, Idaho 83701-0790
(208) 332-8500
(208) 334-4062 FAX

IDAPA 02, TITLE 04, Chapter 03

RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING ANIMAL INDUSTRY

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-10, October 2, 2002, pages 26 through 33.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE
02.04.22 - RULES GOVERNING ANIMAL HEALTH EMERGENCIES
DOCKET NO. 02-0422-0201
NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending 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. The action is authorized pursuant to Sections 25-203, 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.

This pending rule is being adopted to create rules for Animal Health Emergency Management in compliance with Sections 25-210 and 25-212, Idaho Code and HB 446 passed by the 2002 Legislature. The Department conducted a public hearing, but received no comments on the proposed rule and is not making any changes between the text of the proposed rule and the text of the pending rule.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the October 2, 2002 Idaho Administrative Bulletin, Volume 02-10, pages 52 through 58.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Dr. bob Hillman or John Chatburn, Idaho Department of Agriculture, at (208) 332-8540.

DATED this 24th day of October, 2002.

Patrick A. Takasugi, Director
Idaho State Department of Agriculture
P.O. Box 790
Boise, Idaho 83701-0790
(208) 332-8500
(208) 334-4062 FAX

IDAPA 02, TITLE 04, Chapter 22

RULES GOVERNING ANIMAL HEALTH EMERGENCIES

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-10, October 2, 2002, pages 52 through 58.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

NOTICE OF LEGISLATIVE ACTION AFFECTING THE ADMINISTRATIVE RULES OF THE IDAHO STATE DEPARTMENT OF AGRICULTURE, DIVISION OF PLANT INDUSTRIES

DOCKET NO. 02-0600-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 22-2006, 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 passage of HB 448 repealed and consolidated the legal authorities of 16 rules into Title 22, Chapter 20, Idaho Code, "Idaho Plant Pest Act of 2002," IDAPA 02, TITLE 06, Chapters 05, 07, 11, 14, 15, 17, 18, 20, 24, 26, 29, 32, 35, 36, 38, and 40 needed to have the legal authority updated to reference the new law and to add sections required by the Office of Administrative Rules Coordinator. The rules are necessary to protect the public health, safety or welfare; to comply with deadlines in amendments to governing law and confers a benefit to producers, handlers and the general public.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the October 2, 2002 Idaho Administrative Bulletin, Volume 02-10, pages 59 through 87.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Michael E. Cooper, Acting Administrator or Curtis Thornburg, Program Manager at (208) 332-8620.

DATED this 17th day of October, 2002.

Patrick A. Takasugi
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790, Boise, Idaho 83701
Phone: (208) 332-8503 / Fax: (208) 334-2170

IDAPA 02, TITLE 06, Chapter(s) 05, 07, 11, 14, 15, 17, 18, 20, 24, 26, 29, 32, 35, 36, 38, and 40

NOTICE OF LEGISLATIVE ACTION AFFECTING THE ADMINISTRATIVE RULES OF THE IDAHO STATE DEPARTMENT OF AGRICULTURE, DIVISION OF PLANT INDUSTRIES

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-10, October 2, 2002, pages 59 through 87.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

02.06.01 - RULES GOVERNING THE PURE SEED LAW

DOCKET NO. 02-0601-0201 - (FEE RULE)

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective after the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224(5)(c) and 67-5291, Idaho Code. After the pending rule is approved, rejected, 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 22-418(4), 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 Seed Lab Advisory Board and the Idaho Eastern Oregon Seed Association recommended increases in service and license fees to improve seed analysis turn-around time 35 - 40% by hiring two (2) additional Senior Seed Analysts.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the June 5, 2002, Idaho Administrative Bulletin Volume 02-6, pages 13 through 18.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 22-418(4), Idaho Code.

Service testing fees were increased by 7 to 20%
Seed dealer license fees:

- a. Seed conditioning from \$50 to \$100.
- b. Selling seed from \$50 to \$100.
- c. Out-of-state seed dealer license from \$100 to \$250.
- d. In-state seed dealer who has total annual gross seed sales of one thousand dollars (\$1,000) or more from \$50 to \$100

Because of the fee being imposed or increased through this rulemaking, and in accordance with Section 67-5224(5)(c), this pending rule will not be adopted as final nor will it become effective until it has been approved, amended, or modified by concurrent resolution of the legislature.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Michael E. Cooper, Acting Administrator at (208) 332-8620 or Richard C. Lawson, Bureau Chief at (208) 332-8630.

DATED this 17th day of October, 2002.

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IDAPA 02, TITLE 06, Chapter 01

RULES GOVERNING THE PURE SEED LAW

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-6, June 5, 2002, pages 13 through 18.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE
02.06.06 - BACTERIAL DISEASES OF BEANS, *PHASEOLUS SPECIES*
DOCKET NO. 02-0606-0201 - (REPEAL OF CHAPTER)
NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Title 22, Chapter 20, 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.

Because numerous changes were made, it was best to repeal the original IDAPA 02.06.06 in its entirety and replace it with a new chapter. The repeal and rewrite will confer a benefit to the Idaho bean industry.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the October 2, 2002 Idaho Administrative Bulletin, Volume 02-10, page 89.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Michael E. Cooper, Acting Administrator at (208) 332-8620 or Garry West, Program Manager at (208) 736-2195.

DATED this 17th day of October, 2002.

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IDAPA 02, TITLE 06, Chapter 06

BACTERIAL DISEASES OF BEANS, *PHASEOLUS SPECIES*

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-10, October 2, 2002, page 89.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

02.06.06 - RULES GOVERNING THE PLANTING OF BEANS, (*PHASEOLUS SPP.*), IN IDAHO

DOCKET NO. 02-0606-0202 - (FEE RULE)

NOTICE OF RULEMAKING - (REWRITE OF CHAPTER)

PENDING RULE AND AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is September 1, 2002. This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective when it is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224(5)(c) and 67-5291, Idaho Code. When 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 and has amended the previously adopted temporary rule. The action is authorized pursuant to Title 22, Chapter 20, 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.

Because numerous changes needed to be made, it was best to repeal the original IDAPA 02.06.06 in its entirety and replace it with a new chapter. The principal change was the addition of a new disease (Anthracnose) to the list of regulated pests because the disease has been found in beans in the upper mid-west. Other changes were: changing the title to "Rules Governing the Planting of Beans, (*Phaseolus spp.*), in Idaho"; adding sections required by the Office of Administrative Rules; updating the nomenclature of the bacterial pathogens; repealing the reference to the Memorandum of Understanding between the Idaho State Department of Agriculture and the University of Idaho concerning plant pathology laboratory testing procedures; and adding a late fee for applications received after July 1 of each year.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department of Agriculture has amended the temporary rule with the same revisions, which have been made to the pending rule. Only the sections that have changes from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the October 2, 2002 Idaho Administrative Bulletin, Volume 02-10, pages 90 through 99.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 22-2006, Idaho Code.

The fees charged for field inspections and applications remain the same as the original IDAPA 02.06.06 with the addition of a ten dollar (\$10) fee per application for field inspection applications received after July 1 of each year. The Department does not expect to collect more than one to two thousand dollars (\$1,000 - \$2,000) during the initial phase of the 2003 field inspection season and less in subsequent years.

Because of the fee being imposed or increased through this rulemaking, and in accordance with Section 67-5224(5)(c), this pending rule will not be adopted as final nor will it become effective until it has been approved, amended, or modified by concurrent resolution of the legislature.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Michael E. Cooper, Acting Administrator at (208) 332-8620 or Garry West, Program Manager at (208) 736-2195.

DATED this 17th day of October, 2002.

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IDAPA 02, TITLE 06, Chapter 06

RULES GOVERNING THE PLANTING OF BEANS, (*PHASEOLUS SPP.*), IN 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 text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-10, October 2, 2002, pages 90 through 99](#).

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 02-0606-0202

SUBSECTION 250.02.b.

250. TRIAL GROUNDS.

02. Trial Ground Subdivisions. (9-1-02)T

b. Introduction Plots. Introduction plots are limited to a maximum of two (2) acres per variety for any given year and each seed lot to be planted in an introduction plot must successfully pass laboratory tests conducted by the Department from samples officially drawn in the state of Idaho by the Department. ~~(9-1-02)T~~(9-1-02)T

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

02.06.08 - ORDER IN THE MATTER OF THE CONTROL OF CHERRY FRUIT FLY IN CERTAIN PRESCRIBED PORTIONS OF CANYON COUNTY

DOCKET NO. 02-0608-0201 - (REPEAL OF CHAPTER)

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Title 22, Chapter 20, 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.

IDAPA 02.06.08 was repealed in its entirety to combine the common provisions of that rule, and three other related rules that were repealed, into one comprehensive rule. The repeal of IDAPA 02.06.08 confers benefits to the fruit industry, reduces annual printing costs and removes pesticide recommendations; some of which may be illegal under Federal law.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the September 4, 2002 Idaho Administrative Bulletin, Volume 02-9, page 65.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Michael E. Cooper, Acting Administrator or Curtis Thornburg, Program Manager at (208) 332-8620.

DATED this 17th day of October, 2002.

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IDAPA 02, TITLE 06, Chapter 08

ORDER IN THE MATTER OF THE CONTROL OF CHERRY FRUIT FLY IN CERTAIN PRESCRIBED PORTIONS OF CANYON COUNTY

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-9, September 4, 2002, page 65.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE
02.06.08 - QUARANTINE RULES PERTAINING TO APPLES AND CHERRIES

DOCKET NO. 02-0608-0202

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Title 22, Chapter 20, 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 common provisions of IDAPA 02.06.08, 02.06.10, 02.06.19 and 02.06.23 were combined into a new and comprehensive rule by eliminating duplications in the definitions, regulated articles and pests, restrictions, exemptions, etc. and update the pesticide recommendations, some of which may be illegal under Federal law. The new rule confers benefits to the fruit industry. Cherry fruit fly and Apple maggot are insect pests known to be injurious to apples and cherries. The Apple maggot is known to exist in several counties in Idaho, as well as in several other states. Cherry fruit fly are known to exist in portions of Gem and Canyon counties. The further spread of these pests would adversely affect the production and domestic and international marketing of Idaho fruit. The rule also consolidates the requirements into one rule, making it easier for growers and shippers to access. The rule ensures that survey techniques conform with national and international recommendations for these pests.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the September 4, 2002 Idaho Administrative Bulletin, Volume 02-9, pages 66 through 71.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Michael E. Cooper, Acting Administrator or Curtis Thornburg, Program Manager at (208) 332-8620.

DATED this 17th day of October, 2002.

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IDAPA 02, TITLE 06, Chapter 08

QUARANTINE RULES PERTAINING TO APPLES AND CHERRIES

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-9, September 4, 2002, pages 66 through 71.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

02.06.09 - IDAHO QUARANTINE RULES CONCERNING THE NECROTIC STRAIN OF THE POTATO VIRUS Y

DOCKET NO. 02-0609-0201 - (REPEAL OF CHAPTER)

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. This action was originally authorized under Sections 22-1905, 22-1915 and 22-2001, Idaho Code, which were repealed by the 2002 Legislature and replaced with Title 22, Chapter 20, Idaho Code. This current action is authorized under Section 20-2006, 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.

IDAPA 02.06.09 was repealed in its entirety. The Seed Potato Advisory Committee of the Idaho Crop Improvement Association (ICIA) recommended that the necrotic strain of the potato virus Y be removed from quarantine status and be addressed in the ICIA seed potato certification rules.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the January 2, 2002 Idaho Administrative Bulletin, Volume 02-1, page 28.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Michael E. Cooper, Acting Administrator at (208) 332-8620.

DATED this 17th day of October, 2002.

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IDAPA 02, TITLE 06, Chapter 09

IDAHO QUARANTINE RULES CONCERNING THE NECROTIC STRAIN OF THE POTATO VIRUS Y

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-1, January 2, 2002, page 28.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

02.06.10 - ORDER IN THE MATTER OF THE CONTROL OF CHERRY FRUIT FLY IN CERTAIN PRESCRIBED PORTIONS OF GEM COUNTY

DOCKET NO. 02-0610-0201 - (REPEAL OF CHAPTER)

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Title 22, Chapter 20, 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.

IDAPA 02.06.10 was repealed in its entirety to combine the common provisions of that rule, and three other related rules that were repealed, into one comprehensive rule. The repeal of IDAPA 02.06.10 confers benefits to the fruit industry, reduces annual printing costs and removes pesticide recommendations; some of which may be illegal under Federal law.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the September 4, 2002 Idaho Administrative Bulletin, Volume 02-9, page 72.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Michael E. Cooper, Acting Administrator or Curtis Thornburg, Program Manager at (208) 332-8620.

DATED this 17th day of October, 2002.

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IDAPA 02, TITLE 06, Chapter 10

ORDER IN THE MATTER OF THE CONTROL OF CHERRY FRUIT FLY IN CERTAIN PRESCRIBED PORTIONS OF GEM COUNTY

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-9, September 4, 2002, page 72.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

02.06.16 - CROP RESIDUE DISPOSAL RULES

DOCKET NO. 02-0616-0101

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 22-4801, 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 incorporate suggestions received from statewide public meetings with the industry and the general public including: in conjunction with the Idaho Department of Environmental Quality rules IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho," Section 556, no new fires shall be ignited when ambient air quality levels reach 80% of the one-hour action criteria for particulate matter of 2.5 microns or less, and are predicted to remain above those levels; require all persons to obtain applicable local, state or federal permits prior to receiving ISDA approval to burn crop residue; fields of perennial crop need not be re-registered after the initial registration; it shall be the responsibility of the grower to notify ISDA when a field of perennial crop is taken out of production; burning of fields adjacent to roads and highways may be approved on a case-by-case basis taking into account the time of day, field size and wind direction; number of acres to be burned and the hours to burn shall be based on local meteorological conditions and a test burn and requires a crop residue burning refresher training session every five years.

The proposed rule has been amended in response to SCR 125 and public comment.

Only the sections that have changes are printed in this bulletin. The original text of the temporary and proposed rules was published in the August 1, 2001 Idaho Administrative Bulletin, Volume 01-8, pages 37 through 41. The text of the amendment to temporary rules was published in the June 5, 2002 Idaho Administrative Bulletin, Volume 02-6, pages 19 through 22.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Mr. Michael E. Cooper, Acting Administrator or Curtis Thronburg, Program Manager at (208) 332-8620.

DATED this 24th day of October, 2002.

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IDAPA 02, TITLE 06, Chapter 16

CROP RESIDUE DISPOSAL 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 text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 01-8, August 1, 2001, pages 37 through 41.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 02-0616-0101

010. DEFINITIONS.

The Idaho State Department of Agriculture adopts the definitions set forth in Section 22-4802, Idaho Code. In addition, as used in this chapter, a burn day will be defined as a ~~(7-1-01)T~~

~~01. **Airshed.** An area covered by a volume of air that has similar meteorological and air quality characteristics is separated from other volumes of air by weather patterns and topography. ~~(7-10-01)T~~~~

~~02. **Burn Day.** A period of time when meteorological conditions are conducive to adequate smoke dispersion and when the burning of crop residue would not likely ~~violate~~ exceed National ~~Ambient Air Quality~~ Standards established by the USEPA, the IDEQ, or an Indian tribe authorized by federal law to establish air quality standards. ~~(7-1-01)T(____)~~~~

011. ABBREVIATIONS.

- 01. **IACSGA.** Idaho Alfalfa and Clover Seed Growers Association. ~~(7-1-01)T(____)~~
- 02. **IDEQ.** Idaho Department of Environmental Quality. (7-1-01)T
- 03. **IEOSA.** Idaho Eastern Oregon Seed Association. (7-1-01)T
- 04. **IGP.** Idaho Grain Producers. (7-1-01)T
- 05. **IMGGA.** Idaho Mint Growers Association. (7-1-01)T
- 06. **ISDA.** Idaho State Department of Agriculture. (7-1-01)T
- 07. **NAAQS.** National Ambient Air Quality Standards. (____)
- ~~078.~~ **NIFA.** North Idaho Farmers' Association. (7-1-01)T
- ~~082.~~ **NPGGA.** Nez Perce Prairie Grass Growers Association. (7-1-01)T
- ~~0910.~~ **USEPA.** United States Environmental Protection Agency. (7-1-01)T

(BREAK IN CONTINUITY OF SECTIONS)

100. REGISTRATION OF FIELDS TO BE BURNED.

01. ~~Fields Larger Than Five Acres~~ Registration. All persons in Idaho except in Benewah and Kootenai Counties shall register each field ~~larger than five (5) acres to be burned~~ with ISDA ~~each year field burning is conducted~~ prior to burning crop residue. (7-1-01)F()

02. Registration Forms. Approved forms for registering fields may be obtained from offices of ISDA, IDEQ, County Extension Educators or Soil Conservation District offices. A single form is required for each person, however, more than one (1) field may be listed on a single form. County, township, range, and section for each field registered must be included on the registration form. Completed forms shall include permit numbers for any burning permits issued by county, state, or federal agencies, or local fire protection authorities. (7-1-01)F()

03. ~~Deadlines for Registration.~~ ~~Completed and signed registration forms shall be received by ISDA one (1) month prior to the burning of the crop residue.~~ **Perennial Crops. It is not necessary to re-register annually each field of perennial crops to be burned after the initial registration. It shall be the responsibility of the grower to notify the ISDA when a field of perennial crop is taken out of production. (7-1-01)F()**

(BREAK IN CONTINUITY OF SECTIONS)

200. DETERMINATION OF BURN OR NO BURN DAYS.

01. ~~Recommendation Of IDEQ~~ Designation Of Burn Days. The director or his designee shall designate for a given ~~airshed~~ county burn or no burn days, ~~the hours that burning shall be permitted, and the number of acres to be burned based on the recommendation of IDEQ.~~ (7-1-01)F()

02. Daily Postings On Website. The department shall post daily on their website whether a given day is a burn or no burn day, ~~the hours that burning shall be permitted and the number of acres persons can burn in a given airshed.~~ (7-1-01)F()

03. Time And Acres To Burn. The hours that burning shall be permitted, and the number of acres to be burned for a given county shall be based on local meteorological conditions and/or a test burn. ()

034. Toll Free Number. (7-1-01)F

~~a-~~ The department shall make available a toll free number to receive ~~incoming complaints~~, requests for information, requests for approval to burn crop residue, and will include an updated message designating a burn or no burn day in a given county. (7-1-01)F()

~~b-~~ All persons in Idaho except in Benewah and Kootenai Counties shall report to ISDA via the toll free number the date of burning and acres burned. (7-1-01)F

201. -- 2499. (RESERVED).

~~300. CROP RESIDUE BURNING TIME FRAME.~~

01- Spring Burning. ~~Burning of crop residue shall be allowed for a maximum of fourteen (14) days within a forty five (45) day time period during the spring within each airshed.~~ (7-1-01)F

02- Fall Burning. ~~Burning of crop residue shall be allowed for a maximum of fourteen (14) days within a forty five (45) day time period during the fall within each airshed.~~ (7-1-01)F

~~301.---499. (RESERVED).~~

500. GENERAL PROVISIONS.

All persons in Idaho ~~except those in Benewah and Kootenai Counties disposing~~ intending to dispose of crop residue through burning shall abide by the following provisions: (7-1-01)F(____)

01. ~~Violation Of Ambient Air Quality Exceedence Of NAAQS.~~ Burning of All persons planning to burn crop residue in Idaho shall not be conducted burn if it would result in a violation of ambient air quality standards as established by USEPA and IDEQ the NAAQS have been reached, are predicted to reach, and persist at a level that would result in an exceedence of NAAQS. (7-1-01)F(____)

02. ~~Cessation Of Burning.~~ In conjunction with IDEQ rules, IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho," Section 556, no new fires shall be ignited when particulate matter levels reach eighty percent (80%) of the one (1) hour action criteria for particulate matter of two and one-half (2.5) microns or less, and are predicted to remain above those levels. (____)

023. ~~Burning Prohibitions.~~ Burning of crop residue shall not be conducted on weekends or federal or state holidays. (7-1-01)T

034. ~~Designated Burn Day.~~ Burning of crop residue shall not be conducted unless the department has designated that day a burn day. (7-1-01)T

04. ~~Setback From Structures.~~ Burning of crop residue shall not be conducted within fifty (50) feet of any school or structure. (7-1-01)F

05. ~~Adequate Fire Suppression Equipment.~~ Adequate fire suppression equipment shall be on site prior to any burning of crop residue. (7-1-01)F

065. ~~Location Of Field Burning.~~ Disposal of crop residue through burning shall be conducted in the field where it was generated. (7-1-01)T

076. ~~Training Session.~~ All persons intending to burn crop residue shall attend a crop residue burning training session provided by ISDA, and shall attend a crop residue disposal refresher training session every five (5) years. (7-1-01)F(____)

087. ~~Air Stagnation Advisory.~~ All field burning shall be prohibited during an IDEQ air stagnation advisory. (7-1-01)T

098. ~~Airsheds Reporting To ISDA.~~ All persons burning crop residue in Idaho shall first obtain approval to burn prior to field ignition. All persons burning crop residue shall also report to ISDA shall designate for each airshed the names of persons date burning was conducted and the number of acres to be burned. (7-1-01)F(____)

09. ~~Burning Of Fields Adjacent To Roads.~~ Burning of fields adjacent to roads and highways shall be approved on a case-by-case basis taking into account the time of day, field size and wind direction. (____)

10. ~~Additional Burning Permits.~~ All persons intending to burn crop residue shall obtain any additional applicable permits from federal, state or local fire control authorities prior to receiving ISDA approval to burn crop residue. (____)

(BREAK IN CONTINUITY OF SECTIONS)

800. ADDITIONAL BURN DAYS.

The director may declare additional burn days under special situations provided the burning of crop residue would not result in an violation of ambient air quality standards established by USEPA and IDEQ exceedence of NAAQS. (7-1-01)F(____)

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

02.06.19 - APPLE AND CHERRY QUARANTINE RULES

DOCKET NO. 02-0619-0201 - (REPEAL OF CHAPTER)

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Title 22, Chapter 20, 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.

IDAPA 02.06.19 was repealed in its entirety to combine the common provisions of that rule, and three other related rules that were repealed, into one comprehensive rule. The repeal of IDAPA 02.06.19 confers benefits to the fruit industry, reduces annual printing costs and removes pesticide recommendations; some of which may be illegal under Federal law.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the September 4, 2002 Idaho Administrative Bulletin, Volume 02-9, page 73.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Michael E. Cooper, Acting Administrator or Curtis Thornburg, Program Manager at (208) 332-8620.

DATED this 17th day of October, 2002.

Patrick A. Takasugi
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790, Boise, Idaho 83701
Phone: (208) 332-8503 / Fax: (208) 334-2170

IDAPA 02, TITLE 06, Chapter 19

APPLE AND CHERRY QUARANTINE RULES

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-9, September 4, 2002, page 73.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

02.06.23 - INTERIOR APPLE MAGGOT QUARANTINE

DOCKET NO. 02-0623-0201 - (REPEAL OF CHAPTER)

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Title 22, Chapter 20, 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.

IDAPA 02.06.23 was repealed in its entirety to combine the common provisions of that rule, and three other related rules that were repealed, into one comprehensive rule. The repeal of IDAPA 02.06.23 confers benefits to the fruit industry, reduces annual printing costs by being consolidated into a single rule covering all aspects of the Apple Maggot Program.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the September 4, 2002 Idaho Administrative Bulletin, Volume 02-9, page 74.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Michael E. Cooper, Acting Administrator or Curtis Thornburg, Program Manager at (208) 332-8620.

DATED this 17th day of October, 2002.

Patrick A. Takasugi
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790, Boise, Idaho 83701
Phone: (208) 332-8503 / Fax: (208) 334-2170

IDAPA 02, TITLE 06, Chapter 23

INTERIOR APPLE MAGGOT QUARANTINE

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-9, September 4, 2002, page 74.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

02.06.26 - RULES CREATING THE FREMONT SEED POTATO CROP MANAGEMENT AREA

DOCKET NO. 02-0626-0201 - (REPEAL OF CHAPTER)

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. This action was originally authorized under Title 22, Chapter 10, Idaho Code, which was repealed by the 2002 Legislature and replaced with Title 22, Chapter 20, Idaho Code. The current action is authorized under Sections 20-2006 and 20-2017, 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.

IDAPA 02.06.26 was repealed in its entirety. The common provisions of IDAPA 02.06.26; 02.06.27; 02.06.28; and 02.06.37 were combined into a new comprehensive rule IDAPA 02.06.26, "Rules Concerning Seed Potato Crop Management Areas".

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the January 2, 2002 Idaho Administrative Bulletin, Volume 02-1, page 29.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Michael E. Cooper, Acting Administrator at (208) 332-8620.

DATED this 17th day of October, 2002.

Patrick A. Takasugi
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790, Boise, Idaho 83701
Phone: (208) 332-8503 / Fax: (208) 334-2170

IDAPA 02, TITLE 06, Chapter 26

RULES CREATING THE FREMONT SEED POTATO CROP MANAGEMENT AREA

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-1, January 2, 2002, page 29](#).

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

02.06.26 - RULES CONCERNING SEED POTATO CROP MANAGEMENT AREAS

DOCKET NO. 02-0626-0202

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. This action was originally authorized under Title 22, Chapter 10, Idaho Code, which was repealed by the 2002 Legislature and replaced with Title 22, Chapter 20, Idaho Code. The current action is authorized under Sections 20-2006 and 20-2017, 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 common provisions of IDAPA 02.06.26; 02.06.27; 02.06.28; and 02.06.37 were combined into a new comprehensive rule IDAPA 02.06.26, "Rules Concerning Seed Potato Crop Management Areas."

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the January 2, 2002 Idaho Administrative Bulletin, Volume 02-1, pages 30 through 36.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Michael E. Cooper, Acting Administrator at (208) 332-8620.

DATED this 17th day of October, 2002.

Patrick A. Takasugi
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790, Boise, Idaho 83701
Phone: (208) 332-8503 / Fax: (208) 334-2170

IDAPA 02, TITLE 06, Chapter 26

RULES CONCERNING SEED POTATO CROP MANAGEMENT AREAS

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-1, January 2, 2002, pages 30 through 36.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

02.06.27 - RULES CREATING THE TETON AND PORTIONS OF MADISON COUNTIES SEED POTATO CROP MANAGEMENT AREA

DOCKET NO. 02-0627-0201 - (REPEAL OF CHAPTER)

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. This action was originally authorized under Title 22, Chapter 10, Idaho Code, which was repealed by the 2002 Legislature and replaced with Title 22, Chapter 20, Idaho Code. The current action is authorized under Sections 20-2006 and 20-2017, 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.

IDAPA 02.06.27 was repealed in its entirety. The common provisions of IDAPA 02.06.26; 02.06.27; 02.06.28; and 02.06.37 were combined into a new comprehensive rule IDAPA 02.06.26, "Rules Concerning Seed Potato Crop Management Areas".

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the January 2, 2002 Idaho Administrative Bulletin, Volume 02-1, page 37.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Michael E. Cooper, Acting Administrator at (208) 332-8620.

DATED this 17th day of October, 2002.

Patrick A. Takasugi
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790, Boise, Idaho 83701
Phone: (208) 332-8503 / Fax: (208) 334-2170

IDAPA 02, TITLE 06, Chapter 27

RULES CREATING THE TETON AND PORTIONS OF MADISON COUNTIES SEED POTATO CROP MANAGEMENT AREA

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-1, January 2, 2002, page 37](#).

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

02.06.28 - RULES CREATING THE LOST RIVER SEED POTATO CROP MANAGEMENT AREA

DOCKET NO. 02-0628-0201 - (REPEAL OF CHAPTER)

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. This action was originally authorized under Title 22, Chapter 10, Idaho Code, which was repealed by the 2002 Legislature and replaced with Title 22, Chapter 20, Idaho Code. The current action is authorized under Sections 20-2006 and 20-2017, 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.

IDAPA 02.06.28 was repealed in its entirety. The common provisions of IDAPA 02.06.26; 02.06.27; 02.06.28; and 02.06.37 were combined into a new comprehensive rule IDAPA 02.06.26, "Rules Concerning Seed Potato Crop Management Areas".

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the January 2, 2002 Idaho Administrative Bulletin, Volume 02-1, page 38.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Michael E. Cooper, Acting Administrator at (208) 332-8620.

DATED this 17th day of October, 2002.

Patrick A. Takasugi
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790, Boise, Idaho 83701
Phone: (208) 332-8503 / Fax: (208) 334-2170

IDAPA 02, TITLE 06, Chapter 28

RULES CREATING THE LOST RIVER SEED POTATO CROP MANAGEMENT AREA

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-1, January 2, 2002, page 38](#).

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

02.06.33 - ORGANIC FOOD PRODUCTS RULES

DOCKET NO. 02-0633-0101 - (FEE RULE)

NOTICE OF RULEMAKING

PENDING RULE AND AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is October 24, 2002. These rules have been adopted by the agency and are now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Section 22-1103, Idaho Code.

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

To be in compliance with the National Organic Program (NOP) rules which became effective April 22, 2001. To eliminate duplication and combine the common provisions of IDAPA 02.02.15, "Idaho Organic Food Products Rules" and IDAPA 02.02.16, "Idaho Department of Agriculture Rules Governing Organic Livestock" into a new, comprehensive rule, IDAPA 02.06.33, "Organic food Products Rules." The responsibility for the organic program was transferred from the Idaho State Department of Agriculture, Division of Agricultural Inspection to the Division of Plant Industries. The Director of the Idaho State Department of Agriculture has found it necessary to amend the temporary rules to include a choice of certifying with the ISDA or other certifying agents accredited under the National Organic Program and to clarify the application deadline for producers who wish to certify.

The proposed rule has been amended in response to public comment and in order to correct a conflict within the rules, and are being amended pursuant to Section 67-5227, Idaho Code. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the proposed rule. Only the sections that have changes are printed in this bulletin. The original text of the proposed rule was published in the December 5, 2001 Idaho Administrative Bulletin, Volume 01-12, pages 23 through 28.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger. This fee or charge is being imposed pursuant to Section 22-1106, Idaho Code. The following is a specific description of the fee or charge imposed or increased:

Pursuant to Section 22-1106, Idaho Code, the director may adopt rules establishing a fee schedule that will provide for the recovery of the full cost of the certification program. The fees include, but are not limited to: registration fees, inspection fees, laboratory fees and graduated gross sales fees. These fees are identical to those previously provided for in the former IDAPA 02.02.15, "Idaho Organic Food Products Rules" and IDAPA 02.02.16, "Idaho Department of Agriculture Rules Governing Organic Livestock Rules," except the Transitional to Organic Producer and Transitional to Organic Handler fees have been repealed.

Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Michael E. Cooper, Acting Administrator or Margaret Misner, Program Manager at (208) 332-8620.

DATED this 24th day of October, 2002.

Patrick A. Takasugi
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790, Boise, Idaho 83701
Phone: (208) 332-8503 / Fax: (208) 334-2170

IDAPA 02, TITLE 06, Chapter 33

ORGANIC FOOD PRODUCTS 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 text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 01-12, December 5, 2001, pages 23 through 28.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 02-0633-0101

SUBSECTION 300.02

300. REGISTRATION AND CERTIFICATION - FEE SCHEDULE.

02. Deadlines For Applications Of Certification. All organic food producers and organic handlers in Idaho shall be certified with the Department or another certifying agent accredited under the National Organic Program, except those production or handling operations exempted in Section 205.101 of 7 Code of Federal Regulations (CFR); ~~shall apply for organic certification with the Department by April 30th of each year and All organic food producers and organic handlers certifying with the Department are subject to an annual on-site inspection. When All applicants applying for certification with the Department, shall submit the application and fees shall be forwarded~~ to the Department on forms furnished by the Department. Applications for certification received prior to April 30th will be given priority scheduling for on-site inspection services. Applications received after April 30th will be considered late applications. Late applicants may lose the opportunity to have their on-site ~~farm~~ inspection scheduled in conjunction with other applicants in the area, which could result in substantially higher inspection fees. Applications for producer certification received after July 1 will not be accepted.

~~(1-1-02)T(10-24-02)T~~

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

02.06.37 - RULES CREATING THE CARIBOU COUNTY AND THAT PORTION OF FRANKLIN COUNTY INCLUDED IN SCHOOL DISTRICT NO. 148 SEED POTATO CROP MANAGEMENT AREA

DOCKET NO. 02-0637-0201 - (REPEAL OF CHAPTER)

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. This action was originally authorized under Title 22, Chapter 10, Idaho Code, which was repealed by the 2002 Legislature and replaced with Title 22, Chapter 20, Idaho Code. The current action is authorized under Sections 20-2006 and 20-2017, 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.

IDAPA 02.06.37 was repealed in its entirety. The common provisions of IDAPA 02.06.26; 02.06.27; 02.06.28; and 02.06.37 were combined into a new comprehensive rule IDAPA 02.06.26, "Rules Concerning Seed Potato Crop Management Areas".

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the January 2, 2002 Idaho Administrative Bulletin, Volume 02-1, page 39.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Michael E. Cooper, Acting Administrator at (208) 332-8620.

DATED this 17th day of October, 2002.

Patrick A. Takasugi
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790, Boise, Idaho 83701
Phone: (208) 332-8503 / Fax: (208) 334-2170

IDAPA 02, TITLE 06, Chapter 37

RULES CREATING THE CARIBOU COUNTY AND THAT PORTION OF FRANKLIN COUNTY INCLUDED IN SCHOOL DISTRICT NO. 148 SEED POTATO CROP MANAGEMENT AREA

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-1, January 2, 2002, page 39](#).

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 09 - IDAHO DEPARTMENT OF LABOR

09.01.06 - RULES OF THE APPEALS BUREAU

DOCKET NO. 09-0106-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 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 change is to provide an exception to IDAPA 09.01.06.012 for filing of a timely appeal. If a party establishes that but for an error by the U.S. Postal Service the appeal would have been postmarked timely, the appeal will be considered timely.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the August 7, 2002 Idaho Administrative Bulletin, Volume 02-8, pages 22 and 23.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Evelyn Thomas at 208/332-3570 ext. 3138.

DATED this 23rd day of October, 2002.

Tom Valasek
U.I. Administrator
Idaho Department of Labor
317 W. Main St., Boise, ID 83735
208/332-03570 ext. 3437 / 208/334-6301 Fax

IDAPA 09, TITLE 01, Chapter 06

RULES OF THE APPEALS BUREAU

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-8, August 7, 2002, pages 22 and 23.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 09 - IDAHO DEPARTMENT OF LABOR

09.01.30 - RULES OF THE BENEFITS BUREAU

DOCKET NO. 09-0130-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s)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 rulemaking amends IDAPA 09.01.30.475.07 to provide that if a claimant declines work with his or her ongoing employer and the employment relationship is not severed, the claimant's availability for work will be examined, but the claimant will not be considered to have refused an offer of work for the purposes of Sections 72-1366(6) or (21)(a)(ii)(A), Idaho Code.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the September 4, 2002 Idaho Administrative Bulletin, Volume 02-9, pages 82 and 83.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Roger Holmes at 208/332-3570 ext. 3233.

DATED this 23rd day of October, 2002.

Roger Holmes
UI Benefits Bureau Chief
Benefit Programs Bureau
Idaho Department of Labor
317 W. Main St., Boise, ID 83735
208/332-3570 ext. 3233 / 208/334-6301 Fax

IDAPA 09, TITLE 01, Chapter 30

RULES OF THE BENEFITS BUREAU

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-9, September 4, 2002, pages 82 and 83.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

**IDAPA 10 - IDAHO BOARD OF REGISTRATION OF PROFESSIONAL
ENGINEERS AND PROFESSIONAL LAND SURVEYORS**

10.01.01 - RULES OF PROCEDURE

DOCKET NO. 10-0101-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1208, Idaho Code.

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

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the September 4, 2002, Idaho Administrative Bulletin Volume No. 02-9, pages 84 through 88.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact David L. Curtis at (208) 334-3860.

DATED this 4th day of October, 2002.

David L. Curtis, Executive Director
Board of Registration of Professional Engineers and Professional Land Surveyors
600 S. Orchard, Suite A
Boise, Idaho 83705-1242
Telephone (208) 334-3860
Fax (208) 334-2008

IDAPA 10, TITLE 01, Chapter 01

RULES OF PROCEDURE

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-9, September 4, 2002, pages 84 through 88.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 10 - IDAHO BOARD OF REGISTRATION OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS

10.01.02 - RULES OF PROFESSIONAL RESPONSIBILITY

DOCKET NO. 10-0102-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1208, Idaho Code.

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

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the September 4, 2002, Idaho Administrative Bulletin Volume No. 02-9, pages 89 and 90.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact David L. Curtis at (208) 334-3860.

DATED this 4th day of October, 2002.

David L. Curtis, Executive Director
Board of Registration of Professional Engineers and Professional Land Surveyors
600 S. Orchard, Suite A
Boise, Idaho 83705-1242
Telephone (208) 334-3860
Fax (208) 334-2008

IDAPA 10, TITLE 01, Chapter 02

RULES OF PROFESSIONAL RESPONSIBILITY

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-9, September 4, 2002, pages 89 and 90.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 11 - IDAHO STATE POLICE

11.07.01 - MOTOR VEHICLES RULES - GENERAL RULES

DOCKET NO. 11-0701-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 2003 Idaho State Legislature for final approval. 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 Title 67, Chapter 29, 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 September 4, 2002, Idaho Administrative Bulletin, Volume 02-9, page 91 and 92.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Margaret P. White at (208) 884-7050.

DATED this 10th day of October, 2002.

Margaret P. White
Deputy Attorney General
Idaho State Police
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7050
(208) 884-7090 (FAX)

IDAPA 11, TITLE 07, Chapter 01

MOTOR VEHICLES RULES - GENERAL RULES

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-9 September 4, 2002, pages 91 and 92.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 11- IDAHO STATE POLICE

11.07.02 - RULES GOVERNING SAFETY GLAZING MATERIAL

DOCKET NO. 11-0702-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 2003 Idaho State Legislature for final approval. 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 Title 67, Chapter 29, 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 September 4, 2002, Idaho Administrative Bulletin, Volume 02-9, page 93 through 96.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Margaret P. White at (208) 884-7050.

DATED this 10th day of October, 2002.

Margaret P. White
Deputy Attorney General
Idaho State Police
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7050
(208) 884-7090 (FAX)

IDAPA 11, TITLE 07, Chapter 02

RULES GOVERNING SAFETY GLAZING MATERIAL

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-9 September 4, 2002, pages 93 through 96.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 11 - IDAHO STATE POLICE

11.07.03 - RULES GOVERNING EMERGENCY VEHICLES/AUTHORIZED EMERGENCY VEHICLES

DOCKET NO. 11-0703-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 2003 Idaho State Legislature for final approval. 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 Title 67, Chapter 29, 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 September 4, 2002, Administrative Bulletin, Volume 02-9, page 97 through 100.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Margaret P. White at (208) 884-7050.

DATED this 10th day of October, 2002.

Margaret P. White
Deputy Attorney General
Idaho State Police
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7050
(208) 884-7090 (FAX)

IDAPA 11, TITLE 07, Chapter 03

RULES GOVERNING EMERGENCY VEHICLES/AUTHORIZED EMERGENCY VEHICLES

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-9 September 4, 2002, pages 97 through 100.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 11 - IDAHO STATE POLICE

11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

DOCKET NO. 11-1101-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 19-5107, 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 October 2, 2002 Idaho Administrative Bulletin, Volume 02-10, pages 218 through 273.

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

Section 298 establishes that for-profit entities shall pay a fee for having their training courses evaluated and certified pursuant to Sections 19-5107, 19-5109(4), 19-5116(4)(C), and 19-5116(4)(d), Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Michael N. Becar at (208) 884-7251.

DATED this 23rd day of October, 2002.

Michael N. Becar, Executive Director
Idaho State Police/Peace Officer Standards and Training Council
700 South Stratford Drive
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7251 / (208) 884-7295 (FAX)

IDAPA 11, TITLE 11, Chapter 01

RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-10, October 2, 2002, pages 218 through 273.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

**IDAPA 15 - OFFICE OF THE GOVERNOR
IDAHO COMMISSION ON AGING**

15.01.01 - RULES GOVERNING SENIOR SERVICES PROGRAM

DOCKET NO. 15-0101-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-5003, 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 October 2, 2002 Idaho Administrative Bulletin, Volume 02-10, pages 316 through 332.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lois S. Bauer, Administrator, at (208) 334-3833.

DATED this 23rd day of October, 2002.

Lois S. Bauer, Administrator
Idaho Commission on Aging
3380 Americana Terrace, Ste. 120
Boise, Idaho 83706
Phone: (208) 334-3833 / Fax: (208) 334-3033

IDAPA 15, TITLE 01, Chapter 01

RULES GOVERNING SENIOR SERVICES PROGRAM

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-10, October 2, 2002, pages 316 through 332.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

**IDAPA 15 - OFFICE OF THE GOVERNOR
IDAHO COMMISSION ON AGING**

15.01.02 - RULES GOVERNING AREA AGENCY ADULT PROTECTION PROGRAMS

DOCKET NO. 15-0102-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-5003, 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 October 2, 2002 Idaho Administrative Bulletin, Volume 02-10, pages 333 through 336.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lois S. Bauer, Administrator, at (208) 334-3833.

DATED this 23rd day of October 2002.

Lois S. Bauer, Administrator
Idaho Commission on Aging
3380 Americana Terrace, Ste. 120
Boise, Idaho 83706
Phone: (208) 334-3833
Fax: (208) 334-3033

IDAPA 15, TITLE 01, Chapter 02

RULES GOVERNING AREA AGENCY ADULT PROTECTION PROGRAMS

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-10, October 2, 2002, pages 333 through 336.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

**IDAPA 15 - OFFICE OF THE GOVERNOR
IDAHO COMMISSION ON AGING**

15.01.21 - RULES GOVERNING OLDER AMERICANS ACT SERVICES

DOCKET NO. 15-0121-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-5003, 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 October 2, 2002 Idaho Administrative Bulletin, Volume 02-10, pages 337 and 338.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lois S. Bauer, Administrator, at (208) 334-3833.

DATED this 23rd day of October, 2002.

Lois S. Bauer, Administrator
Idaho Commission on Aging
3380 Americana Terrace, Ste. 120
Boise, Idaho 83706
Phone: (208) 334-3833
Fax: (208) 334-3033

IDAPA 15, TITLE 01, Chapter 21

RULES GOVERNING OLDER AMERICANS ACT SERVICES

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-10, October 2, 2002, pages 337 and 338.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

**IDAPA 15 - OFFICE OF THE GOVERNOR
IDAHO FOREST PRODUCTS COMMISSION**

15.03.01 - RULES OF ADMINISTRATIVE PROCEDURE OF THE FOREST PRODUCTS COMMISSION

DOCKET NO. 15-0301-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 38-1508, 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 September 4, 2002 Idaho Administrative Bulletin, Volume 02-9, pages 101 through 103.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Betty Munis, Director, at (208) 334-3292.

DATED this 7th day of October, 2002.

Betty Munis, Director
Idaho Forest Products Commission
350 N. 9th St., Ste. 304
P. O. Box 855
Boise, Idaho 83701
Telephone: (208) 334-3292
Facsimile: (208) 334-3449

IDAPA 15, TITLE 03, Chapter 01

RULES OF ADMINISTRATIVE PROCEDURE OF THE FOREST PRODUCTS COMMISSION

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-9, September 4, 2002, pages 101 through 103.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED, BLIND AND DISABLED

DOCKET NO. 16-0305-0203

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective October 1, 2002, and January 1, 2003.

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 56-1004(1), 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 December 18, 2002.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation 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:

The requirement for a face-to-face interview is being changed to a telephone interview. Medicaid coverage for certain eligible disabled aliens is being added. Clarification is being made for the definition of "room and board". Clarification is being made to provide a participant must require or is likely to require waiver services as a condition of eligibility for Home and Community Based Services. Clarification to provide that income and resource exclusions for AABD program are used for eligibility determinations effective January 1, 2003, for both Qualified Medicare Beneficiary (QMB) eligibility and for Specified Low Income Medicare Beneficiary (SLMB) eligibility. Effective January 1, 2003, the SLBM III group is being eliminated.

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 the public comment should be addressed.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226(1)(b), Idaho Code and are necessary in order to comply with federal regulations.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes are being made due to governing law.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Maggie Manzo at (208) 334-5753.

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 December 25, 2002.

DATED this 11th day of October, 2002.

Sherri Kovach
Administrative Procedures Coordinator
DHW – Administrative Procedures Section
450 West State Street, 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET 16-0305-0203

052. PERSONAL INTERVIEW.

Each applicant for AABD must participate in a ~~face-to-face~~ telephone interview unless good cause exists. Upon request, the Department may require a face-to-face interview. ~~(7-1-99)~~(10-1-02)T

(BREAK IN CONTINUITY OF SECTIONS)

106. CITIZENSHIP AND LEGAL NON-CITIZEN REQUIREMENT.

Individuals must be U.S. citizens or nationals or qualified legal non-citizens to be eligible. Nationals of American Samoa or Swain's Island are the equivalent of U.S. citizens. Only groups of legal non-citizens listed in Subsections 106.01 through 106.09 may be eligible. (7-1-99)

01. Permanent Residents Admitted Before August 22, 1996. Participants must be: (7-1-99)

a. For AABD cash, legal non-citizens lawfully admitted for permanent residence and getting AABD on August 22, 1996. For Medicaid, legal non-citizens lawfully admitted for permanent residence. (7-1-99)

b. Legal non-citizens of any age who are blind or disabled under the SSI disability criteria and lawfully admitted for permanent residence. (7-1-99)

c. American Indians born in Canada to whom Section 289 of the INA applies or legal non-citizens who are members of Indian tribes. (7-1-99)

d. Legal non-citizens who started AABD or SSI before January 1, 1979. (7-1-99)

02. Battered Non-Citizen Admitted Before August 22, 1996. A legal non-citizen admitted to the U.S. before August 22, 1996, as a battered non-citizen under Section 204(a)(1)(A) or 204(a)(1)(B) of the INA, as a non-citizen whose deportation is suspended under Section 244(a)(3) of the INA who is: (7-1-99)

a. 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 (7-1-99)

b. Blind or disabled of any age under the SSI disability criteria and lawfully admitted for permanent residence; or (7-1-99)

c. Lawfully admitted for permanent residence and getting AABD. (7-1-99)

03. Permanent Residents Admitted On Or After August 22, 1996. A lawful permanent resident admitted on or after August 22, 1996 must ~~be~~: ~~(7-1-99)~~(10-1-02)T

a. Be Aa veteran honorably discharged for a reason other than alienage or is 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 ~~(7-1-99)~~(10-1-02)T

b. Have lived in the U.S. for at least five (5) years and has forty (40) quarters of work; or ~~(7-1-99)~~(10-1-02)T

c. Be blind or disabled of any age under the SSI disability criteria. (10-1-02)T

04. Battered Non-Citizen Admitted On Or After August 22, 1996. A legal non-citizen admitted to the U.S. on or after August 22, 1996, as a battered non-citizen under Section 204(a)(1)(A) or 204(a)(1)(B) of the INA, or as a non-citizen whose deportation is suspended under Section 244(a)(3) of the INA, who is: (7-1-99)

a. 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 (7-1-99)

b. Who has lived in the U.S. for at least five (5) years. (7-1-99)

05. Refugees. A refugee admitted under Section 207 of the INA, 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: (7-1-99)

a. For seven (7) years from the date of entry; or (7-1-99)

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. (7-1-99)

06. Asylees. An asylee admitted under Section 208 of the INA is eligible: (7-1-99)

a. For seven (7) years from the date asylee status is assigned; or (7-1-99)

b. With no time limit if the asylee 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. (7-1-99)

07. Deportation Withheld. An individual whose deportation has been withheld under Section 241(b)(3) or 243(h) of the INA is eligible: (7-1-99)

a. For seven (7) years from the date deportation was withheld; or (7-1-99)

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. (7-1-99)

08. Conditional Entrants. A conditional entrant admitted under Section 203(a)(7) 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. (7-1-99)

09. Parolees. A person paroled into the U.S. under Section 212(d)(5) of the INA 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. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

512. ROOM AND BOARD HOME ALLOWANCE.

Room and board is a living arrangement where the participant purchases lodging (room) and meals (board) from a person he lives with who is not his parent, child or sibling. Through December 31, 2000, a participant living in a room and board home is budgeted six hundred thirty-two dollars (\$632) monthly. Beginning January 1, 2001, the Room and Board allowance increase is one-half (1/2) the dollar amount of the annual cost-of-living increase in the federal SSI benefit rate for a single person. Beginning January 1, 2002, the Room and Board allowance increase is the

dollar amount of the annual cost-of-living increase in the federal SSI benefit rate for a single person.

~~(3-15-02)~~(1-1-03)T

(BREAK IN CONTINUITY OF SECTIONS)

787. PERSON ENTITLED TO HOME AND COMMUNITY BASED SERVICES (HCBS).

An aged, blind or disabled person not eligible for SSI or AABD cash in his own home, because of income deeming or income limits, is eligible for Medicaid if he meets the conditions in Subsections 787.01 through 787.12. (7-1-99)

- 01. Age.** Is at least eighteen (18) years old. (4-5-00)
- 02. AABD Criteria.** If under age sixty-five (65), meets the AABD blindness or disability criteria. (7-1-99)
- 03. AABD Resource Limit.** Meets the AABD single person resource limit. (7-1-99)
- 04. HCBS Income Limit.** For the HCBS Aged and Disabled (A&D) waiver, has income not exceeding three (3) times the Federal SSI benefit payable monthly to a single person. For the HCBS Developmentally Disabled (DD) waiver, has income not exceeding three (3) times the Federal SSI benefit payable monthly to a single person. (3-15-02)
- 05. Eligible For Long Term Care.** For HCBS-A&D, meets the medical conditions for nursing facility care in accordance with IDAPA 16.03.09, "Rules Governing Medical Assistance," Subsection 160.09. For HCBS-DD, meets the medical conditions for ICF/MR care in accordance with IDAPA 16.03.09, "Rules Governing Medical Assistance," Section 143. (3-30-01)
- 06. Maintained In The Community.** For HCBS-A&D, can be maintained in the community with A&D waiver services furnished under the Department's HCBS waiver. For HCBS-DD, can be maintained in the community with DD waiver services. (1-1-02)T
- 07. Cost Of Care.** For HCBS-A&D, can be cared for in the community at a cost not to exceed the statewide average cost of care for the participant's level of care. The estimated cost of care in a nursing facility is the statewide average rate for the level of care the participant requires, charged by the type of facility where he would be placed if he were not living at home. For traumatic brain injury patients, the estimated cost of care is at the nursing facility special rate. (1-1-02)T
- 08. Care Requirement.** For HCBS-A&D, must require and receive, or be likely to require and receive, HCBS-A&D waiver services for thirty (30) consecutive days. For HCBS-DD, must require and receive, or be likely to require and receive, HCBS-DD waiver services for thirty (30) consecutive days. (1-1-02)T
- 09. Effective Date.** Medicaid is effective the first day of the thirty (30) day period the participant is likely to require and receive HCBS A&D or HCBS-DD waiver services. The date of the FSI resource assessment is the start date of the first thirty-day (30) period after September 30, 1989, that the participant is likely to require HCBS A&D or HCBS-DD waiver services. ~~(3-30-01)~~(1-1-03)T
- 10. Participant With Spouse.** A married participant living at home with his spouse who is not and HCBS participant, can choose between the SSI, CP, and FSI methods. If his spouse is also an HCBS participant or lives in a nursing home, the couple can choose between the SSI and CP methods. (7-1-99)
- 11. Continued Services.** The participant must continue to require and receive waiver services. The participant is ineligible when there is a lapse in need for or receipt of waiver services for thirty (30) days. (7-1-99)
- 12. Annual Limit.** A participant who applies for HCBS Medicaid, after the annual limit on HCBS-A&D or HCBS-DD waiver participants is reached, must be denied Medicaid. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

810. QUALIFIED MEDICARE BENEFICIARY (QMB).

A person meeting all requirements in Subsections 810.01 through 810.07 is eligible for QMB. QMB Medicaid pays Medicare premiums, coinsurance, and deductibles. (3-15-02)

01. Medicare Part A. The participant must be entitled to hospital insurance under Part A of Medicare at the time of his application. (7-1-99)

02. Nonfinancial Requirements. The participant must meet the Medicaid residence, citizenship, support cooperation, and SSN requirements. (7-1-99)

03. Income. Monthly income must not exceed one hundred percent (100%) of the official poverty line defined by the Federal Office of Management and Budget (OMB). The single person income limit is the poverty line for a family of one (1) person. The couple income limit is the poverty line for a family of two (2) persons. The annual Social Security cost of living increase is disregarded from income, until the month after the month the annual Federal poverty line revision is published. AABD cash is not counted as income. The income exclusions and disregards used for AABD are used for QMB. (~~7-1-99~~)(10-1-02)T

04. Dependent Income. Income of the dependent child, parent, or sibling is not counted. (7-1-99)

05. QMB Dependent Family Member Disregard. A dependent family member is a minor child, adult child meeting SSA disability criteria, parent or sibling of the participant or spouse living with the participant. The family member is or could be claimed on the Federal tax return of the participant or spouse. A participant with a dependent family member has an income disregard based on family size. The spouse is included in family size, whether or not the spouse is also participant. The disregard is based on the official poverty line income as defined by the OMB. The disregard is the difference between the poverty line for one (1) person, or two (2) persons if the participant has a spouse, and the poverty line for the family size including the participant, spouse, and dependent. (7-1-99)

06. Resource Limit. The resource limit for a single participant is four thousand dollars (\$4,000). The resource limit for a couple is six thousand dollars (\$6,000). The resource exclusions used for AABD are used for QMB. (~~7-1-99~~)(10-1-02)T

07. Effective Dates. The effective date of QMB coverage is no earlier than the first day of the month after the approval month. A QMB participant is not entitled to backdated Medicaid. (7-1-99)

811. SPECIFIED LOW INCOME MEDICARE BENEFICIARY (SLMB).

A person meeting all requirements in Subsections 811.01 through 811.07 is eligible for SLMB. Medicaid pays ~~all or part of~~ the Medicare Part B premiums for a SLMB, ~~depending on the participant's SLMB group.~~ The income and resource exclusions and disregards used for AABD are used for SLMB. (~~7-1-99~~)(10-1-02)T

01. Other Medicaid. The SLMB ~~I~~ may be eligible for other Medicaid. The SLMB II ~~and SLMB III~~ cannot be eligible for any other type of Medicaid. (~~7-1-99~~)(1-1-03)T

02. Medicare Part A. The SLMB must be entitled to hospital insurance under Part A of Medicare at the time of his application. (7-1-99)

03. Nonfinancial Requirements. The SLMB must meet the Medicaid eligibility requirements of residence, citizenship, support cooperation, and SSN. (7-1-99)

04. Income. The annual Social Security cost of living increase is disregarded from income, until the month after the month the annual Federal poverty line revision is published. The monthly income limit depends on

the SLMB group. The single person limit is based on a family of one (1). The couple limit is based on a family of two (2). The monthly income limit for SLMB Group I is up to one hundred twenty percent (120%) of the Federal poverty line. Monthly income for SLMB Group II is at least one hundred and twenty percent (120%) and not more than one hundred thirty five percent (135%) of the Federal poverty line. ~~The monthly income limit for SLMB Group III is at least one hundred thirty five percent (135%) and not more than one hundred seventy five percent (175%) of the Federal poverty line.~~ (7-1-99)(1-1-03)T

05. Resource Limit. The resource limit for a single person is four thousand dollars (\$4,000). The resource limit for a couple is six thousand dollars (\$6,000). (7-1-99)

06. Coverage Limits. Medicaid pays the Medicare Part B premium for SLMB Group I. There is no annual limit on participants served. Medicaid pays the Medicare Part B premium for SLMB Group II. There is an annual limit on participants served, based on availability of Federal funds. New applications are denied when the annual limit is reached. ~~Medicaid pays part of the Medicare Part B premium for SLMB Group III. The Medicaid payment is the increase in the Part B premium described in Section 4732 of Public Law 105-33. New applications are denied when the annual limit is reached.~~ (7-1-99)(1-1-03)T

07. Effective Dates. SLMB coverage begins on the first day of the application month. SLMB coverage may be backdated up to three (3) calendar months before the application month. (7-1-99)

08. Status Of SLMB Group II. SLMB Group II is extended to at least January 21, 2003, pending action by the U. S. Congress. (1-1-03)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM

DOCKET NO. 16-0309-0203

NOTICE OF RULEMAKING

RESCISSION OF TEMPORARY RULE AND VACATION OF PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221, Idaho Code, notice is hereby given that this agency has vacated the proposed rulemaking previously initiated under this docket and is rescinding the temporary rule previously adopted under this docket. The action is authorized pursuant to Section(s) 56-202(b) and 56-203(g), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a summary of the reasons for the rescission and vacation of this rulemaking:

The temporary rule, adopted under this docket (16-0309-0203) by the Department of Health and Welfare, was published in the February 6, 2002 Administrative Bulletin, Volume 02-2, page 29; the proposed rule was published in the May 1, 2002 Administrative Bulletin, Volume 02-5, page 49. This Notice of Rulemaking hereby rescinds the temporary rules, effective March 1, 2002, and vacates the proposed rulemaking.

The temporary and proposed rulemaking was done in order to implement Executive Order 2001-10 and to comply with 67-3516, Idaho Code, which restricts expenditures to available funds. Medicaid attempted to gain better control over prescription drug spending by requiring prior authorization for medications over four (4) per month per adult clients. It became apparent that the volume of prior authorizations required to be processed exceeded Medicaid's staffing resources. A new docket (16-0309-0214) was written to allow Medicaid to focus on other cost-effective measures by prior authorizing medications. Therefore, this Notice of Rulemaking rescinds the temporary rule, effective March 1, 2002, and vacates the proposed rulemaking to allow the new pharmacy coverage rules to be effective on May 20, 2002.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this vacation of proposed rulemaking and rescission of temporary rule, contact Arla Farmer at (208) 364-1958.

DATED this 11th day of October, 2002.

Sherri Kovach
Administrative Procedures Coordinator
DHW – Administrative Procedures Section
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IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM

DOCKET NO. 16-0309-0205

NOTICE OF RULEMAKING

RESCISSION OF TEMPORARY RULE AND VACATION OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221, Idaho Code, notice is hereby given that this agency has vacated the proposed rulemaking previously initiated under this docket and is rescinding the temporary rule previously adopted under this docket. The action is authorized pursuant to Section(s) 56-202(b) and 56-203(g), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a summary of the reasons for the vacating this rulemaking:

The temporary rule and the proposed rulemaking, both adopted and initiated by the Department of Health and Welfare under this docket (16-0309-0205) and published in the May 8, 2002 Administrative Bulletin, Volume 02-5, pages 53 through 59, are hereby rescinded and vacated effective June 30, 2002.

This rulemaking (16-0306-0205) was required to comply with Legislative Intent Language as described in the Department's Appropriations Bill which defines Medicaid dental coverage for adults (persons twenty-one years of age or older) as "emergency services only". During the course of implementing these rules, Medicaid staff was confronted with many requests for exceptions and special considerations. After conferring with Medicaid's dental consultants and working with the Idaho Dental Association, additional changes need to be made to the rule to allow the client's dentist or oral surgeon to determine when a dental emergency exists which requires immediate dental intervention. Therefore, this Notice of Rulemaking rescinds the temporary rule, effective June 30, 2002, and vacates the proposed rulemaking to allow the new dental coverage rules to be effective on July 1, 2002.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this vacation of proposed rulemaking and the rescission of temporary rule, contact Arla Farmer at (208) 364-1958.

DATED this 4th day of October, 2002.

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IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM
DOCKET NO. 16-0309-0212
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective October 1, 2002.

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); 56-203(g), (i), (j); 56-1003(1); 56-1004(1)(a), 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 December 18, 2002.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation 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:

The proposed amendments in these rules regarding Traumatic Brain Injury (TBI) will clarify provider qualifications and update terminology to read consistently within the TBI rules and with the other Home and Community Based Services (HCBS) Waivers.

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 the public comment should be addressed.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226(1)(a) and (c), Idaho Code and are necessary in order protect public health, safety or welfare and to confer a benefit to the public.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, formal negotiated rulemaking was not conducted because input was gathered from stakeholders by other means. However, a statewide waiver improvement group participated in the rule change process and input from statewide brain injury councils, regional staff, and other interested stakeholders was included as well.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Arla Farmer at (208) 364-1958.

Anyone can submit written comments regarding this proposed rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before December 25, 2002.

DATED this 15th day of October, 2002.

Sherri Kovach
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0212

765. WAIVER SERVICES FOR ADULTS WITH A TRAUMATIC BRAIN INJURY.

Pursuant to 42 CFR Section 435.217, it is the intention of the Department to provide waiver services to eligible ~~recipients~~ participants in order to prevent unnecessary institutional placement, to provide for the greatest degree of independence possible, to enhance the quality of life, to encourage individual choice, and to achieve and maintain community integration. For a ~~recipient~~ participant to be eligible, the Department must find that the ~~recipient~~ participant requires services due to a traumatic brain injury which impairs their mental or physical function or independence, be capable of being maintained safely and effectively in a non-institutional setting and would, in the absence of such services, require the level of care provided in a ~~NF~~ nursing facility as set forth in IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," ~~Subsection 180.03 506.~~ ~~(7-1-99)~~(10-1-02)T

(BREAK IN CONTINUITY OF SECTIONS)

767. DIAGNOSTIC CRITERIA.

In order to qualify for the waiver under this rule the person must have a diagnosis listed in the International Classification of Diseases - Clinical Modification Medicode (ICD-CM). The diagnosis must be within one (1) of the classification codes listed:

TABLE 767	
Classification Code Number	Classification Description
348.1	Anoxic brain damage
431	Intra cerebral hemorrhage
800 - 800.9	Fracture of a vault of the skull
801 - 801.99	Fracture of the base of the skull
803 - 803.99	Other skull fractures
804 - 804.99	Multiple fractures involving the skull, face, and other bones
<u>850 - 850.9</u>	<u>Concussion</u>
851 - 851.9	Cerebral laceration and contusion
852 - 852.99	Subarachnoid, subdural, and extradural hemorrhage following injury
853 - 853.99	Other unspecified Intra cerebral hemorrhage following injury
<u>854 - 854.99</u>	<u>Intracranial injury of other and unspecified nature</u>
905 - 907.0	Late effects of skull and face fractures plus late effects of intracranial injury without fractures

~~(7-1-99)~~(10-1-02)T

(BREAK IN CONTINUITY OF SECTIONS)

769. RESIDENTIAL HABILITATION.

Services consist of an integrated array of individually-tailored services and supports furnished to eligible ~~recipients~~ participants designed to assist them to reside successfully in their own homes, with their families, or alternate family homes. The services and supports that may be furnished are listed in sections 769 through 771 of these rules.
(7-1-99)(10-1-02)T

770. HABILITATION SERVICES.

Services consist of assisting the individual to acquire, retain or improve his ability to reside as independently as possible in the community or maintain family unity. Habilitation services include training in one (1) or more of the following areas: (7-1-99)

01. Self-Direction. Self-direction consists of the identification of and response to dangerous or threatening situations, making decisions and choices affecting the individual's life, and initiating changes in living arrangements or life activities; (7-1-99)

02. Money Management. Money management consists of training or assistance in handling personal finances, making purchases, and meeting personal financial obligations; (7-1-99)

03. Daily Living Skills. Daily living skills consists of training in accomplishing routine housekeeping tasks, meal preparation, dressing, personal hygiene, self administration of medications, and other areas of daily living including proper use of adaptive and assistive devices, appliances, home safety, first aid, and emergency procedures; (7-1-99)

04. Socialization. Socialization consists of training or assistance in participation in general community activities and establishing relationships with peers with an emphasis on connecting the ~~recipient~~ participant to ~~their~~ his community. (Socialization training associated with participation in community activities includes assisting the ~~recipient~~ participant to identify activities of interest, working out arrangements to participate in such activities and identifying specific training activities necessary to assist the ~~recipient~~ participant to continue to participate in such activities on an on-going basis. Socialization training does not include participation in nontherapeutic activities which are merely diversional or recreational in nature); (7-1-99)(10-1-02)T

05. Mobility. Mobility consists of training or assistance aimed at enhancing movement within the person's living arrangement, mastering the use of adaptive aids and equipment, accessing and using public transportation, independent travel, or movement within the community; (7-1-99)

06. Behavior Shaping And Management. Behavior shaping and management consists of training and assistance in appropriate expressions of emotions or desires, assertiveness, acquisition of socially appropriate behaviors; or extension of therapeutic services, which consist of reinforcing physical, occupational, speech and other therapeutic programs. (7-1-99)

771. PERSONAL ASSISTANCE SERVICES.

Services consist of assisting the individual in daily living activities, household tasks, and such other routine activities as the ~~recipient~~ participant or the ~~recipient's~~ participant's primary caregiver(s) are unable to accomplish on his own behalf. (7-1-99)(10-1-02)T

772. PERSONAL ASSISTANCE SERVICES SKILLS TRAINING.

~~01-~~ **Skills Training.** Skills training consists of teaching waiver ~~recipients~~ participants, family members, alternative family caregiver(s), or a ~~recipient's~~ participant's roommate or neighbor to perform activities with greater independence and to carry out or reinforce habilitation training. Services are focused on training and are not designed to provide substitute task performance. Skills training is provided to encourage and accelerate development in independent daily living skills, self direction, money management, socialization, mobility and other therapeutic programs. (7-1-99)(10-1-02)T

772.3. -- 779. (RESERVED).

780. CHORE SERVICES.

Services consist of heavy household maintenance and minor home repairs necessary to maintain the functional use of

the home and to provide a clean, sanitary and safe environment. Chore activities include washing windows; moving heavy furniture and shoveling snow to provide safe access inside and outside the home; chopping wood when wood is the ~~recipient's~~ participant's primary source of heat; and tacking down loose rugs and flooring. These services are only available when neither the ~~recipient~~ participant, nor anyone else in the household is capable of performing or financially providing for them, and where no other relative, caretaker, landlord, community volunteer/agency or third party payor is capable of or responsible for their provision. In the case of rental property, the responsibility of the landlord, pursuant to the lease agreement, will be examined prior to any authorization of service. Chore services are limited to the services provided in a home rented or owned by the ~~recipient~~ participant. ~~(7-1-99)~~(10-1-02)T

781. RESPITE CARE SERVICES.

Services consist of those services provided, on a short term basis, in the home of either the waiver ~~recipient~~ participant or respite provider, to relieve the person's family or other primary caregiver(s) from daily stress and care demands. While receiving respite care services, the waiver ~~recipient~~ participant cannot receive other waiver services which are duplicative in nature. Respite care services provided under this waiver will not include room and board payments. Respite care services are limited to ~~recipients~~ participants who reside with non-paid caregivers. ~~(7-1-99)~~(10-1-02)T

(BREAK IN CONTINUITY OF SECTIONS)

783. EXCLUSIONS FROM SUPPORTED EMPLOYMENT.

01. Supported Employment Services. Supported employment services rendered under the waiver are not available under a program funded by either the Rehabilitation Act of 1973, as amended, or the Individuals with Disabilities Education Act (IDEA). Documentation will be maintained in the file of each individual receiving this service verifying that the service is not otherwise available/funded under the Rehabilitation Act of 1973 as amended, or IDEA; ~~and the waiver participant has been deinstitutionalized from an NF or ICF/MR at some prior period.~~ ~~(7-1-99)~~(10-1-02)T

02. Federal Financial Participation (FFP). FFP will not be claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following: incentive payments made to an employer of waiver ~~recipients~~ participants to encourage or subsidize employers' participation in a supported employment program; payments that are passed through to beneficiaries of supported employment programs; or payments for vocational training that is not directly related to a waiver participant's supported employment program. ~~(7-1-99)~~(10-1-02)T

784. TRANSPORTATION SERVICES.

Services consist of services offered in order to enable waiver ~~recipients~~ participants to gain access to waiver and other community services and resources required by the ~~individual support p~~Plan of Care. This service is offered in addition to medical transportation required under 42 CFR 431.53 and transportation services offered under the State plan, defined at 42 CFR 440.170(a), and shall not replace them. Whenever possible, family, neighbors, friends, or community agencies which can provide this service without charge or public transit providers will be utilized. ~~(7-1-99)~~(10-1-02)T

785. ENVIRONMENTAL ACCESSIBILITY ADAPTATIONS.

Adaptations consist of interior or exterior physical adaptations to the home, required by the waiver ~~recipient's~~ participant's support plan, which are necessary to ensure the health, welfare, safety of the individual, or which enable the individual to function with greater independence in the home and without which, the waiver ~~recipient~~ participant would require institutionalization. Such adaptations may include the installation of ramps and lifts, widening of doorways, modification of bathroom facilities, or installation of electric and plumbing systems which are necessary to accommodate the medical equipment and supplies necessary for the welfare of the waiver ~~recipient~~ participant, but shall exclude those adaptations or improvements to the home which are not of direct medical or remedial benefit to the ~~recipient~~ participant, such as carpeting, roof repair, or central air conditioning. All services shall be provided in accordance with applicable State or local building codes. Permanent environmental modifications are limited to modifications to a home rented or owned by the ~~recipient~~ participant or the ~~recipient's~~ participant's family when the home is the ~~recipient's~~ participant's principal residence. Portable or non-stationary modifications may be made when

such modifications can follow the ~~recipient~~ participant to his next place of residence or be returned to the Department. (~~7-1-99~~)(10-1-02)T

786. SPECIALIZED MEDICAL EQUIPMENT AND SUPPLIES.

Specialized medical equipment and supplies consist of devices, controls, or appliances, specified in the ~~Individual Support~~ Plan of Care which enable ~~recipients~~ participants to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. They also include items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid State ~~p~~Plan. Items reimbursed with waiver funds shall be in addition to any medical equipment and supplies furnished under the State ~~p~~Plan and shall exclude those items which are not of direct medical or remedial benefit to the ~~recipient~~ participant. All items shall meet applicable standards of manufacture, design and installation. (~~7-1-99~~)(10-1-02)T

787. PERSONAL EMERGENCY RESPONSE SYSTEMS (PERS).

PERS ~~consist of a system which~~ may be provided to monitor waiver ~~recipient~~ participant safety and ~~or~~ provide access to emergency crisis intervention for emotional, medical or environmental emergencies through the provision of communication connection systems. PERS are limited to ~~recipients~~ participants who rent or own their home, who are alone for significant parts of the day, have no regular caretaker for extended periods of time and who would otherwise require extensive routine supervision. (~~7-1-99~~)(10-1-02)T

788. HOME DELIVERED MEALS.

Home delivered meals consist of meals designed to promote adequate waiver ~~recipient~~ participant nutrition through the provision and home delivery of one (1) to two (2) meals per day. Home delivered meals are limited to ~~recipients~~ participants who rent or own their own home, who are alone for significant parts of the day, and who have no regular caretaker for extended periods of time. (~~7-1-99~~)(10-1-02)T

789. EXTENDED STATE PLAN SERVICES.

01. Extended State Plan Services. Extended ~~s~~State ~~p~~Plan services under the waiver consist of physical therapy services; occupational therapy services; and speech, hearing and language services. These services are to be available through the waiver when the need for such services exceeds the therapy limitations under the State ~~p~~Plan. Under the waiver, therapy services will include: (~~7-1-99~~)(10-1-02)T

- a. Services provided in the waiver ~~recipient's~~ participant's residence, day rehabilitation site, or supported employment site; (~~7-1-99~~)(10-1-02)T
- b. Consultation with other service providers and family members; (7-1-99)
- c. Participation on the ~~recipient's Individual Support~~ participant's Plan of Care team. (~~7-1-99~~)(10-1-02)T

790. SKILLED NURSING SERVICES.

Services consist of intermittent or continuous oversight and skilled care in a non-congregate setting, which is within the scope of the Nurse Practice Act and as such must be provided by a licensed registered nurse or licensed practical nurse under the supervision of a registered nurse, licensed to practice in Idaho. These services are ~~not~~ appropriate if they are available and more cost effective than a Home Health visit. Nursing services may include but are not limited to the insertion and maintenance of nasogastric tubes and the monitoring or installation of feeding material, the maintenance of volume ventilators including associated tracheotomy care, tracheotomy and oral pharyngeal suctioning, maintenance and monitoring of IV fluids and/or nutritional supplements which are to be administered on a continuous or daily basis, injections, blood glucose monitoring, and blood pressure monitoring. (~~7-1-99~~)(10-1-02)T

791. PERSONAL CARE SERVICES.

Services consist of assistance due to a medical condition which impairs physical or mental function and which maintains a ~~consumer~~ participant safely and effectively in ~~their~~ his own home or residence. Services include but are not limited to bathing, care of the hair, assistance with clothing, basic skin care, bladder and bowel requirements, medication management, food nutrition and diet activities, active treatment training programs, and non-nasogastric gastrostomy tube feedings. (~~7-1-99~~)(10-1-02)T

792. BEHAVIOR CONSULTATION/CRISIS MANAGEMENT.

Behavior consultation/crisis management consist of services which provide direct consultation and clinical evaluation of ~~recipients~~ participants who are currently experiencing or may be expected to experience, a psychological, behavioral, or emotional crisis. This service may provide training and staff development related to the needs of a ~~recipient~~ participant. These services also provide emergency back-up involving the direct support of the ~~recipient~~ participant in crisis. (7-1-99)(10-1-02)T

793. DAY REHABILITATION.

Day rehabilitation consists of assistance with acquisition, retention, or improvement in self-help, socialization and adaptive skills which take place in a non-residential setting, separate from the home or facility in which the ~~individual~~ participant resides. Services shall normally be furnished four (4) or more hours per day on a regularly scheduled basis, for one (1) or more days per week unless provided as an adjunct to other day activities included in ~~an~~ ~~individual's~~ participant's ~~p~~Plan of ~~e~~Care. Day rehabilitation services shall focus on enabling the ~~individual~~ participant to attain or maintain his or her maximum functional level and shall be coordinated with any physical, occupational, or speech therapies listed in the ~~p~~Plan of ~~e~~Care. In addition, day rehabilitation services may serve to reinforce skills or lessons taught in school, therapy, or other settings. (7-1-99)(10-1-02)T

794. PLACE OF SERVICE DELIVERY.

Waiver services for ~~recipients~~ participants with a traumatic brain injury may be provided in the ~~recipient's~~ participant's personal residence, ~~specialized~~ certified family home, waiver facilities, day rehabilitation/supported employment program or community. The following living situations are specifically excluded as a personal residence for the purpose of these rules: (7-1-99)(10-1-02)T

01. Excluded As A Personal Residence. (7-1-99)

- a. Licensed Skilled, or Intermediate Care Facilities, Certified Nursing Facility (NF) or hospital; and (7-1-99)
- b. Licensed Intermediate Care Facility for the Mentally Retarded (ICF/MR); and (7-1-99)
- c. Licensed Residential ~~Care~~ or Assisted Living Facility; ~~and~~ (7-1-99)(10-1-02)T
- ~~d. Adult Foster Homes.~~ (7-1-99)

e02. Additional Service Limitations. Additional limitations to specific services are listed under that service definition. (7-1-99)(10-1-02)T

795. SERVICE DELIVERED FOLLOWING A WRITTEN PLAN.

All waiver services must be authorized by the Regional Medicaid ~~Unit~~ Services in the ~~R~~region where the ~~recipient~~ participant will be residing and provided based on a written ~~Individual Support~~ Plan (ISP) of Care. (7-1-99)(10-1-02)T

01. Development Of The ISP Plan Of Care. The ISP Plan of Care is developed by the ISP Plan of Care team which includes: (7-1-99)(10-1-02)T

- a. The Waiver ~~Recipient~~ Participant. Efforts must be made to maximize the ~~recipient's~~ participant's participation on the team by providing him with information and education regarding his rights; and (7-1-99)(10-1-02)T
- b. The Department's administrative case manager ~~chosen by the recipient~~; and (7-1-99)(10-1-02)T
- c. The guardian when appropriate; and (7-1-99)
- d. May include others identified by the waiver ~~recipient~~ participant. (7-1-99)(10-1-02)T

02. Assessment Process Approved By The Department. The ISP Plan of Care must be based on an

assessment process approved by the Department.

~~(7-1-99)~~(10-1-02)T

03. Included In The ~~IS~~Plan Of Care. The ~~IS~~Plan of Care must include the following:

~~(7-1-99)~~(10-1-02)T

a. The specific types, amounts, frequency and duration of Medicaid reimbursed waiver services to be provided; and

(7-1-99)

b. Supports and service needs that are to be met by the ~~recipient's~~ participant's family, friends and other community services; and

~~(7-1-99)~~(10-1-02)T

c. The providers of waiver services when known; and

(7-1-99)

d. Documentation that the ~~recipient~~ participant has been given a choice between waiver services and institutional placement; and

~~(7-1-99)~~(10-1-02)T

e. The signature of the ~~recipient~~ participant or his legal representative and the case manager.

~~(7-1-99)~~(10-1-02)T

f. The plan must be revised and updated by the ~~IS~~Plan of Care team based upon treatment results or a change in the ~~recipient's~~ participant's needs, ~~but at least semi-annually~~. A new plan must be developed and approved annually.

~~(7-1-99)~~(10-1-02)T

04. Authorization Of Services. All services reimbursed under the Home and Community Based Waiver for ~~recipients~~ participants with a traumatic brain injury must be authorized prior to the payment of services by the Regional Medicaid ~~Unit~~ Services.

~~(7-1-99)~~(10-1-02)T

05. Service Supervision. The ~~Individual Support~~ Plan of Care which includes all waiver services is monitored by the Department's case manager.

~~(7-1-99)~~(10-1-02)T

796. PROVIDER QUALIFICATIONS.

All providers of waiver services must have a valid provider agreement/performance contract with the Department. Performance under this agreement/contract will be monitored by the Regional Medicaid ~~Unit~~ Services in each region.

~~(7-1-99)~~(1-1-02)T

01. Residential Habilitation Service Providers. ~~Residential Habilitation services must be provided by an agency that is certified as a Residential Habilitation Agency under IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies".~~ Providers of residential habilitation services must meet the following requirements:;

~~(7-1-99)~~(10-1-02)T

a. Direct service staff must meet the following minimum qualifications: be at least eighteen (18) years of age; be a high school graduate or have a GED or demonstrate the ability to provide services according to ~~an~~ ~~Individual Support~~ Plan of Care; have current CPR and First Aid certifications; be free from communicable diseases; pass a criminal background check (when residential habilitation services are provided in a ~~specialized~~ certified family home, all adults living in the home must pass a criminal background check); participate in an orientation program, including the purpose and philosophy of services, service rules, policies and procedures, proper conduct in relating to waiver participants, and handling of confidential and emergency situations that involve the waiver participant, provided by the agency prior to performing services; and have appropriate certification or licensure if required to perform tasks which require certification or licensure. Direct service staff must also have taken a traumatic brain injury training course approved by the Department.

~~(7-1-99)~~(10-1-02)T

b. The provider agency will be responsible for providing direct service staff with a traumatic brain injury training course approved by the Department, and training specific to the needs of the ~~recipient~~ participant. Skill training ~~must~~ may be provided by a Program Coordinator, if no agency is available in their geographic area as outlined in Subsection 796.01.c. of this rule, who has demonstrated experience in writing skill training programs. Additional training requirements may also include ~~at a minimum:~~ instructional technology; behavior technology; feeding; communication/sign language; mobility; assistance with medications (training in assistance with

medications must be provided by a licensed nurse); activities of daily living; body mechanics and lifting techniques; housekeeping techniques and maintenance of a clean, safe, and healthy environment. ~~(7-1-99)~~(10-1-02)T

c. Residential habilitation providers who are unable to be employed by an agency because one is not available in their geographic area, must receive program development, implementation and oversight of service delivery services by a Program Coordinator who has a valid case management, service coordination, or targeted service coordination provider agreement with the Department and who has taken a traumatic brain injury training course approved by the Department. ~~(7-1-99)~~(10-1-02)T

d. When residential habilitation services are provided in the provider's home, the agency must meet the environmental sanitation standards; fire and life safety standards; and building, construction and physical home standards for certification as ~~an adult foster~~ certified family home. Non-compliance with the above standards will be cause for termination of the provider's provider agreement/contract. ~~(7-1-99)~~(10-1-02)T

02. Chore Service Providers. Providers of chore services must meet the following minimum qualifications: (7-1-99)

a. Be skilled in the type of service to be provided; and (7-1-99)

b. Demonstrate the ability to provide services according to ~~an individual support p~~Plan of Care. ~~(7-1-99)~~(10-1-02)T

03. Respite Care Service Providers. Providers of respite care services must meet the following minimum qualifications: (7-1-99)

a. Meet the qualifications prescribed for the type of services to be rendered, for instance. Residential Habilitation providers must be an employee of an agency selected by the waiver participant and/or the family or guardian; and (7-1-99)

b. Have received caregiving instructions in the needs of the person who will be provided the service; and (7-1-99)

c. Demonstrate the ability to provide services according to ~~an individual support p~~Plan of Care; and ~~(7-1-99)~~(10-1-02)T

d. Have good communication and interpersonal skills and the ability to deal effectively, assertively and cooperatively with a variety of people; and (7-1-99)

e. Be willing to accept training and supervision by a provider agency or the primary caregiver of services; and (7-1-99)

f. Be free of communicable diseases; and ~~(7-1-99)~~(10-1-02)T

g. ~~Have~~ Successfully completed a ~~basic and advanced~~ traumatic brain injury training course approved by the Department. ~~(7-1-99)~~(10-1-02)T

04. Supported Employment Service Providers. Supported Employment services must be provided by an agency capable of supervising the direct service and be accredited by the Commission on Accreditation of Rehabilitation Facilities; or other comparable standards; or meet State requirements to be a State-approved provider, and have taken a ~~basic and advanced~~ traumatic brain injury training course approved by the Department. ~~(7-1-99)~~(10-1-02)T

05. Transportation Service Providers Must: (7-1-99)

a. Possess a valid driver's license; and (7-1-99)

b. Possess valid vehicle insurance. (7-1-99)

- 06. Environmental Modifications Service Providers.** Environmental Modifications services must: (7-1-99)
- a.** Be done under a permit, if required; and (7-1-99)
 - b.** Demonstrate that all modifications, improvements, or repairs are made in accordance with local and state housing and building codes. (7-1-99)
- 07. Specialized Medical Equipment And Supplies.** Specialized Medical Equipment and Supplies purchased under this service must: (7-1-99)
- a.** Meet Underwriter's Laboratory, FDA, or Federal Communication Commission standards where applicable; and (7-1-99)
 - b.** Be obtained or provided by authorized dealers of the specific product where applicable. For instance, medical supply businesses or organizations that specialize in the design of the equipment. (7-1-99)
- 08. Personal Emergency Response Systems.** Personal Emergency Response Systems must demonstrate that the devices installed in waiver participants' homes meet Federal Communications Standards or Underwriter's Laboratory standards or equivalent standards. (7-1-99)
- 09. Home Delivered Meal Services.** Home Delivered Meals under this section may only be provided by an agency capable of supervising the direct service and must: (7-1-99)
- a.** Provide assurances that each meal meets one third (1/3) of the Recommended Dietary Allowance as defined by the Food and Nutrition Board of National Research Council or meet physician ordered individualized therapeutic diet requirement; and (7-1-99)
 - b.** Maintain Registered Dietitian documented review and approval of menus, menu cycles and any changes or substitutes; and (7-1-99)
 - c.** Must provide assurances that the meals are delivered on time and demonstrate the ability to deliver meals at a minimum of three (3) days per week; and (7-1-99)
 - d.** Maintain documentation reflecting the meals delivered are nutritionally balanced and made from the highest U.S.D.A. Grade for each specific food served; and (7-1-99)
 - e.** Provide documentation of current driver's license for each driver; and (7-1-99)
 - f.** Must be inspected and licensed as a food establishment by the District Health Department. (7-1-99)
- 10. Extended State Plan Service Providers.** All therapy services, with the exception of physical therapy, must be provided by a provider agency capable of supervising the direct service. Providers of services must meet the provider qualifications listed in the State Plan and have taken a ~~basic and advanced~~ traumatic brain injury training course approved by the Department. (~~7-1-99~~)(10-1-02)T
- 11. Nursing Service Providers.** Nursing Service Providers must provide documentation of current Idaho licensure as a RN or LPN in good standing and have taken a ~~basic and advanced~~ traumatic brain injury training course approved by the Department. (~~7-1-99~~)(10-1-02)T
- 12. Behavior Consultation/Crisis Management Service Providers.** Behavior Consultation/Crisis Management Providers must meet the following: (7-1-99)
- ba.** ~~Must have~~ Have a Master's Degree in a behavioral science such as social work, psychology, psychosocial rehabilitation counseling, psychiatric nursing, or a closely related course of study; or (~~7-1-99~~)(10-1-02)T

- eb.** Be a licensed pharmacist; or (7-1-99)
- ec.** Work for a provider agency capable of supervising the direct service or work under the direct supervision of a licensed psychologist or Ph.D., with training and experience in treating severe behavior problems and training and experience in applied behavior analysis; and (7-1-99)
- ed.** Taken a ~~basic and advanced~~ traumatic brain injury training course approved by the Department. (7-1-99)(10-1-02)T
- de.** Emergency back-up providers must also meet the minimum provider qualifications under Residential Habilitation services. (7-1-99)(10-1-02)T

13. Day Rehabilitation Providers. Day Rehabilitation Providers must have a minimum of two (2) years of experience working directly with persons with a traumatic brain injury, must provide documentation of standard licensing specific to their discipline, and must have taken a ~~basic and advanced~~ traumatic brain injury course approved by the Department. (7-1-99)(10-1-02)T

14. Personal Care Service Providers. Personal Care Service providers must meet the requirements outlined in IDAPA 16.03.09, "Rules Governing Medical Assistance," Subsections 146.06.a. through 146.06.h. - PCS Provider Qualifications. Providers ~~will be required to~~ must take a ~~basic and advanced~~ traumatic brain injury training course approved by the Department. (7-1-99)(10-1-02)T

797. RECIPIENT PARTICIPANT ELIGIBILITY DETERMINATION.

~~Waiver eligibility will be determined by the Regional Medicaid Unit. The recipient must be financially eligible for MA~~ The Regional Medicaid Services determines whether the participant meets the NH level of care required for waiver eligibility. The self reliance specialist determines whether the participant meets the other MA eligibility requirements as described in IDAPA 16.03.05, "Rules Governing Eligibility for the Aged, Blind, and Disabled (AABD)," Section 634 787. ~~The cited chapter implements and is in accordance with the Financial Eligibility Section of the Idaho State Plan.~~ In addition, waiver ~~recipients~~ participants must meet the following requirements:-: (7-1-99)(10-1-02)T

01. Requirements For Determining ~~Recipient~~ Participant Eligibility. The Regional Medicaid ~~Unit~~ Services must determine that: (7-1-99)(10-1-02)T

a. The ~~recipient~~ participant would qualify for NF level of care as set forth in Section ~~480~~ 506 of these rules; if the waiver services listed in Section 765 of these rules were not made available; and (7-1-99)(10-1-02)T

b. The ~~recipient~~ participant could be safely and effectively maintained in the requested/chosen community residence with appropriate waiver services. This determination must: be made by ~~a team of individuals~~ the Department's Case Manager, with input from the ~~ISPlan of Care~~ team; and prior to any denial of services on this basis, be determined by the Department's Case manager that services to correct the concerns of the team are not available. (7-1-99)(10-1-02)T

c. The average daily cost of waiver services and other medical services to the ~~recipient~~ participant would not exceed the average daily cost to Medicaid of NF care and other medical costs. Individual ~~recipients~~ participants whose cost of services exceeds this average may be approved on a case by case basis that assures that the average per capita expenditures under the waiver do not exceed one hundred percent (100%) of the average per capita expenditures for NF care under the State plan that would have been made in that fiscal year had the waiver not been granted. This approval will be made by a team identified by the Administrators of the Divisions of Medicaid and Family and Community Services. (7-1-99)(10-1-02)T

d. Following the approval by the Regional Medicaid ~~Unit~~ Services for services under the waiver, the ~~recipient~~ participants must receive and continue to receive a waiver service as described in these rules. A ~~recipient~~ participant who does not use a waiver service for thirty (30) consecutive days will be terminated from the waiver program. (7-1-99)(10-1-02)T

02. Admission To A Nursing Facility. A ~~recipient~~ participant who is determined by the Regional

Medicaid Unit Services to be eligible for services under the Home and Community Based Services Waiver for adults with a traumatic brain injury may elect to not utilize waiver services but may choose admission to an NF.

(7-1-99)(10-1-02)T

03. Self-Reliance Specialist. The recipient's participant's self-reliance specialist will process the application in accordance with IDAPA 16.03.05, "Rules Governing Eligibility for the Aged, Blind, and Disabled (AABD)," as if the application was for admission to a NF except that the eligibility examiner self reliance specialist will forward potentially eligible applications immediately to the Regional Medicaid Unit Services for review. The Medicaid application process cited above conforms to all statutory and regulatory requirements relating to the Medicaid application process.

(7-1-99)(10-1-02)T

04. Redetermination Process. Case Redetermination. (7-1-99)

a. Financial redetermination will be conducted pursuant to ~~IDAPA 16.03.01, "Rules Governing Eligibility for Medicaid for Families and Children,"~~ and IDAPA 16.03.05, "Rules Governing Eligibility for the Aged, Blind, and Disabled (AABD)". Medical redetermination will be made at least annually by the Regional Medicaid Unit Services, or sooner at the request of the recipient participant, the self-reliance specialist, provider agency or physician. The sections cited implement and are in accordance with Idaho's approved state plan with the exception of deeming of income provisions.

(7-1-99)(10-1-02)T

b. The redetermination process will assess the following factors: (7-1-99)

i. The recipient's participant's continued need for waiver services; and (7-1-99)(10-1-02)T

ii. Discharge from the waiver services program. (7-1-99)

798. PROVIDER REIMBURSEMENT.

The following outlines the criteria used in reimbursing providers for waiver services. (7-1-99)

01. Fee For Services. Waiver service providers will be paid on a fee for service basis based on the type of service provided as established by the Department. (7-1-99)

02. Provider Claims. Provider claims for payment will be submitted on claim forms provided or approved by the Department. Billing instructions will be provided by the Department. (7-1-99)

03. Calculation Of Fees. The fees calculated for waiver services include both services and mileage. No separate charges for mileage will be paid by the Department for provider transportation to and from the recipient's participant's home or other service delivery location when the recipient participant is not being provided transportation. (7-1-99)(10-1-02)T

799. PROVIDER RECORDS.

Three (3) types of record information will be maintained on all recipients participants receiving waiver services: (7-1-99)(10-1-02)T

01. Service Provider Information. Direct Service Provider Information which includes written documentation of each visit made or service provided to the recipient participant, and will record at a minimum the following information: (7-1-99)(10-1-02)T

a. Date and time of visit; and (7-1-99)

b. Services provided during the visit; and (7-1-99)

c. A statement of the recipient's participant's response to the service, if appropriate to the service provided, including any changes in the recipient's participant's condition; and (7-1-99)(10-1-02)T

d. Length of visit, including time in and time out, if appropriate to the service provided. Unless the recipient participant is determined by the Case manager to be unable to do so, the delivery will be verified by the

~~recipient participant~~ as evidenced by their signature on the service record. (~~7-1-99~~)(10-1-02)T

e. A copy of the above information will be maintained in the ~~recipient's participant's~~ home unless authorized to be kept elsewhere by the Regional Medicaid ~~Unit Services~~. Failure to maintain documentation according to these rules shall result in the recoupment of funds paid for undocumented services. (~~7-1-99~~)(10-1-02)T

02. Individual Support Plan Of Care. The ~~individual support p~~Plan of Care which is initiated by the Regional Medicaid ~~Unit Services~~ and developed by the ~~Case manager~~ and the ~~IS~~Plan of Care team must specify which waiver services are required by the ~~recipient participant~~. The plan will contain all elements required by Subsection 143.03 of these rules and a copy of the most current ~~individual support p~~Plan of Care will be maintained in the ~~recipient's participant's~~ home and will be available to all service providers and the Department. (~~7-1-99~~)(10-1-02)T

03. Verification Of Services Provided. In addition to the ~~individual support p~~Plan of Care, at least monthly the case manager will verify in writing that the services provided were consistent with the ~~individual support p~~Plan of Care. Any changes in the plan will be documented and include the signature of the case manager and when possible, the ~~recipient participant~~. (~~7-1-99~~)(10-1-02)T

800. PROVIDER RESPONSIBILITY FOR NOTIFICATION.

It is the responsibility of the service provider to notify the case manager when any significant changes in the ~~recipient's participant's~~ condition are noted during service delivery. Such notification will be documented in the service record. (~~7-1-99~~)(10-1-02)T

801. RECORDS MAINTENANCE.

In order to provide continuity of services, when a ~~recipient participant~~ is transferred among service providers, or when a ~~recipient participant~~ changes case managers, all of the foregoing ~~recipient participant~~ records will be delivered to and held by the Regional Medicaid ~~Unit Services~~ until a replacement service provider or case manager assumes the case. When a ~~recipient participant~~ leaves the waiver services program, the records will be retained by the Regional Medicaid ~~Unit Services~~ as part of the ~~recipient's participant's~~ closed case record. Provider agencies will be responsible to retain their client's records for three (3) years following the date of service. (~~7-1-99~~)(10-1-02)T

802. HOME AND COMMUNITY-BASED WAIVER ~~RECIPIENT PARTICIPANT~~ LIMITATIONS.

The number of Medicaid ~~recipients participants~~ to receive waiver services under the home and community based waiver for ~~recipients participants~~ with a traumatic brain injury will be limited to the projected number of users contained in the Department's approved waiver. Individuals who apply for waiver services after the waiver maximum has been reached will be placed on a waiting list and will have their applications processed after September 30 of each new waiver year. The earliest effective date of waiver service delivery for these ~~recipients participants~~ will be October 1 of each new waiver year. (~~7-1-99~~)(10-1-02)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM
DOCKET NO. 16-0309-0213
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective July 1, 2002.

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 Sections 56-202(b) and 56-203(g), 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 December 18, 2002.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation 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:

A recent state court decision ruled that the state is not required to pay for abortions to save the health of the woman. The court's action upheld the legality of H.B. 309, Sec. 3 (2001), which struck the health of the mother as reason for a DHW-paid abortion. Effective July 1, 2002, only abortions to save the life of the mother or in cases of rape or incest will be covered through Medicaid. In addition, the rules are being changed to require one physician to certify the need for an abortion after the court found the current two-physician requirement to be contrary to federal law.

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. Public comment should be addressed to these additions and deletions.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226(1)(c), Idaho Code and are necessary in order to comply with deadlines in amendments to governing law.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes were due to a court decision.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Arla Farmer, (208) 364-1958.

Anyone can submit written comments regarding this proposed rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before December 25, 2002.

DATED this 4th day of October, 2002.

Sherri Kovach
Administrative Procedures Coordinator
DHW – Administrative Procedures Section
450 West State Street, 10th Floor
P.O. Box 83720
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(208) 334-5564 phone
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0213

095. ABORTION PROCEDURES.

01. **Requirements For Funding Abortions Under Title XIX.** The Department will fund abortions under Title XIX only under circumstances where the abortion is necessary to save the life of the woman or in cases of rape or incest as determined by the courts or, where no court determination has been made, if reported to a law enforcement agency. *This Subsection is effective retroactively from October 1, 1993.* (10-1-93)(7-1-02)T

~~02. **Requirements For Funding Abortions Solely With State Funds.** The Department will fund abortions solely out of state general funds only under circumstances where the abortion is determined to be medically necessary to save the health of the woman. The woman applying for services under this subsection shall apply for and be determined by the Department to be otherwise Medicaid eligible. This Subsection is effective retroactively from February 17, 1994.~~ (2-17-94)

032. **Required Documentation For Payment.** The following documentation shall be provided: (10-1-93)

a. In the case of rape or incest: (10-1-93)

i. A copy of the court determination of rape or incest must be provided; or (10-1-93)

ii. Where no court determination has been made, documentation that the rape or incest was reported to a law enforcement agency. (10-1-93)

iii. Where the rape or incest was not reported to a law enforcement agency, ~~two (2)~~ a licensed physician~~s~~ must certify in writing that, in the physician~~s~~'s professional opinion, the woman was unable, for reasons related to her health, to report the rape or incest to a law enforcement agency. The certification must contain the name and address of the woman; or (10-1-93)(7-1-02)T

iv. Documentation that the woman was under the age of eighteen (18) at the time of sexual intercourse. *This Subsection 095.03.a. is effective retroactively from October 1, 1993.* (10-1-93)(7-1-02)T

b. In the case where the abortion is necessary to save the life of the woman, ~~two (2)~~ a licensed physician~~s~~ must certify in writing that the woman may die if the fetus is carried to term. The certification must contain the name and address of the woman. *This Subsection 095.03.b. is effective retroactively from October 1, 1993.* (10-1-93)(7-1-02)T

~~c. In the case where the abortion is determined to be medically necessary to save the health of the woman, two (2) licensed physicians must certify in writing that the abortion is medically necessary to prevent injury or damage to the health of the woman. The certification must contain the name and address of the woman. This Subsection 095.03.c. is effective retroactively from February 17, 1994.~~ (2-17-94)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM
DOCKET NO. 16-0309-0214
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective May 20, 2002.

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 56-203(g), 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 December 18, 2002.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation 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:

Changes to the prescription drug rules are being made to allow better management of Medicaid spending and to make it easier for clients and providers to understand the Medicaid prescription drug program.

Medicaid's current prescription drug rules list the specific names of excluded drugs and drugs which must be prior authorized by the Department. The number of new brand name drugs and classes of drugs which continuously become available make it impossible to continue listing each specific drug in rule.

The rules are being written to allow Medicaid to review brand name prescription drugs for medical necessity when there may be a less expensive and therapeutically interchangeable drug which might also be appropriate for the client's medical condition.

Early refill of prescription drugs has been identified as an unnecessary and costly practice which needs to be controlled to reduce unnecessary Medicaid spending. New rules will require, except for medically necessary situations, that 75% of the estimated days supply of prescription medication has been used before Medicaid will pay for a refill.

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 the public comment should be addressed.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Sections 67-5226(1)(a) and (b), Idaho Code and are necessary in order to protect public health safety, or welfare and to comply with deadlines in amendments to governing law or federal programs.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted due to the mandatory reduction in Medicaid spending.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Arla Farmer at (208) 364-1958.

Anyone can submit written comments regarding this proposed rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before December 25, 2002.

DATED this 11th day of October, 2002.

Sherri Kovach
Administrative Procedures Coordinator
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0214

805. PRESCRIPTION DRUGS.

The Department will pay for those prescription drugs not excluded by Section 811 which are legally obtainable by the order of a licensed prescriber whose licensing allows for the prescribing of legend drugs under Idaho law and which are deemed medically necessary. A prescription drug is considered medically necessary if it is reasonably calculated to prevent or treat conditions in the client that endanger life, cause pain, or cause functionally significant deformity or malfunction and if there is no other therapeutically interchangeable prescription drug available or suitable for the client requesting the service which is more conservative or substantially less costly; and the prescription drug meets professionally recognized standards of health care and must be substantiated by prescriber's records including evidence of such medical necessity. Those records must be made available to the Department upon request.

~~(4-5-00)~~(5-20-02)T

(BREAK IN CONTINUITY OF SECTIONS)

810. ~~FINANCIAL OBLIGATIONS OF RECIPIENTS~~ LIMITATIONS ON PAYMENT.

~~Recipients shall be responsible for prescription charges if~~ Medicaid payment for prescription drugs will be limited as follows:

~~(4-5-00)~~(5-20-02)T

01. Day's' Supply. ~~The day's supply obtained exceeds the Department's allowable amount (recipient pays the cost of the additional medication).~~ Medicaid will not cover any days' supply of prescription drugs which exceeds the quantity or dosage allowed by these rules.

~~(4-5-00)~~(5-20-02)T

02. ~~Drugs Not Covered.~~ ~~The drugs are not covered by the Medicaid Drug Program (recipient pays the entire cost).~~

~~(4-5-00)~~

032. Brand Name Drugs. ~~The recipient will only accept~~ Medicaid will not pay for a brand name product which is part of the FUL (federal upper limit) or SMAC (state maximum allowable cost) listing and when the physician has not specified the brand name drug to be medically necessary (recipient pays the entire cost).

~~(4-5-00)~~(5-20-02)T

043. Medication For Multiple Persons. When the medication dispensed is for more than one (1) person, and the second person is not covered under Medicaid (recipient pays the cost of the non-covered person's portion) Medicaid will only pay for the amount prescribed for the person or persons covered by Medicaid.

~~(4-5-00)~~(5-20-02)T

054. No Prior Authorization. ~~The Medicaid will not pay for a covered drug or pharmacy item that requires, but~~ has not received, prior authorization for Medicaid payment as required in Section 808 or Subsection 812.03 in these rules.

~~(3-1-02)~~(5-20-02)T

05. Limitations To Discourage Waste. Medicaid may conduct drug utilization reviews and impose

limitations for clients whose drug utilization exceeds the standard client profile or disease management guidelines determined by the Department. (5-20-02)T

811. EXCLUDED DRUG PRODUCTS.

The following categories and specific products are excluded: (4-5-00)

01. Non-Legend Medications. Non-legend medications unless included in Subsection 812.02. This includes federal legend medications that change to non-legend status as well as their therapeutic equivalents regardless of prescription status. (4-5-00)

02. Legend Drugs. Any legend drugs for which federal financial participation is not available. (4-5-00)

03. Diet Supplements. Diet supplements and weight loss products, except lipase inhibitors when prior authorized as outlined in Subsection 812.03 of these rules. (4-5-00)(5-20-02)T

04. Amphetamines And Related Products. Amphetamines and related products, ~~except~~ for cosmetic purposes or weight loss. Amphetamines and related products which are deemed to be medically necessary may be covered if prior authorized as outlined in Subsection 812.03, ~~including, but not limited to:~~ of these rules. (4-5-00)(5-20-02)T

~~a. Benzphetamine;~~ (4-5-00)

~~b. Chlorphentermine;~~ (4-5-00)

~~c. Chlorphentermine;~~ (4-5-00)

~~d. Diethylpropion;~~ (4-5-00)

~~e. Fenfluramine;~~ (4-5-00)

~~f. Mazindol;~~ (4-5-00)

~~g. Phendimetrazine;~~ (4-5-00)

~~h. Phenmetrazine;~~ (4-5-00)

~~i. Phentermine;~~ (4-5-00)

~~j. Salts and optical isomers of the above; and~~ (4-5-00)

~~k. Combination products containing any of the above drugs.~~ (4-5-00)

05. Ovulation/Fertility Drugs. Ovulation stimulants, fertility drugs, and similar products, ~~including~~ but not limited to: (4-5-00)(5-20-02)T

~~a. Clomiphene Citrate;~~ (4-5-00)

~~b. Menotropins; and~~ (4-5-00)

~~c. Urofollitropin.~~ (4-5-00)

06. Impotency Aids. Impotency aids, either as medication or prosthesis. (4-5-00)

07. Nicotine Products. Nicotine chewing gum, sprays, inhalers, transdermal patches and related products. (4-5-00)

08. Medications Utilized For Cosmetic Purposes. Medications utilized for cosmetic purposes or hair growth. Prior authorization may be granted for these medications if the Department finds other medically necessary indications. (4-5-00)

09. Vitamins. Vitamins unless included in Subsection 812.01. (4-5-00)

~~**10. Medications Not Medically Necessary.** Medications not deemed medically necessary by the Department. (4-5-00)~~

812. ADDITIONAL COVERED DRUG PRODUCTS. Additional drug products will be allowed as follows: (4-5-00)

01. Therapeutic Vitamins. Therapeutic vitamins may include: (4-5-00)

a. Injectable vitamin B12 (cyanocobalamin and analogues); (4-5-00)

b. Vitamin K and analogues; (4-5-00)

c. Pediatric legend vitamin-fluoride preparations; (4-5-00)

d. Legend prenatal vitamins for pregnant or lactating women; (4-5-00)

e. Legend folic acid; (4-5-00)

f. Oral legend drugs containing folic acid in combination with Vitamin B12 and/or iron salts, without additional ingredients; and (4-5-00)

g. Legend vitamin D and analogues. (4-5-00)

02. Prescriptions For Nonlegend Products. Prescriptions for nonlegend products may include: (4-5-00)

a. Insulin; (4-5-00)

b. Disposable insulin syringes and needles; (4-5-00)

c. Oral iron salts; and (4-5-00)

d. Permethrin. (4-5-00)

03. Prior Authorization Drugs. ~~Prior authorization for drugs is as follows~~ Drug products that are ~~(4-5-00)~~ (5-20-02)T
prior authorized:

a. Medications requiring prior authorization include: (4-5-00)

i. Amphetamines and related CNS stimulants; (4-5-00)

ii. Growth hormones; (4-5-00)

iii. Retinoids. (4-5-00)

iv. Brand name drugs when an acceptable generic form exists. (3-30-01)

v. Medications otherwise covered by the Department for which there is a less costly, therapeutically interchangeable alternate medication covered by the Department. (5-20-02)T

vi. Medications prescribed in quantities which exceed the Food and Drug Administration (FDA)

dosage guidelines. (5-20-02)T

vii. Lipase inhibitors. (5-20-02)T

viii. Medications prescribed outside of the Food and Drug Administration approved indications. (5-20-02)T

b. Some medications excluded in Section 811 may be accepted for other medically approved indications, provided that prior authorization is obtained. (4-5-00)

c. The prior authorization procedure is initiated by the prescriber who ~~shall~~ must submit the dated and signed request to the Department. This request ~~shall~~ must include: (~~3-30-01~~)(5-20-02)T

i. Recipient name; (4-5-00)

ii. Medicaid identification number; (4-5-00)

iii. Date of birth; (4-5-00)

iv. Diagnosis; (4-5-00)

v. Specific drug; (4-5-00)

vi. Strength and dosage; (4-5-00)

vii. Statement of medical necessity as to why this drug is needed versus other therapies; and (4-5-00)

viii. Duration of therapy desired, not to exceed twelve (12) months. (4-5-00)

d. The Department will determine coverage based on this request, and will notify the client, prescriber, and pharmacy, if known. Specific details on the prior authorization procedure can be found in the pharmacy guidelines issued by the Department. (4-5-00)

813. LIMITATION OF QUANTITIES.

Medication refills provided before at least seventy-five percent (75%) of the estimated days' supply has been utilized are not covered, unless an increase in dosage is ordered. Days' supply is the number of days a medication is expected to last when used at the dosage prescribed for the client. No more than a thirty-four (34) days' supply of continuously required medication is to be purchased in a calendar month as a result of a single prescription with the following exceptions: (~~4-5-00~~)(5-20-02)T

01. Doses Of Medication. Up to one hundred (100) doses of medication may be dispensed, not to exceed a one hundred (100) day supply for: (4-5-00)

a. Cardiac glycosides; (4-5-00)

b. Thyroid replacement hormones; (4-5-00)

c. Prenatal vitamins; (4-5-00)

d. Nitroglycerin products - oral or sublingual; (4-5-00)

e. Fluoride and vitamin/fluoride combination products; and (4-5-00)

f. Nonlegend oral iron salts. (4-5-00)

02. Oral Contraceptive Products. Oral contraceptive products may be dispensed in a quantity sufficient for one (1), two (2), or three (3) cycles. (4-5-00)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM
DOCKET NO. 16-0309-0215
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective December 1, 2002.

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); 56-203(g), (i), (j); 56-1003(l); 56-1004(l)(a), 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 December 18, 2002.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation 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:

As a result of the reduction in the Targeted Service Coordination (TSC) reimbursement, rulemaking relaxes the requirements for targeted service coordinators to reflect that coordinators will now have less hours available for providing case management services. Specifically, these rules removes all caseload limit requirements, and removes the requirement for availability of a care coordinator on a twenty-four (24) hour basis. These rules also incorporate changes to make requirements more consistent across the different types of case management.

As a result of the reduction in the ESC (Early Periodic Screening, Diagnosis, and Treatment (EPSDT) Service Coordinator) reimbursement, rulemaking removes all caseload limit requirements, and removes the requirement for availability of a care coordinator on a twenty-four (24) hour basis.

Reduces ongoing Targeted Case Management (TCM) for the mentally ill from unlimited hours to a maximum of four (4) hours per month. Also removes all caseload limit requirements, and removes the requirement for availability of a case manager on a twenty-four (24) hour basis. Crisis assistance will no longer be a required core element of targeted case management. These rules also incorporate changes to make requirements more consistent across the different types of case management.

Reduces hours available for initial evaluation and service planning from eight (8) hours to six (6) hours.

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 the public comment should be addressed.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226(1)(c), Idaho Code and are necessary in order to comply with deadlines in amendments to governing law or federal programs.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because rulemaking occurred to comply with executive mandate.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Lloyd Forbes at (208) 364-1833.

Anyone can submit written comments regarding this proposed rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before December 25, 2002.

DATED this 10th day of October, 2002.

Administrative Procedures Coordinator
DHW – Administrative Procedures Section
450 West State Street, 10th Floor
P.O. Box 83720
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0215

118. TARGETED DEVELOPMENTAL DISABILITIES SERVICE COORDINATION.

The Department will purchase targeted case management, hereafter referred to as Targeted Service Coordination (TSC) for adult Medicaid eligible recipients with developmental disabilities when authorized by the Regional ACCESS Unit and provided by an organized service coordination provider agency who has entered into a written provider agreement/contract with the Department. The Department will only provide Targeted Service Coordination in a geographic area where such service is not available through a private provider who has entered into a provider agreement/contract with the Department. The purpose of these services is to assist eligible individuals to obtain needed health, educational, vocational, residential, and social services. (3-16-95)

01. Eligible Target Group. Only Medicaid eligible adults, eighteen (18) years of age or older, who desire to live, learn, or work in community based settings are eligible. All participants must have a primary diagnosis of Developmental Disability. (3-30-01)

a. The following diagnostic and functional criteria will be applied to determine membership in the target population: (1-7-94)

i. “Developmental Disability” means a chronic disability of a person which appears before the age of twenty-two (22) years of age and: (10-1-94)

(1) Is attributable to an impairment, such as mental retardation, cerebral palsy, epilepsy, autism or other condition found to be closely related to or similar to one of these impairments that requires similar treatment or services, or is attributable to dyslexia resulting from such impairments; and (10-1-94)

(2) Results in substantial functional limitations in three (3) or more of the following areas of major life activity: self care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (10-1-94)

(3) Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of life-long or extended duration and individually planned or coordinated. (10-1-94)

b. Eligible individuals may reside in ~~adult foster care~~ certified family homes, residential care, semi-independent living, room and board, their own homes, or be homeless. (~~1-7-94~~)(12-1-02)T

c. Eligible individuals may be receiving habilitation, supportive assistance, respite, or other services. (1-7-94)

02. Service Description. TSC shall be delivered by eligible providers to assist the Medicaid recipient to obtain and coordinate needed health, educational, vocational, residential, and social services using the least restrictive and most appropriate procedures and settings. TSC shall consist of the following core functions: (10-1-94)

a. Individual Assessment and Service Planning. Unless specifically excluded by the recipient, an Individual Support Plan (ISP) shall be developed in conjunction with the recipient, service providers, the recipient's family and/or guardian and other individuals selected by the recipient. (3-16-95)

i. The ISP shall replace existing service plans, except when such plans are required by other rules, and be developed from a person centered planning process and include information obtained from evaluations (assessments), consumer interview, observation in community settings, and other pertinent information. (10-1-94)

ii. The plan shall be directed at meeting the individual recipient's needs, primarily by building on, maintaining, and utilizing the recipient's identified strengths and abilities. Services proposed must: be the result of on-going planning; be built around the recipient's wants and needs; encourage the recipient to choose the locality in which he lives and works; be age appropriate; include, whenever possible, two (2) or more options from which the recipient may choose; be aimed at maximizing community participation; be culturally appropriate; be designed to promote and utilize natural and informal community supports, including family, friends, and other non-paid citizens; and be designed with supports and services necessary to succeed in his chosen environment. (1-7-94)

iii. The plan must be completed within ninety (90) days of the selection of the service coordinator, unless documentation of a delay based on consumer need is submitted to the regional ACCESS unit. (5-24-95)

iv. The plan must be written in language that is easily understood by the consumer and his team. (5-24-95)

b. The service coordinator is responsible for writing the plan, and submitting it to the Regional ACCESS Unit for authorization of Medicaid and state general fund eligibility. The service coordinator will be responsible for finding alternative funding/resources for services and supports not deemed eligible for Medicaid or state general fund reimbursement. (10-1-94)

c. Implementation. The service coordinator shall arrange for services necessary to execute the ISP. (10-1-94)

d. Monitoring. The service coordinator shall review, update and monitor the plan continuously to meet the recipient's changing needs. This can occur through phone contact and/or face-face meetings with the participant. Monitoring includes discussing changes, assessing satisfaction with services, evaluating progress and making necessary changes based on the service coordinator's evaluation. (~~10-1-94~~)(12-1-02)T

~~**i.** Discuss the status of the ISP with the recipient in at least one face-to-face contact per month. (10-1-94)~~

~~**ii.** Discuss all proposed changes and the options related to those changes with the recipient. (1-7-94)~~

~~**iii.** Maintain regular contact with all service providers active with the recipient, and participate in meetings to facilitate the coordination of services. (1-7-94)~~

~~**iv.** Discuss the recipient's (family or guardian if appropriate) satisfaction with the quantity and quality of services provided; (1-7-94)~~

~~**v.** Maintain documentation in the ISP of the service coordinator's (family member or guardian if appropriate) observations of the recipient engaged in ISP objective-oriented behavior; (10-1-94)~~

~~**vi.** Evaluate progress toward outcomes identified on the ISP. (10-1-94)~~

~~**vii.** Modify, change, terminate or add services based on these evaluations. (1-7-94)~~

e. Enablement. The service coordinator shall enable the recipient whenever possible. Enablement includes but is not limited to the following: (10-1-94)

i. Providing information in ways that empower the recipient to make an informed decision; (1-7-94)

ii. Assuring that all placements in the service delivery system shall be to services which offer the individual the best available opportunity for personal development, provide an improved quality of life, and are within the least restrictive environment appropriate to the individual. (1-7-94)

iii. Ensure that all residential arrangements are community-based. Such arrangements may include, but are not limited to, the recipient's family's residence, or an independent living arrangement. (1-7-94)

iv. Ensure that providers comply with clients' rights as specified in the Developmental Disabilities Act. (10-1-94)

v. Assure that no one shall be denied TSC solely on the basis of the severity of physical or mental disability. ~~(10-1-94)~~(12-1-02)T

vi. If the placement or services which are recommended are not immediately available, continued attempts to try to access the service or placement for the recipient must be documented. (1-7-94)

vii. The service coordinator will foster the independence of the recipient (family or guardian if appropriate) by demonstrating to the individual how best to access service delivery systems. (10-1-94)

03. Targeted Service Coordination Agency Qualifications. Targeted Service Coordination agencies must meet the following criteria: (10-1-94)

a. Demonstrated ability to provide all the core elements listed in Subsection 119.02 of TSC to the target population; and (10-1-94)

~~**b.** Provide consumers of the agency, the availability of a care coordinator on a twenty-four (24) hour basis to assist them in obtaining needed services. (10-1-94)~~

~~**b.**~~ **eb.** May contract with individual service coordinators or case management agencies to provide TSC services. (10-1-94)

~~**c.**~~ **ec.** Not provide service coordination to any individual for whom the agency, owners or employees also provide direct services. Agencies must disclose any interest by the owners of the agency or their employees/contractors in any other agency that provides services to people with developmental disabilities. (10-1-94)

~~**d.**~~ **ed.** The individual or agency employees successfully complete the service coordination certification training specified by the Department; (10-1-94)

~~**e.**~~ **ee.** The individual or agency follows the written procedures for service coordination authorized and adhered to by the Department; (10-1-94)

~~**f.**~~ **ef.** Adheres to the Department's mission and value statements; and (10-1-94)

~~**g.**~~ **eg.** Adheres to the Department's contract requirements, billing, and reimbursement procedures. (10-1-94)

04. TSC Provider Staff Qualifications. All individual service coordinators must be employees or contractors of an organized provider agency that has a valid provider agreement/contract with the Department. The employing entity will supervise the individual service coordinators and assure that the following qualifications are met for each individual service coordinator: (10-1-94)

a. Must be a psychologist, Ph.D., Ed.D., M.A./M.S.; nurse, B.S.N., M.S., Ph.D.; Q.M.R.P.;

Developmental Specialist; M.D.; D.O.; or possess a valid Idaho social work license issued by the Board of Social Work Examiners; and (10-1-94)

b. Must have documentation of at least ~~eighteen~~ twelve (18~~2~~) months, at an average of twenty (20) hours per week, of on-the-job experience providing service to the target population, or be working under the supervision of a fully qualified service coordinator; and ~~(10-1-94)~~(12-1-02)T

c. A criminal history check with finger printing shall be obtained; and (10-1-94)

d. Must be supervised by an individual with the authority to oversee the service delivery, and to remove the individual if the recipient's needs are not met; provider agencies will supervise their service coordinators; and (10-1-94)

e. Cannot be the service coordinator for any recipient for whom the service coordinator has individual responsibility for the provision of any other care or treatment; and (10-1-94)

f. ~~Cannot be responsible for the service coordination of more than fifty (50) individuals when using one or more paraprofessionals to implement the plan. If not using paraprofessionals, the individual service coordinator's caseload shall not exceed thirty five (35).~~ At no time will the total caseload of a service coordinator be so large as to violate the purpose of the program or adversely affect the health and welfare of any recipient served by the service coordinator. ~~A waiver of the caseload limit may be granted by the Regional ACCESS Unit on a case by case basis and must meet the following criteria:~~ (5-24-95)(12-1-02)T

~~i. The availability of service coordinators is not sufficient to meet the needs of the service area; or (10-1-94)~~

~~ii. The recipient who has chosen a particular service coordinator who has reached their limit, has just cause to need that particular provider over other available providers; or (10-1-94)~~

~~iii. The individual service coordinator's caseload consists of twenty five percent (25%) or more maintenance level (two (2) hours per month or less of service coordination services) consumers. (10-1-94)~~

~~iv. The request for waiver must include: (10-1-94)~~

~~(1) The time period for which the waiver is requested; and (10-1-94)~~

~~(2) The alternative caseload limit requested; and (10-1-94)~~

~~(3) Documentation that the granting of the waiver would not diminish the effectiveness of the service coordinator's services, violate the purposes of the program, or adversely affect the health and welfare of any of the service coordinator's consumers. (10-1-94)~~

~~v. The Bureaus may impose any conditions, including limiting the duration of a waiver, which they deem necessary to ensure the quality of TSC services provided. (10-1-94)~~

g. Paraprofessionals may be used to assist in the implementation of the ISP. Paraprofessionals must meet the following qualifications: (10-1-94)

i. Must be eighteen (18) years of age and have a high school diploma or the equivalent (G.E.D.); and (1-7-94)

ii. Must be able to read and write at a level commensurate with the general flow of paperwork and forms; and (1-7-94)

iii. Must complete a training program developed by the Division of Family and Community Services and be working under the supervision of a fully qualified service coordination; and (10-1-94)

- iv. A criminal background check will be obtained. (10-1-94)
- 05. Recipient's Choice.** The choice of whether or not to receive TSC services will be the eligible recipient's. All recipients who choose TSC services will have free choice of authorized TSC providers, as well as, the providers of medical and other services under the Medicaid Program. (10-1-94)
- 06. Payment For Services.** When an assessment indicates the need for medical, psychiatric, social, educational, or other services, referral or arrangement for such services may be included as TSC services, however the actual provision of the services does not constitute TSC. Medicaid will only reimburse for core services (Subsection 118.02) provided to members of the eligible target group by qualified staff. (10-1-94)
- a.** Payment for TSC will not duplicate payment made to public or private entities under other program authorities for the same purpose. (10-1-94)
- b.** Payment will not be made for TSC services provided to individuals who are inpatients in NFs, ICFs/MRs, or hospitals. (10-1-94)
- i. Medicaid will reimburse for TSC on the same date a recipient is admitted or discharged from NF, ICF/MR or other institutional setting, as long as the recipient is not yet admitted or has been discharged at the time of the service delivery. (10-1-94)
- ii. TSC may be provided during the last thirty (30) days of inpatient stay or when the inpatient stay is not expected to last longer than thirty (30) days when not duplicating those services included in the responsibilities of the facility. (10-1-94)
- c.** Reimbursement for TSC services shall be made *on a fee for service basis for service provided as at* ~~(10-1-94)~~(12-1-02)T rates established by the Department.
- d.** The Department will not provide Medicaid reimbursement for on-going TSC services delivered prior to the completion of assessments and ISP. (10-1-94)
- e.** The Department will provide Medicaid reimbursement for crisis assistance provided prior to or after the completion of the assessments and ISP. (10-1-94)
- f.** Medicaid reimbursement will be provided only for the following TSC services: (10-1-94)
- i. Face-to-face contact between the service coordinator and the recipient, the recipient's family members, guardian, service providers, legal representatives, primary caregivers, or other interested persons; (10-1-94)
- ii. Telephone contact between the service coordinator and the recipient, the recipient's family, guardian, service providers, legal representatives, primary caregivers, or other interested persons; (10-1-94)
- iii. Development, review, revision of the ISP. (10-1-94)
- g.** The provider will provide the Department with access to all information required to review compliance with these rules. (1-7-94)
- h.** Failure to provide services for which reimbursement has been received or to comply with these rules will be cause for recoupment of payments for services, sanctions, or both. (1-7-94)
- i.** The Department will not provide Medicaid reimbursement for TSC provided to a group of individuals. (10-1-94)
- j.** The TSC agency must release all pertinent information to direct service providers when written informed consent is obtained from the recipient. (5-24-95)

- 07. Record Requirements.** In addition to the development and maintenance of the ISP, the following documentation must be maintained by the provider: (10-1-94)
- a. Name of recipient; (1-7-94)
 - b. Name of provider agency and person providing the service; (1-7-94)
 - c. Date, time, and duration of service; (1-7-94)
 - d. Place of service delivery; (1-7-94)
 - e. Activity record describing the service(s) provided; (1-7-94)
 - f. Documented review of progress toward each service plan goal, and assessment of the recipient's need for TSC and other services as the recipient's needs change; (10-1-94)
 - g. Documentation justifying the provision of crisis assistance to the recipient; and (1-7-94)
 - h. An informed consent form signed by the recipient or legal guardian clearly explaining the purpose of TSC. (10-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

476. TARGETED CASE MANAGEMENT FOR THE MENTALLY ILL.

The Department will purchase case management (CM) services for adult Medicaid recipients with severe disabling mental illness. Services will be provided by an organized provider agency ~~which~~ that has entered into a provider agreement with the Department. The purpose of these services is to assist eligible individuals to gain access to needed medical, social, educational, mental health and other services. (~~3-30-01~~)(12-1-02)T

477. ELIGIBLE TARGET GROUP.

Only those individuals who are mentally ill and eighteen (18) years of age or older who are using or ~~has~~ have a history of using high-cost medical services associated with exacerbations of mental illness are eligible for CM services. (~~3-30-01~~)(12-1-02)T

01. Diagnostic And Functional Criteria. The following diagnostic and functional criteria will be applied to determine membership in this target population: (3-30-01)

- a. **Diagnosis:** A condition of severe and persistent mental illness determined by a licensed physician or other licensed practitioner of the healing arts within the scope of his practice under state law, and be a diagnosis listed in the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) within one (1) of the following classification codes for: (3-30-01)
 - i. Schizophrenia and Other Psychotic Disorders; (3-30-01)
 - ii. Organic mental disorders associated with Axis III physical disorders or conditions, or whose etiology is unknown; (3-30-01)
 - iii. Mood disorders - bipolar and depressive; (3-30-01)
 - iv. Schizoid, Schizotypal, Paranoid, and Borderline Personality disorders. (~~3-30-01~~)(12-1-02)T
 - v. If the only diagnosis is one (1) or more of the following, the person is not included in the target population for CM services: (8-1-92)

- (1) Mental retardation; or (8-1-92)
- (2) Alcoholism; or (8-1-92)
- (3) Drug abuse. (8-1-92)

b. Functional limitations: The psychiatric disorder must be of sufficient severity to cause a disturbance in the role performance or coping skills in at least two (2) of the following areas, on either a continuous (more than once per year) or an intermittent (at least once per year) basis: (8-1-92)

i. Vocational or academic: Is unemployed, unable to work or attend school, is employed in a sheltered setting or supportive work situation, or has markedly limited skills and a poor work history. (8-1-92)

ii. Financial: Requires public financial assistance for out-of-hospital maintenance and may be unable to procure such assistance without help, or the person is unable to support him or manage his finances without assistance. (8-1-92)

iii. Social/interpersonal: Has difficulty in establishing or maintaining a personal social support system, has become isolated, has no friends or peer group and may have lost or failed to acquire the capacity to pursue recreational or social interests. (8-1-92)

iv. Family: Is unable to carry out usual roles and functions in a family, such as spouse, parent, or child, or faces gross familial disruption or imminent exclusion from the family. (8-1-92)

v. Basic living skills: Requires help in basic living skills, such as hygiene, food preparation, or other activities of daily living, or is gravely disabled and unable to meet daily living requirements. (8-1-92)

vi. Housing: Has lost or is at risk of losing his current residence. (8-1-92)

vii. Community: Exhibits inappropriate social behavior or otherwise causes a public disturbance due to poor judgment, bizarre, or intrusive behavior which results in intervention by law enforcement and/or the judicial system. (8-1-92)

viii. Health: Requires substantial assistance in maintaining physical health or in adhering to medically rigid prescribed treatment regimens, e.g. brittle diabetic. (3-30-01)

02. Recipient's Residence. Recipients may reside in adult foster care, residential care, semi-independent living, room and board or their own homes. (3-30-01)

03. Other Services. Recipients may be receiving homemaker, personal care, home health, respite or other services. (3-30-01)

04. Hospice Services. Recipients who elect hospice services as found in Section 104, or are receiving case management services through another program are excluded from CM services. (3-30-01)

478. CASE MANAGEMENT SERVICES DESCRIPTIONS.

CM services shall be designed to foster independence and be delivered by eligible providers to assist the Medicaid recipient to obtain and coordinate needed health, educational, vocational and social services in the least restrictive, most appropriate and most cost-effective setting. CM services shall consist of the following core functions:

~~(3-30-01)~~(12-1-02)T

01. Assessment. A CM provider must have the capacity to perform written comprehensive assessments of a person's assets, deficits and needs. Assessment is an interactive process with the maximum feasible involvement of the recipient. Should the assessments reveal that the person does not need CM services, appropriate referrals will be made to meet other needs of the participant. All the following areas must be evaluated and addressed: (3-30-01)

a. Psychiatric history and current mental status: Includes but is not limited to age of onset, childhood

history of physical or sexual abuse, number of hospitalizations, precursors of hospitalizations, symptoms of decompensation that the client manifests, is the client able to identify his symptoms, medication history; substance abuse history, history of mental illness in the family, current mental status observation, any other information that contributes to their current psychiatric status; and (10-22-93)

b. Medical history and current medical status: Includes but is not limited to history of any major non-psychiatric illnesses, surgeries, hospitalizations, dates of last physical, dental, or eye examinations, pertinent family history of medical illness, current health problems/needs, current medications; name of current physician; and (10-22-93)

c. Vocational status: Includes but is not limited to current and past job status, level of satisfaction with the vocation, educational level, military status, strengths and barriers to employment; and (10-22-93)

d. Financial status: Includes but is not limited to adequacy and stability of the client's financial status, what difficulties they perceive with it, what resources may be available, client's ability to manage personal finances; and (10-22-93)

e. Social relationships/support: Includes but is not limited to client's ability to establish/maintain personal support systems or relationships, client's ability to acquire leisure, recreational, or social interests; and (10-22-93)

f. Family status: Includes but is not limited to: client's ability or desire to carry out family roles, client's perception of the support he receives from their family, what role does the family play in the client's mental illness; and (10-22-93)

g. Basic living skills: Includes but is not limited to client's ability to meet their basic living needs, what does the client want to accomplish in this area; and (10-22-93)

h. Housing: Includes but is not limited to: current living situation and level of satisfaction with the arrangement, is present situation appropriate to the client's needs; and (8-1-92)

i. Community/Legal status: Includes but is not limited to legal history with law enforcement, transportation needs, supports the client has in the community, daily living skills necessary for community living. (8-1-92)

02. Service Plan Development And Implementation. Following the assessment(s) and determination of need for CM, a written service plan shall be developed and implemented as a vehicle to address the case management needs of the recipient. To the maximum extent possible, the development of a service plan shall be a collaborative process involving the recipient, his family or other support system, and the CM provider. The written service plan shall be developed within thirty (30) calendar days of when the recipient chooses the agency as his provider and must be signed by a licensed physician or other licensed practitioner of the healing arts within the scope of his practice under State law according to Title 54, Chapter 18, Idaho Code, indicating the services are medically necessary, and must include, at a minimum: ~~(3-30-01)~~(12-1-02)T

a. A list of focus problems identified during the assessments; and (8-1-92)

b. Concrete, measurable goals to be achieved, including time frames for achievement; and (8-1-92)

c. Specific plans directed toward the achievement of each one of the goals; and (8-1-92)

d. Documentation of who has been involved in the service planning; the recipient, if possible, must be involved. The recipient or the recipient's legal guardian must sign the service plan or documentation must be provided as to why this was not possible. A copy of the plan must be given to the recipient; and (8-1-92)

e. Reference to any formal services arranged, including specific providers where applicable; and (8-1-92)

f. Planned frequency of services initiated. (8-1-92)

~~03. **Crisis Assistance.** Crisis assistance services are those case management activities that are needed in addition to the assessment and ongoing case management hours in emergency situations. These are necessary activities to obtain services needed to ensure the health and/or safety or to prevent hospitalization or incarceration of a recipient. Crisis assistance may be provided prior to or after the completion of the assessments and individual service plan. (8-1-92)~~

043. Linking/Coordination Of Services. Through negotiation and referrals, the case manager links the recipient to various providers of services/care and coordinates service delivery. Coordination of service delivery includes activities such as: assuring that needed services have been delivered, consulting with service providers to ascertain whether they are adequate for the needs of the recipient, and consulting with the client to identify the need for changes in a specific service or the need for additional services. The case manager may refer to his own agency for services but may not restrict the recipient's choice of service providers. It may be necessary to mobilize more than one set of resources to make adequate services available. The case manager may be needed to act as an advocate for the recipient. There must be a minimum of one face-to-face contact with the recipient at least every thirty (30) days. (10-22-93)

054. Case Manager. The case manager will encourage independence of the recipient by demonstrating to the individual how to best access service delivery systems such as transportation and Meals on Wheels, etc. Such assistance must be directed toward reducing the number of case management hours needed. Such assistance is limited to thirty (30) days per service delivery system. (3-30-01)

479. (RESERVED).

480. CM PROVIDER AGENCY QUALIFICATIONS.

Case management provider agencies must meet the following criteria: (8-1-92)

01. Intake/Pre-Screening. Utilization of a standardized intake and prescreening process for determining whether or not Medicaid eligible individuals are included in the target group for case management services. Prescreening must be effective in sorting out who does and who does not need a full assessment of needs for CM. (3-30-01)

02. Core Elements. Demonstrated capacity in providing all core elements of case management services to the target population including: (3-30-01)

a. Comprehensive assessment; and (8-1-92)

b. Comprehensive service plan development and implementation; and (8-1-92)

~~c. Crisis assistance; and (8-1-92)~~

~~d. Linking/coordination of services; and (8-1-92)~~

~~e. Encouragement of independence. (10-22-93)~~

~~03. **Availability.** Provides clients of the agency the availability of a case manager on a twenty four (24) hour basis to assist them in obtaining needed services. (3-30-01)~~

481. PROVIDER QUALIFICATIONS.

All individual CM providers must be employees of an organized provider agency that has a valid CM provider agreement with the Department. The employing entity will supervise individual CM providers and assure that the following qualifications are met for each individual CM provider: A provider must be a(n): ~~(3-30-01)~~(12-1-02)T

01. ~~Staff Qualifications~~ Psychiatrist. Must be a Psychiatrist, M.D., D.O.; or (12-1-02)T

02. ~~Physician.~~ Physician, M.D., D.O.; or (12-1-02)T

- 03. Licensed Psychologist.** Licensed Psychologist; or (12-1-02)T
- 04. Psychologist Extender.** Psychologist Extender who is registered with the Bureau of Occupational Licenses; or (12-1-02)T
- 05. Social Worker.** ~~s~~Social worker with a valid Idaho social work license issued by the Board of Social Work Examiners; or (12-1-02)T
- 06. Nurse.** ~~r~~Nurse, R.N.; or (12-1-02)T
- 07. Licensed Professional Counselor.** Licensed Professional Counselor - Private Practice Licensure; or (12-1-02)T
- 08. Clinician.** ~~e~~Clinician employed by a state agency and who meets the requirements of the Division of Human Resources and the Personnel Commission; or (12-1-02)T
- 09. Holder Of A Bachelor's Degree In A Human Services Field.** ~~##~~ Individual having a B.A. / or B.S. in a human services field and at least one (1) year experience with the target population. Individuals without the one (1) year of experience may gain this experience by working for one (1) year under the supervision of a fully-qualified case manager. ~~(3-30-01)~~(12-1-02)T
- 02- Caseload.** ~~A total caseload per case manager of no more than twenty (20) individuals. The Bureau may grant a waiver of the caseload limit when requested by the agency. The following criteria must be met to justify a waiver:~~
- ~~a- The availability of case management providers is not sufficient to meet the needs of the service area. (8-1-92)~~
- ~~b- The recipient that has chosen the particular agency or individual case manager that has reached their limit, and has just cause to need that particular agency or manager over other available agencies/managers. (7-1-99)~~
- ~~c- The request for waiver must include: (8-1-92)~~
- ~~i- The time period for which the waiver is requested; (8-1-92)~~
- ~~ii- The alternative caseload limit requested; (8-1-92)~~
- ~~iii- Assurances that the granting of the waiver would not diminish the effectiveness of the CM agency, violate the purposes of the program, or adversely affect the recipients' health and welfare. (8-1-92)~~
- ~~d- The Bureau may impose any conditions on the granting of the waiver which it deems necessary. (8-1-92)~~
- ~~e- The Bureau may limit the duration of a waiver. (8-1-92)~~

(BREAK IN CONTINUITY OF SECTIONS)

483. PAYMENT FOR SERVICES.

When an assessment indicates the need for medical, psychiatric, social, educational, or other services, referral or arrangement for such services may be included as CM services, however, the actual provision of the service does not constitute CM. Medicaid will reimburse only for core services (~~Sub~~section ~~16.02~~ 480 of these rules) provided to members of the eligible target group by qualified staff. ~~(8-1-92)~~(12-1-02)T

01. Duplication. Payment for CM will not duplicate payment made to public or private entities under other program authorities for the same purpose. (3-30-01)

02. Inpatients. Payment will not be made for CM services provided to individuals who are inpatients in nursing homes or hospitals. (3-30-01)

03. Evaluation/Service Plan Development. Reimbursement for the initial evaluation and individual service plan development shall be paid based on an hourly rate, not to exceed ~~eight~~ six (86) hours. The rate will be established by the ~~Bureau~~ Department. ~~(3-30-01)~~(12-1-02)T

04. Case Management. Reimbursement for on-going case management services shall be ~~made on an hourly rate for service delivered. The~~ at a rate will be established by the ~~Bureau~~ Department. ~~(3-30-01)~~(12-1-02)T

05. Reimbursement. Medicaid reimbursement shall be provided only for the following case management services: (3-30-01)

a. Face-to-face contact between the case manager and the recipient, no less than every thirty days; (3-30-01)

b. Telephone contact between the case manager and the recipient, the recipient's mental health and other service providers, a recipient's family members, primary caregivers, legal representative, or other interested persons; (8-1-92)

c. Face-to-face contacts between the case manager and the recipient's family members, legal representative, primary caregivers, mental health providers or other service providers, or other interested persons; (8-1-92)

d. Development, review, and revision of the recipient's individual service plan, including the case manager's functional assessment of the recipient. (8-1-92)

06. Services Delivered Prior To Assessment. The Department will ~~not~~ provide Medicaid reimbursement for on-going case management services delivered prior to the completion of the assessments and individual service plan if an immediate need is documented. ~~(3-30-01)~~(12-1-02)T

~~**07. Crisis Assistance.** The Department will provide Medicaid reimbursement for crisis assistance provided prior to or after the completion of the assessments and individual service plan. (3-30-01)~~

~~**087. Audit Reviews.** Audit reviews will be conducted at least once a calendar year by the ~~Bureau~~ Department or its designee. Review findings may be referred to the Department's Surveillance and Utilization Review Section for appropriate action. ~~(3-30-01)~~(12-1-02)T~~

~~**098. Recoupment.** Failure to provide services for which reimbursement has been received or to comply with these rules will be cause for recoupment of payments for services, sanctions, or both. (3-30-01)~~

~~**409. Information.** The provider will provide the Department with access to all information required to review compliance with these rules. (3-30-01)~~

~~**140. Group Case Management.** The Department will not provide Medicaid reimbursement for case management services provided to a group of recipients. (3-30-01)~~

121. Case Management In A Facility. Medicaid will reimburse for case management services on the same date a recipient is admitted or discharged from a hospital, nursing facility, or other institutional setting, as long as the recipient is not yet admitted or has been discharged at the time of service delivery. Services may be provided during the last thirty (30) days of inpatient stay or if the inpatient stay is not expected to last longer than thirty (30) days, when not duplicating those included in the responsibilities of the facility. (3-30-01)

12. On-Going Case Management. On-going case management services are limited to a total of four (4) hours per calendar month. (12-1-02)T

484. RECORD REQUIREMENTS.

In addition to the development and maintenance of the service plan, the following documentation must be maintained by the provider: (8-1-92)

- 01. Name.** Name of recipient. (3-30-01)
- 02. Provider.** Name of the provider agency and person providing the service. (3-30-01)
- 03. Diagnosis.** Diagnosis, contained in Subsection 477.01.a. of these rules, documented by a qualified physician or other licensed practitioner of the healing arts within the scope of his practice under state law, prior to assessment. (~~3-30-01~~)(12-1-02)T
- 04. Date.** Date, time, and duration of service. (3-30-01)
- 05. Place Of Service.** Place of service. (3-30-01)
- 06. Activity Record.** Activity record describing the recipient and the service provided. (3-30-01)
- 07. Documentation.** Documented review of progress toward each CM service plan goal, and assessment of the recipient's need for CM and other services at least every one hundred twenty (120) days. (3-30-01)
- ~~**08. Justification.** Documentation justifying the provision of crisis assistance to the recipient. (3-30-01)~~
- 098. Informed Consent.** An informed consent form signed by the recipient or legal guardian clearly explaining the purpose of case management. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

530. EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT (EPSDT) SERVICE COORDINATION.

The Department will purchase case management services hereafter referred to as Service Coordination (SC) for Medicaid eligible children age birth to twenty-one (21) years of age who meet medical necessity criteria. (10-1-94)

- 01. Medical Necessity Criteria.** Medical necessity criteria for SC services under EPSDT are as follows: (10-1-94)
 - a.** Children eligible for SC must meet one of the following diagnostic criteria: (10-1-94)
 - i.** Children who are diagnosed with a physical or mental condition which has a high probability of resulting in developmental delay or disability, or children with developmental delay or disability. Developmentally delayed children are children with or without established conditions who by assessment measurements have fallen significantly behind developmental norms in one or more of the five functional areas which include cognitive development; physical development including vision and hearing; communication; social/emotional development; and adaptive skills. (10-1-94)
 - ii.** Children who have special health care needs requiring medical and multidisciplinary habilitation or rehabilitation services to prevent or minimize disability. Special health care needs may include a wide range of physical, mental, or emotional limitations from birth defects, illnesses, or injuries. (5-24-95)
 - iii.** Children who have been diagnosed with a severe emotional/behavioral disorder under DSM-IV or subsequent revisions or another classification system used by the Department; and expected duration of the condition

is at least one (1) year or more. (5-24-95)

b. Children eligible for SC must have one (1) or more of the following problems associated with their diagnosis: (10-1-94)

i. The condition requires multiple service providers and treatments; or (10-1-94)

ii. The condition has resulted in a level of functioning below age norm in one (1) or more life areas, such as school, family, or community; or (10-1-94)

iii. There is risk of out-of-home placement or the child is returning from an out-of-home placement as a result of the condition; or (10-1-94)

iv. There is imminent danger to the safety or ability to meet basic needs of the child as a result of the condition; or (10-1-94)

v. Further complications may occur as a result of the condition without provision of service coordination services; and (5-24-95)

vi. The family needs a service coordinator to assist them to access medical and other services for the child. (5-24-95)

02. Service Descriptions. SC services shall be delivered by eligible providers to assist the Medicaid child and their family to obtain and coordinate needed health, educational, early intervention, advocacy, and social services identified in an authorized SC plan developed by the Department or their contractor. Services must take place in the least restrictive, most appropriate and most cost effective setting. SC services shall consist of the following core functions: (10-1-94)

a. Coordination/Advocacy, which is the process of facilitating the child's access to the services, evaluations, and resources identified in the service plan. The case manager may advocate on behalf of the child and family for appropriate community resources and coordinate the multiple providers of social and health services defined in the service plan to avoid the duplication of services for the child. (10-1-94)

b. Monitoring, which is the ongoing process of ensuring that the child's service plan is implemented and assessing the child's progress toward meeting the goals outlined in the service plan and the family's satisfaction with the services. Direct in-person contact with the child and the child's family is essential to the monitoring process. (10-1-94)

c. Evaluation, which is the process of determining whether outcomes have been reached on the service plan, the need for additional revised outcomes, the need for a new plan, or if services are no longer needed. Evaluation is accomplished through periodic in-person reassessment of the child, consultation with the child's family, and consultation and updated assessment from other providers. The addition of new services to the plan or increase in the amount of an authorized service on the existing plan must be authorized by the Department prior to implementation. (5-24-95)

d. Crisis Assistance, which are those SC activities that are needed in emergency situations in addition to those identified on the service plan. These are necessary activities to obtain needed services to ensure the health or safety of the child. To the extent possible the plan should include instructions for families to access emergency services in the event of a crisis. If a need for twenty-four (24) hour availability of service coordination is identified, then arrangements will be made and included on the plan. (10-1-94)

e. Encouragement of Independence, which is the demonstration to the child, parents, family, or legal guardian of how to best access service delivery systems. (10-1-94)

03. SC Provider Agency Qualifications. SC provider agencies must have a valid provider agreement with the Department and meet the following criteria: (10-1-94)

a. Demonstrated experience and competency in providing all core elements of service coordination services to children meeting the medical necessity criteria. (5-24-95)

b. Level of knowledge sufficient to assure compliance with regulatory requirements. Adherence to provision of provider agreement for EPSDT service coordination. Provider agreement may include, but is not limited to, requirements for training, quality assurance, and personnel qualifications. (10-1-94)

04. Service Coordination Individual Provider Staff Qualifications. All individual SC providers must be employees of an organized provider agency that has a valid SC provider agreement with the Department. The employing entity will supervise the individual SC providers and assure that the following qualifications are met for each individual SC provider: (10-1-94)

a. Must be a licensed M.D., D.O., social worker, R.N., or have at least a B.A./B.S. in human/health services field; and have at least one (1) year's experience working with children meeting the medical necessity criteria. (5-24-95)

b. Individuals without the one (1) year experience may gain this experience by working for one (1) year under the supervision of an individual who meets the above criteria. (5-24-95)

c. Paraprofessionals, under the supervision of a qualified SC, may be used to assist in the implementation of the service plan. Paraprofessionals must meet the following qualifications: be eighteen (18) years of age and have a high school diploma or the equivalent (G.E.D.); be able to read at a level commensurate with the general flow of paperwork and forms; meet the employment standards and required competencies of the provider agency; and meet the training requirements according to the agency provider agreement. (10-1-94)

d. Pass a criminal history background check. (10-1-94)

e. ~~The caseload of service coordinators will be limited to fifty (50) when using one (1) or more paraprofessionals to implement the plan. If not using paraprofessionals, the individual service coordinator's caseload shall not exceed thirty-five (35).~~ At no time will the total caseload of a service coordinator be so large as to violate the purpose of the program or adversely affect the health and welfare of any children served by the service coordinator. ~~A waiver of the caseload limit may be granted by the Department on a case-by-case basis and must meet the following criteria:~~ (5-24-95)(12-1-02)T

~~i. The availability of service coordinators is not sufficient to meet the needs of the service area; or (5-24-95)~~

~~ii. The recipient's family who has chosen the particular service coordinator who has reached his limit, has just cause to need that particular provider over other available providers; or (5-24-95)~~

~~iii. The individual service coordinator's caseload consists of twenty five percent (25%) or more maintenance level (two (2) hours per month or less of service coordination services) recipients; and (5-24-95)~~

~~iv. The request for waiver must include: (5-24-95)~~

~~(1) The time period for which the waiver is requested; and (5-24-95)~~

~~(2) The alternative caseload limit requested; and (5-24-95)~~

~~(3) Documentation that the granting of the waiver would not diminish the effectiveness of the service coordinator's services, violate the purposes of the program, or adversely affect the health and safety of any of the service coordinator's consumers. (5-24-95)~~

~~v. The Department may impose any conditions, including limiting the duration of a waiver, which they deem necessary to ensure the quality of the service coordination services provided. (5-24-95)~~

05. Recipient's Choice. The eligible child's family, custodian, or legal guardian will be allowed to

choose whether or not they desire to receive SC services. All eligible children and their families who choose to receive SC services will have free choice of qualified SC providers as well as the qualified providers of medical and other services under the Medicaid program. (10-1-94)

06. Payment For Services. When a recipient is enrolled in managed care/Healthy Connections, the referral for assessment and services must be authorized by primary care providers. When an assessment indicates the need for medical, advocacy, psychiatric, social, educational, early intervention or other services, referral or arrangement for such services may be included as SC services; however, the actual provision of the service does not constitute SC. Medicaid will reimburse for SC services only when ordered by a physician/nurse practitioner/physician assistant and provided by qualified staff of an approved provider agency or their contractor to eligible children who meet the medical necessity criteria. (5-24-95)

a. Payment for SC will not duplicate payment made to public or private entities under other program authorities for the same purpose. (10-1-94)

b. Payment will not be made for SC services provided to children who are inpatients in nursing facilities or hospitals, other than activities performed within the last thirty (30) days of residence which are directed toward discharge and do not duplicate services included in the facility's content of care. (10-1-94)

c. Reimbursement for ongoing SC services shall be paid ~~on a fee for service basis for service delivered. The rate shall be~~ at rates established by the Department or its designee. (~~4-5-00~~)(12-1-02)T

d. Medicaid reimbursement shall be provided only for the following SC services: (10-1-94)

i. Face to face contact between the service coordinator and the eligible child, the child's family members, custodian, legal representative, primary care givers, service providers, or other interested persons; (10-1-94)

ii. Telephone contact between the service coordinator and the child, the child's service providers, the child's family members, custodian or legal guardian, primary caregivers, legal representative, or other interested persons. (10-1-94)

e. Except for crisis assistance the Department will not provide Medicaid reimbursement for ongoing SC services delivered prior to development of the plan by the Department. (10-1-94)

f. Audit reviews will be completed by the Department. (10-1-94)

g. Plans must be reviewed, updated as needed and re-authorized by the Department/Contractor at least annually. Documentation of provision of services will be reviewed and progress toward expected outcomes will be evaluated. Documentation of satisfaction with services and supports will be obtained from parents, family and guardians. (10-1-94)

h. Failure to provide services for which reimbursement has been received or to comply with these rules will be cause for recoupment of payments for services, sanctions, or both. (10-1-94)

i. The Department will not provide Medicaid reimbursement for SC services provided to a group of children at the same time. (10-1-94)

j. Medicaid will reimburse for SC services on the same date a child is admitted to a hospital, nursing facility, or other institutional setting, so long as the child is not yet admitted at the time of the service delivery. (10-1-94)

07. Record Requirements. The following documentation must be maintained by the provider: (10-1-94)

a. Name of eligible child; and (10-1-94)

- b.** Name of provider agency and person providing the service; and (10-1-94)
 - c.** A copy of the current approved SC plan which includes the expected outcomes and objectives and is signed by the child's parents, custodian or legal guardian, and the authorizing representative of the Department; and (10-1-94)
 - d.** Date, time, and duration of service; and (10-1-94)
 - e.** Place of service; and (10-1-94)
 - f.** Activity record describing the child and the service provided; and (10-1-94)
 - g.** Documented review of progress toward each SC service plan goal; and (10-1-94)
 - h.** Documentation from parents, family, and guardians of their satisfaction with services and supports. (5-24-95)
 - i.** A copy of the signed informed consent. (5-24-95)
- 08. Confidentiality.** No personally identifiable information may be released in the absence of written informed consent for release by the child's parent, custodian or legal guardian. (5-24-95)
- 09. Informed Consent.** Informed consent must include an explanation of service coordination and the rights and responsibilities of recipient confidentiality assured through existing state laws and rules. (5-24-95)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM
DOCKET NO. 16-0309-0216
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective July 1, 2002.

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 Sections 56-202(b) and 56-203(g), 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 December 18, 2002.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation 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:

These rules are required to comply with Legislative Intent language as described in the Department's Appropriations Bill, that defines Medicaid dental coverage for adults (persons 21 years of age or older) as "emergency services only". Rule changes were initially completed in Docket 16-0309-0205 published in the May 1, 2002, Idaho Administrative Bulletin, Volume 02-5. However, during the course of implementing these rules, Medicaid staff was confronted with many requests for exceptions and special considerations. After conferring with Medicaid's dental consultants and working with the Idaho Dental Association, changes have been incorporated to rely on dentists and oral surgeons for determining when a dental emergency exists which requires immediate dental intervention.

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. Public comment should be addressed to these additions and deletions.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226(1)(c), Idaho Code and are necessary in order to comply with amendments to governing law or federal programs.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted with the Idaho Dental Association because of the many requests for exceptions and special considerations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Arla Farmer at (208) 364-1958.

Anyone can submit written comments regarding this proposed rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before December 25, 2002.

DATED this 4th day of October, 2002.

Sherri Kovach
Administrative Procedures Coordinator
DHW – Administrative Procedures Section
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0216

900. DENTAL SERVICES.

01. Dental Services Provided. Dental services are provided for the relief of dental pain, prosthetic replacement, and the correcting of handicapping malocclusion and are purchased from a licensed dentist or dentist. A Medicaid dental consultant will review requests for prior authorization, with accompanying documentation, to determine approval or denial. (3-15-02)

02. Dental Covered Benefits And Limitations. Dental services are covered by Medicaid with specific limitations and exclusions. Idaho uses the procedure codes contained in the most recent Current Dental Terminology (CDT) handbook published by the American Dental Association. (3-15-02)

a. Dental services for children (through the month of their twenty-first birthday) are covered as outlined in Sections 900 through 913 of these rules. (7-1-02)T

b. Dental services for adults (persons who are past the month of their twenty-first birthday) without eligibility restrictions are covered for emergency services only, unless further restricted by these rules. Emergency dental services are services which, after applying the prevailing standards of judgement and practice within the community to the client's condition, require immediate dental intervention. Claims for dental services listed in Section 915 of these rules can be submitted without additional documentation attached to the claim. Claims for any other adult dental services listed in Sections 901 through 913, and 916 of these rules which are considered to be an emergency require documentation attached to the claim. The documentation must be signed by the client's treating dentist or oral surgeon and must certify that, in the professional opinion of the dentist or oral surgeon, there is an emergent need for the service. (7-1-02)T

c. Dental services for women on the Pregnant Women and Children (PWC) Program are listed in Section 914 of these rules. (7-1-02)T

03. Customary Fees. Medicaid reimburses dentists for procedures on a fee-for-service basis. Usual and customary fees are paid up to the Medicaid maximum allowance. Dentists may make arrangements for private payment with families for services not covered by Medicaid. If the provider accepts any Medicaid payment for a covered service, the Medicaid payment must be accepted as payment in full and the client cannot be billed for the difference between the billed amount and the Medicaid allowed amount. (3-15-02)

04. Non-Covered Services. Non-covered services are procedures not recognized by the American Dental Association (ADA) ~~and~~ or services not listed in these rules. (~~3-15-02~~)(7-1-02)T

(BREAK IN CONTINUITY OF SECTIONS)

913.2. DENTURIST POLICY GUIDELINES.

01. Overview. Idaho Medicaid processes charges submitted by Idaho licensed denturists for services provided to eligible clients. Approved services are limited to those services allowed by Idaho eCode for Idaho licensed denturists. (~~3-15-02~~)(7-1-02)T

02. Client Eligibility. ~~Clients without eligibility restrictions are eligible for denturist services.~~ Clients eligible for the PWC program or who have only QMB eligibility are not eligible for denturist services. (~~3-15-02~~)(7-1-02)T

03. Prior Authorization. Prior authorization is not required for the denturist procedures except for

0515D found in Section ~~839~~13 of these rules. Eligibility must be checked with VRS. ~~(3-15-02)~~(7-1-02)T

04. Payment. Denturists will be reimbursed for procedures on a fee-for-service basis. Usual and customary charges will be paid up to the Medicaid maximum allowance. If a provider accepts Medicaid payment for a covered service, the Medicaid payment must be accepted as full payment and the client cannot be billed for the difference between the billed amount and the Medicaid allowed amount. (3-15-02)

05. Service Limitations. Medicaid allows complete and immediate denture construction once every five (5) years. Denture relines is allowed once every two (2) years. Complete and partial denture adjustment is considered part of the initial denture construction service for the first six (6) months. Unless further restricted by these rules, denturist services for adults (persons who are past the month of their twenty-first birthday) without eligibility restrictions are covered for emergency services only as outlined in Subsection 900.02.b. of these rules. ~~(3-15-02)~~(7-1-02)T

9143. DENTURIST PROCEDURE CODES.

The following codes are valid denturist procedure codes:

TABLE 83913 - DENTURIST PROCEDURE CODES	
Dental Code	Description
0515D	Unable to deliver full denture. Arch designation required. Prior authorization required. Laboratory cost may be paid for full dentures if the client: a) decides not to complete the denture; b) leaves the state; c) cannot be located; d) expires.
5110D	Complete denture, upper
5120D	Complete denture, lower
5130D	Immediate denture, upper
5140D	Immediate denture, lower
5410D	Adjust complete denture, upper
5411D	Adjust complete denture, lower
5421D	Adjust partial denture, upper
5422D	Adjust partial denture, lower
5510D	Repair broken complete denture base; arch designation required.
5520D	Replace missing or broken teeth, complete denture (each tooth); six (6) teeth maximum. Tooth designation required.
5610D	Repair resin saddle or base; arch designation required.
5620D	Repair cast framework; arch designation required.
5630D	Repair or replace broken clasp; arch designation required.
5640D	Replace broken teeth per tooth; tooth designation required.
5650D	Add tooth to existing partial denture; tooth designation required.
5660D	Add clasp to existing partial denture; not requiring the altering of oral tissue or natural teeth. Tooth designation required.
5730D	Reline complete upper denture (chairside)
5731D	Reline complete lower denture (chairside)
5740D	Reline upper partial denture (chairside)

TABLE 83913 - DENTURIST PROCEDURE CODES	
Dental Code	Description
5741D	Reline lower partial denture (chairside)
5750D	Reline complete upper denture (laboratory)
5751D	Reline complete lower denture (laboratory)
5760D	Reline upper partial denture (laboratory)
5761D	Reline lower partial denture (laboratory)

(3-15-02)(7-1-02)T

9124. PWC CODES.

The following are the only codes covered for women on the Pregnant Women and Children (PWC) program.

TABLE 9124 - PWC CODES	
Dental Code	Description
01. Clinical Oral Examinations.	
D0140	Limited oral evaluation.
02. Radiographs.	
D0220	Intraoral - periapical - first film.
D0230	Intraoral - periapical - each additional film.
D0330	Panoramic film.
03. Restorative Services.	
D2940	Sedative filling. Tooth designation required.
04. Pulp Capping.	
D3110	Pulp cap - direct (excluding final restoration). Tooth designation required.
D3220	Therapeutic pulpotomy (excluding final restoration). Once per tooth. Tooth designation required.
05. Adjunctive Periodontal Services.	
D04341	Periodontal scaling, root planning, per quadrant. Allowed once in a twelve (12) month period. This procedure is indicated for clients with periodontal disease and is therapeutic, not prophylactic, in nature. Quadrant designation required.
D4355	Full mouth debridement to enable comprehensive periodontal evaluation and diagnosis.
06. Oral Surgery. Extractions - includes local anesthesia and routine postoperative care.	
D7110	Single tooth. Tooth designation required.
D7120	Each additional tooth. Tooth designation required.
D7130	Root removal - exposed roots. Tooth designation required.
07. Surgical. Extractions - includes local anesthesia and routine postoperative care.	

TABLE 9124 - PWC CODES	
Dental Code	Description
D7210	Surgical removal of an erupted tooth requiring elevation of the mucoperiosteal flap and removal of tooth structure, and closure. Tooth designation required.
D7220	Removal of impacted tooth - soft tissue. Tooth designation required.
D7230	Removal of impacted tooth - partially bony. Tooth designation required.
D7240	Removal of impacted tooth - completely bony. Tooth designation required.
D7241	Removal of impacted tooth - complicated. Tooth designation required.
D7250	Surgical removal of residual tooth roots (cutting procedure). Tooth designation required.
08. Surgical Incision.	
D7510	Incision and drainage of abscess - intraoral soft tissue.
09. Unclassified Treatment.	
D9110	Palliative (emergency) treatment of dental pain - minor procedures.
10. Professional Consultation.	
D9310	Consultation. Provided by dentist or physician whose opinion or advice regarding the evaluation, management and/or treatment of a specific problem or condition is requested by another dentist or physician. The written or verbal request for a consult must be documented in the client's medical record. The consultant's opinion and any services that were ordered or performed must also be documented in the client's medical record and communicated to the requesting dentist or physician. A dental consultant may initiate diagnostic and/or therapeutic services at the same or subsequent visit.
11. Professional Visits.	
D9420	Hospital Call. May be reported when providing treatment in hospital or ambulatory surgical center, in addition to reporting appropriate code numbers for actual services performed. Limited to once per day per client.
D9430	Office visit for observation - regular office hours - no other services performed.
D9440	Office visit - after regularly scheduled hours.
D9930	Treatment of complication (post-surgical) - unusual circumstances.

(3-15-02)(7-1-02)T

915. COVERED EMERGENCY DENTAL CODES FOR ADULTS.

The following are the emergency dental codes covered for adults after the month of their twenty-first birthday which do not require attached documentation on the claim. Any other claims for adult dental services require documentation attached to the claim as outlined in Section 900.02.b. of these rules. (7-1-02)T

TABLE 915 - ADULT CODES	
Dental Code	Description
01. GENERAL ORAL EVALUATIONS.	

TABLE 915 - ADULT CODES	
D0140	Limited oral evaluation. An evaluation or re-evaluation limited to a specific oral health problem. Not to be used when a client returns on a later date for follow-up treatment subsequent to either a comprehensive or periodic exam. This may require interpretation of information acquired through additional diagnostic procedures. Report additional diagnostic procedures separately. Definitive procedures may be required on the same date as the evaluation.
D0150	Comprehensive oral evaluation.
02. RADIOGRAPHS/DIAGNOSTIC IMAGES.	
D0220	Intraoral periapical - first film.
D0230	Intraoral periapical - each additional film.
D0270	Bitewing - single film.
D0330	Panoramic film. Panorex, panelipse or orthopantograph are also allowed under this code.
03. OTHER RESTORATIVE SERVICES.	
D2940	Sedative filling. Tooth designation required. Surface is not required.
04. ENDODONTICS	
D3220	Therapeutic pulpotomy (excluding final restoration). Once per tooth. Tooth designation required. Not to be construed as the first step of root canal therapy.
05. PERIODONTICS.	
D4341	Periodontal scaling and root planing (per quadrant). This procedure is indicated for clients with periodontal disease and is therapeutic, not prophylactic, in nature. Quadrant designation required.
D4355	Full mouth debridement to enable comprehensive periodontal evaluation and diagnosis. The removal of subgingival and/or supragingival plaque and calculus. This is a preliminary procedure and does not preclude the need for other procedures.
06. ORAL SURGERY - SIMPLE EXTRACTION.	
D7110	Single tooth. Tooth designation required.
D7120	Each additional tooth. Tooth designation required.
D7130	Root removal - exposed roots. Tooth designation required.
07. ORAL SURGERY - SURGICAL EXTRACTION.	
D7210	Surgical removal of erupted tooth requiring elevation of mucoperiosteal flap and removal of bone and/or section of tooth. Includes cutting of gingiva and bone, removal of tooth structure, and closure. Tooth designation required.
D7220	Removal of impacted tooth - soft tissue. Occlusal surface of tooth covered by soft tissue; requires mucoperiosteal flap elevation. Tooth designation required.
D7230	Removal of impacted tooth - partially bony. Part of crown covered by bone; requires mucoperiosteal flap elevation, bone removal, and may require segmentalization of tooth. Tooth designation required.
D7250	Surgical removal of residual tooth roots (cutting procedure). Includes cutting of gingiva and bone, removal of tooth structure, and closure. Can be completed for the same tooth number as previously extracted without prior approval. Tooth designation required.

TABLE 915 - ADULT CODES	
08. SURGICAL INCISION.	
<u>D7510</u>	<u>Incision and drainage of abscess - intraoral soft tissue.</u>
09. REPAIR OF TRAUMATIC WOUNDS.	
<u>D7910</u>	<u>Suture of recent small wounds up to five (5) cm.</u>
10. UNCLASSIFIED TREATMENT.	
<u>D9110</u>	<u>Palliative (emergency) treatment of dental pain, minor procedure (open and drain abscess, etc.). Tooth or Quadrant designation required.</u>
11. ANESTHESIA.	
<u>D9220</u>	<u>General anesthesia - first thirty (30) minutes. Not included as general anesthesia are tranquilization; nitrous oxide; or enteral or parenteral administration of analgesic, sedative, tranquilizing, or dissociative agents.</u>
<u>D9221</u>	<u>General anesthesia - each additional fifteen (15) minutes.</u>
<u>D9241</u>	<u>Intravenous sedation/analgesia -first thirty (30) minutes. Provider certification required.</u>
<u>D9242</u>	<u>Intravenous sedation/analgesia - each additional fifteen (15) minutes. Provider certification required.</u>
<u>D9310</u>	<u>Consultation. Provided by dentist or physician whose opinion or advice regarding the evaluation, management and/or treatment of a specific problem or condition is requested by another dentist or physician. The written or verbal request for a consult must be documented in the client's medical record. The consultant's opinion and any services that were ordered or performed must also be documented in the client's medical record and communicated to the requesting dentist or physician. A dental consultant may initiate diagnostic and/or therapeutic services at the same or subsequent visit.</u>
12. PROFESSIONAL VISITS.	
<u>D9420</u>	<u>Hospital call - May be reported when providing treatment in hospital or ambulatory surgical center, in addition to reporting appropriate code numbers for actual services performed. Limited to once per day per client.</u>
<u>D9430</u>	<u>Office visit for observation (during regularly scheduled hours). No other services performed.</u>
<u>D9440</u>	<u>Office visit after regularly scheduled hours.</u>
13. MISCELLANEOUS SERVICE.	
<u>D9930</u>	<u>Treatment of complication (post-surgical) - unusual circumstances.</u>

(7-1-02)T

9156. DENTAL PRIOR AUTHORIZATION.

All procedures that require prior authorization must be approved by the Medicaid dental consultant prior to the service being rendered. Prior authorization requires written submission including diagnostics. Verbal authorizations will not be given. Retroactive authorization will be given only in an emergency situation or as the result of retroactive eligibility. Prior authorization of Medicaid dental procedures does not guarantee payment. Client Medicaid eligibility must be verified by the provider before the authorized service is rendered. (3-15-02)

9167. -- 995. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09. RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM
DOCKET NO. 16-0309-0217
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective April 1, 2003.

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 56-203(g), 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 December 18, 2002.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation 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:

At the current time, the Department is allowed to assess a penalty for late submission of a review document to the Quality Improvement Organization (formally called the Peer Review Organization or PRO). The Department cannot currently assess a penalty for the late submission of a review document that the Department's medical staff reviews. This rule change would allow penalties to be assessed when timely review is not obtained from the Department for physician or outpatient procedures. This would ensure that all procedures are submitted in a timely manner for medical necessity review in order to protect the public health and safety.

This rule change replaces the term "Peer Review Organization" with the new term "Quality Improvement Organization". This change was necessary to meet the changes in 42 CFR Chapter I, IV, and V.

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 the public comment should be addressed.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226(1)(a), Idaho Code and are necessary in order to protect the public health, safety and welfare.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted. The rule change is for the protection of the public welfare. If the rulemaking is not made, inconsistency in imposing penalties between the late submission of a review document will continue. Those late submissions that the Department's medical staff reviews will not be assessed a penalty and no incentive for the provider to submit timely documentation will continue to be a problem.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Dr. Thomas Young at (208) 334-5747.

Anyone can submit written comments regarding this proposed rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before December 25, 2002.

DATED this 23rd day of October, 2002.

Sherri Kovach
Administrative Procedures Coordinator
DHW – Administrative Procedures Section
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 03090217

003. DEFINITIONS.

For the purposes of these rules, the following terms will be used, as defined below: (11-10-81)

01. Abortion. The medical procedure necessary for the termination of pregnancy endangering the life of the woman, or the result of rape or incest, or determined to be medically necessary in order to save the health of the woman. This Subsection is effective retroactively from October 1, 1993. (2-17-94)

02. Access Unit (ACCESS). Access to Care Coordination, Evaluation, Services and Supports. A regional multidisciplinary, transdivisional unit that has the responsibility of determining eligibility, authorizing services, and assuring quality for services and supports for individuals with developmental disabilities. (7-1-95)

03. Activities Of Daily Living (ADL). The performance of basic self-care activities in meeting an individual's needs for sustaining him in a daily living environment, including, but not limited to, bathing, washing, dressing, toileting, grooming, eating, communication, continence, mobility, and associated tasks. (3-30-01)

04. Ambulatory Surgical Center (ASC). Any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization, and which is certified by the U.S. Department of Health and Human Services as an ASC. (7-1-97)

05. Attendant Care. Services provided under a Medicaid Home and Community-Based Services waiver that involve personal and medically oriented tasks dealing with the functional needs of the participants and accommodating the participant's needs for long-term maintenance, supportive care or IADLs. These services may include, but are not limited to, personal assistance and medical tasks that can be done by unlicensed persons or delegated to unlicensed persons by a health care professional or the participant. Services are based on the person's abilities and limitations, regardless of age, medical diagnosis or other category of disability. (3-30-01)

06. Authorized Provider. A licensed nurse practitioner, clinical nurse specialist, or physician assistant. (3-30-01)

07. Bill. The itemized cost of all services provided to one (1) participant on a single claim form. (3-30-01)

08. Buy-In Coverage. The amount the State pays for Part B of Title C XVIII on behalf of the A/R. (11-10-81)

09. Category I Sanctions. Less severe administrative sanctions, which can be employed concurrently, which neither require notification nor are subject to appeal unless specifically allowed. (11-10-81)

10. Category II Sanctions. Severe administrative sanctions which are appealable as provided for in

IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". (7-1-97)

11. Central Office. The administrative headquarters for the Idaho Department of Health and Welfare which are located in the State Office Building (State Towers), 450 West State Street, Boise, Idaho 83720. (11-10-81)

12. Certified Registered Nurse Anesthetist (CRNA). A Registered Nurse qualified by advanced training in an accredited program in the specialty of nurse anesthesia to manage the care of the patient during the administration of anesthesia in selected surgical situations. (7-1-97)

13. Claim. An itemized bill for services rendered to one (1) participant by a provider submitted on any of the following Department claim forms: (3-30-01)

a. DHW PH 3-80, "Physician Invoice" or such other claim form as may be prescribed by the Department; or (11-10-81)

b. DHW 03-80, "Title XIX Pharmacy Claim"; or (11-10-81)

c. DHW-AD78, "Adjustment Request"; or (11-10-81)

d. DHW OP REV 4-80, "Hospital Out-patient"; or (11-10-81)

e. DHW IP 3-80, "Hospital In-patient"; or (11-10-81)

f. DHW 0137, "Attending Dentist's Statement"; or (11-10-81)

g. DHW NH 3-80, "Nursing Home Statement"; or (11-10-81)

h. HW-0034 "Consent Form" for sterilization procedures. (11-10-81)

14. Collateral Contacts. Contacts made with a parent, guardian, or other individual having a primary relationship to the patient by an appropriately qualified treatment professional. The contact must be ordered by a physician, contained in the treatment plan, directed at the medical treatment of the patient, and documented in the progress notes or continuous service record. (10-6-88)

15. Community Living Home. A licensed ICF/MR facility of eight (8) beds or less that has converted to a group home to provide residential habilitation services to developmentally disabled waiver recipients. Room and board is not included in the reimbursement rate. (7-1-95)

16. Contraception. The provision of drugs or devices to prevent pregnancy. (1-16-80)

17. Department. The state of Idaho Department of Health and Welfare (DHW). (11-10-81)

18. Director. The Director of the Idaho Department of Health and Welfare. (11-10-81)

19. Durable Medical Equipment (DME). Equipment other than prosthetics or orthotics which can withstand repeated use by one (1) or more individuals, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of an illness or injury, is appropriate for use in the home, and is reasonable and necessary for the treatment of an illness or injury for a MA participant. (3-30-01)

20. Educational Services. Services which are provided in buildings, rooms or areas designated or used as a school or as educational facilities; which are provided during the specific hours and time periods in which the educational instruction takes place in the normal school day and period of time for these students; and which are included in the individual educational plan for the participant or required by federal and state educational statutes or regulations; are not "related services" as listed in Sections 119 and 120 of these rules; and such services are provided to school age individuals as defined in Section 33-201, Idaho Code. (3-30-01)

21. Eligibility Manuals. IDAPA 16.03.01, "Rules Governing Eligibility for Medicaid for Families and

Children,” and IDAPA 16.03.05, “Rules Governing Eligibility for Aid to the Aged, Blind and Disabled”. (3-30-01)

22. Emergency. Any situation arising in the medical condition of a patient, which, after applying the prevailing medical standards of judgement and practice within the community requires immediate medical intervention. All obstetrical deliveries are considered emergencies. (10-29-92)

23. Endangerment Of Life. A condition where, in the opinion of two (2) licensed physicians, a pregnant woman may die or suffer severe and long lasting physical health damage if the fetus is carried to term. (1-16-80)

24. Health Authority. An authorized official of any of the seven (7) Idaho District Health Departments or their satellite centers. (1-16-80)

25. Home Health Services. Services ordered by a physician and performed by a licensed nurse, registered physical therapist, or home health aide as defined in IDAPA 16.03.07, Subsection 002.11, “Rules for Home Health Agencies”. (3-30-01)

26. In-Patient Hospital Services. Services that are ordinarily furnished in a hospital for the care and treatment of an in-patient under the direction of a physician or dentist except for those services provided in mental hospitals. (11-10-81)

27. In-State Care. Medical services provided within the Idaho border or in counties bordering Idaho are considered to be in-state, excluding long term care. (2-5-93)

28. Inspection Of Care Team (IOCT). An interdisciplinary team which provides inspection of care in intermediate care facilities for the mentally retarded approved by the Department as providers of care for eligible medical assistance participants. Such a team is composed of: (3-30-01)

- a. At least one (1) registered nurse; and (7-1-94)
- b. One (1) qualified mental retardation professional; and when required, one (1) of the following: (7-1-94)
 - i. A consultant physician; or (7-1-94)
 - ii. A consultant social worker; or (7-1-94)
 - iii. When appropriate, other health and human services personnel responsible to the Department as employees or consultants. (7-1-94)

29. Instrumental Activities Of Daily Living (IADL). Those activities performed in supporting the activities of daily living, including, but not limited, to managing money, preparing meals, shopping, light housekeeping, using the telephone, or getting around in the community. (3-30-01)

30. Interested Physician. (11-10-81)

- a. A physician who performs a Medicaid funded abortion for a fee; or (11-10-81)
- b. A physician who is related by blood or marriage to another physician performing a Medicaid funded abortion. (11-10-81)

31. Intermediate Care Facility Services. Those services furnished in an intermediate care facility as defined in 42 CFR 440.150, but excluding services provided in a Christian Science Sanatorium. (3-30-01)

32. Law Enforcement Authority. An agency recognized by the state of Idaho in enforcement of established state and federal statutes. (11-10-81)

33. Legal Representative. A parent with custody of a minor child, one who holds a legally-executed and effective power of attorney for health decisions, or a court-appointed guardian whose powers include the power to make health care decisions. (3-30-01)

34. Legend Drug. A drug that requires by federal regulation or state rule, the order of a licensed medical practitioner before dispensing or administration to the patient. (11-10-81)

35. Licensed Psychologist. An individual who is licensed to practice psychology under Chapter 23, Title 54, Idaho Code. (10-6-88)

36. Licensed, Qualified Professionals. Individuals licensed, registered, or certified by national certification standards in their respective discipline, or otherwise qualified within the state of Idaho. (11-10-81)

37. Lock-In Program. An administrative sanction, required of participant found to have misused the services provided by the Medical Assistance Program, requiring the participant to select one (1) provider in the identified area(s) of misuse to serve as the primary provider. (3-30-01)

38. Locum Tenens/Reciprocal Billing. The practice of a physician to retain a substitute physician when the regular physician is absent for reasons such as illness, pregnancy, vacation, or continuing medical education. The substitute physician is called the "Locum Tenens" physician. Reimbursement to a Locum Tenens physician will be limited to a period of ninety (90) continuous days. Reciprocal billing occurs when a substitute physician covers the regular physician during an absence or on an on-call basis not to exceed a period of fourteen (14) continuous days. (3-15-02)

39. Medical Care Treatment Plan. The problem list, clinical diagnosis, and treatment plan of care administered by or under the direct supervision of a physician. (11-10-81)

40. Medical Necessity. A service is medically necessary if: (7-1-98)

a. It is reasonably calculated to prevent, diagnose, or treat conditions in the client that endanger life, cause pain, or cause functionally significant deformity or malfunction; and (7-1-98)

b. There is no other equally effective course of treatment available or suitable for the client requesting the service which is more conservative or substantially less costly. (7-1-98)

c. Medical services shall be of a quality that meets professionally recognized standards of health care and shall be substantiated by records including evidence of such medical necessity and quality. Those records shall be made available to the Department upon request. (7-1-98)

41. Medical Supplies. Items excluding drugs and biologicals and equipment furnished incident to a physician's professional services commonly furnished in a physician's office or items ordered by a physician for the treatment of a specific medical condition. These items are generally not useful to an individual in the absence of an illness and are consumable, nonreusable, disposable, and generally have no salvage value. Surgical dressings, ace bandages, splints and casts, and other devices used for reduction of fractures or dislocations are considered supplies. (11-1-86)

42. Morbid Obesity. The condition of a person who exceeds ideal weight by more than one hundred (100) pounds and who has significant medical complications directly related to weight gain. (7-1-97)

43. Non-Legend Drug. Any drug the distribution of which is not subject to the ordering, dispensing, or administering by a licensed medical practitioner. (11-10-81)

44. Nurse Midwife. A registered nurse (RN) who is currently licensed to practice in Idaho, who meets applicable standards as found in the Idaho Nurse Practice Act, Rules and Minimum Standards promulgated by the Idaho State Board of Nursing, and who meets one of the following provisions: (11-10-81)

a. Is currently certified as a Nurse Midwife by the American College of Nurse Midwives; or

(11-10-81)

- b.** Has satisfactorily completed a formal educational program of at least one (1) academic year that: (11-10-81)
 - i.** Prepares a RN to furnish gynecological and obstetrical care to women during pregnancy, delivery and postpartum, and care to normal newborns; (11-10-81)
 - ii.** Upon completion, qualifies a RN to take the certification examination offered by the American College of Nurse Midwives; (11-10-81)
 - iii.** Includes at least four (4) months, in the aggregate, of classroom instruction and a component of supervised clinical practice; and (11-10-81)
 - iv.** Awards a degree, diploma, or certificate to persons who successfully complete the program. (11-10-81)

45. Nurse Practitioner. A registered nurse (RN) who is currently licensed to practice in this State, who meets applicable standards as found in the Idaho Nurse Practice Act, Rules and Minimum Standards promulgated by the Idaho State Board of Nursing, and who meets one (1) of the following provisions: (11-10-81)

- a.** Is currently certified as a Primary Care Nurse Practitioner by the American Nurses Association or by the National Board of Pediatric Nurse Practitioners and Associates, or by the Nurses Association of the American College of Obstetricians and Gynecologists; or (11-10-81)
- b.** Has satisfactorily completed a formal one (1) year academic year educational program that: (11-10-81)
 - i.** Prepares a RN to perform an expanded role in the delivery of primary care; (11-10-81)
 - ii.** Includes at least four (4) months, in the aggregate, of classroom instruction and a component of supervised clinical practice; and (11-10-81)
 - iii.** Awards a degree, diploma, or certificate to persons who successfully complete the program. (11-10-81)

46. Nursing Facility (NF). An institution, or distinct part of an institution, which is primarily engaged in providing skilled nursing care and related services for residents. The residents must require medical or nursing care, or rehabilitation services for injuries, disabilities, or sickness. An institution must provide, on a regular basis, health-related care and services to individuals; who because of their mental or physical condition require care and services above the level of room, board, and supervision; which are made available to them only through institutional facilities, not primarily for care and treatment of mental diseases. The institution is licensed in the state of Idaho pursuant to Section 39-1301, Idaho Code and is certified as a nursing facility pursuant to 42 CFR 405.1120 through 405.1136. (7-1-94)

47. Orthotic. Pertaining to or promoting the straightening of a deformed or distorted part. (10-1-91)

48. Orthotic And Prosthetic Professional. An individual certified or registered by the American Board for Certification in Orthotics and/or Prosthetics. (10-1-91)

49. Other Public Education Agency. Charter schools and the Idaho Infant Toddler Program. (3-30-01)

50. Otologist. A licensed physician who specializes in the diagnosis and treatment of hearing disorders and diseases of the ear. (11-10-81)

51. Out-Patient Hospital Services. Preventive, diagnostic, therapeutic, rehabilitative, or palliative

items or services furnished by or under the direction of a physician or dentist to a patient not in need of hospital bed accommodation. (11-10-81)

52. Out-Of-State Care. Medical service that is not provided in Idaho or bordering counties is considered out-of-state. Bordering counties outside Idaho are considered out-of-state for the purpose of authorizing long term care. (7-1-97)

53. Oxygen-Related Equipment. Equipment which is utilized or acquired for the routine administration of oxygen in the home. This includes oxygen tanks, regulators, humidification nebulizers, oxygen concentrators, and related equipment. Equipment which is used solely for the administration of medication into the lungs is excluded from this definition. (11-1-86)

54. Participant. An individual who is receiving Medical Assistance. (3-30-01)

55. Patient. The person undergoing treatment or receiving services from a provider. (11-10-81)

56. Personal Assistance Agency. An entity that recruits, hires, fires, trains, supervises, schedules, oversees quality of work, takes responsibility for services provided, provides payroll and benefits for personal assistants working for them, is the employer of record and in fact, and may provide fiscal intermediary services. (3-30-01)

57. Personal Assistance Services (PAS). Services that include attendant care and personal care services. (3-30-01)

58. Physician. A person possessing a Doctorate of Medicine degree or a Doctor of Osteopathy degree and licensed to practice medicine by a state or United States territory. (10-1-91)

59. Physician's Assistant. A person who is licensed by the Idaho Board of Medicine and who meets at least one (1) of the following provisions: (7-1-97)

a. Is currently certified by the National Commission on Certification of Physician Assistants to assist primary care physicians; or (11-10-81)

b. Has satisfactorily completed a program for preparing physician's assistants that: (11-10-81)

i. Was at least one (1) academic year in length; and (11-10-81)

ii. Consisted of supervised clinical practice and at least four (4) months, in the aggregate, of classroom instruction directed toward preparing students to deliver health care; and (11-10-81)

iii. Was accredited by the American Medical Association's Committee on Allied Health Education and Accreditation. (11-10-81)

60. Plan Of Care. A written description of medical, remedial and/or rehabilitative services to be provided to a participant, developed by or under the direction and written approval of a physician. Medications, services and treatments are identified specifically as to amount, type and duration of service. (3-30-01)

61. Premium Or Subscription Charge. The per capita amount paid by the Department for each eligible MA participant enrolled under a contract for the provisions of medical and rehabilitative care and services whether or not such a participant receives care and services during the contract period. (3-30-01)

62. Property. The homestead and all personal and real property in which the participant has a legal interest. (3-30-01)

63. Prosthetic Device. Replacement, corrective, or supportive devices prescribed by a physician or other licensed practitioner of the healing arts profession within the scope of his practice as defined by state law to: (10-1-91)

- a. Artificially replace a missing portion of the body; or (10-1-91)
 - b. Prevent or correct physical deformities or malfunctions; or (10-1-91)
 - c. Support a weak or deformed portion of the body. (10-1-91)
 - d. Computerized communication devices are not covered under the definition of a prosthetic device. (7-1-99)
- 64. Provider.** Any individual, organization or business entity furnishing medical goods or services in compliance with this chapter and who has applied for and received a provider number, pursuant to Section 020, and who has entered into a written provider agreement, pursuant to Section 040. (7-1-97)
- 65. Provider Agreement.** An agreement between the provider and the Department, entered into pursuant to Section 040. (12-31-91)
- 66. Provider Reimbursement Manual.** IDAPA 16.03.10, "Rules Governing Provider Reimbursement in Idaho". (7-1-97)
- 67. Psychology Assistant.** An individual who practices psychology under the supervision of a licensed psychologist when required under Chapter 23, Title 54, Idaho Code, and Section H of the "Rules of the Idaho State Board of Psychologist Examiners". (7-1-94)
- 68. Quality Improvement Organization (QIO).** An organization that performs utilization and quality control review of health care furnished to Medicare and Medicaid beneficiaries. A QIO is formerly known as a Peer Review Organization (PRO). In 42 CFR Chapters I, IV, and V, a "Quality Improvement Organization (QIO)" is replacing "Peer Review Organization (PRO)". (4-1-03)T
- 689. Recreational Therapy (Services).** Those activities or services that are generally perceived as recreation such as, but not limited to, fishing, hunting, camping, attendance or participation in sporting events or practices, attendance at concerts, fairs or rodeos, skiing, sightseeing, boating, bowling, swimming, training for Special Olympics, and special day parties (birthday, Christmas, etc.). (10-6-88)
- 6970. Regional Nurse Reviewer (RNR).** A registered nurse who reviews and makes determinations on applications for entitlement to and continued participation in Title XIX long term care for the Department. (7-1-94)
- 701. Social Security Act.** 42 USC 101 et seq., authorizing, in part, federal grants to the states for medical assistance to low-income persons meeting certain criteria. (11-10-81)
- 742. Specialized Family Home.** Living situation where a maximum of two (2) waiver participants who do not require a skilled nursing service live with a provider family of residential habilitation services. (3-30-01)
- 723. Speech/Language Pathology And Audiology Services.** Diagnostic, screening, preventative, or corrective services provided by a speech pathologist or audiologist, for which a patient is referred by a physician or other practitioner of the healing arts within the scope of his or her practice under state law. Speech, hearing and language services do not include equipment needed by the patient such as communication devices or environmental controls. (7-1-99)
- 734. Subluxation.** A partial or incomplete dislocation of the spine. (11-10-81)
- 745. Supervision.** Procedural guidance by a qualified person and initial direction and periodic inspection of the actual act, at the site of service delivery. (6-21-90)
- 756. Title XVIII.** That program established by the 1965 Social Security Act authorizing funding for the Medicare Program for the aged, blind, and disabled. The term is interchangeable with "Medicare". (11-10-81)

767. Title XIX. That program established by the 1965 Social Security Act authorizing the Medical Assistance Program, commonly referred to as “Medicaid”, which is jointly financed by the federal and state governments and administered by the states. The term is interchangeable with “Medicaid”. (11-10-81)

778. Third Party. Includes a person, institution, corporation, public or private agency that is liable to pay all or part of the medical cost of injury, disease, or disability of a participant of medical assistance. (3-30-01)

789. Transportation. The physical movement of a participant to and from a medical appointment or service by the participant, another person, taxi or common carrier. (3-30-01)

7980. Utilization Control (UC). A program of prepayment screening and annual review by at least one (1) Regional Nurse Reviewer to determine the appropriateness of medical entitlement and the need for continued medical entitlement of applicants/participants to Title XIX benefits in a NF. (3-30-01)

801. Utilization Control Team (UCT). A team of Regional Nurse Reviewers which conducts on-site reviews of the care and services in the NFs approved by the Department as providers of care for eligible medical assistance participants. (3-30-01)

842. Vocational Services. Services or programs which are directly related to the preparation of individuals for paid or unpaid employment. The test of the vocational nature of the service is whether the services are provided with the expectation that the participant would be able to participate in a sheltered workshop or in the general work force within one (1) year. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

070. PHYSICIAN SERVICES.

01. Services Provided. The Department will reimburse for treatment of medical and surgical conditions by doctors of medicine or osteopathy subject to the limitations of practice imposed by state law, and to the restrictions and exclusions of coverage contained in Section 065 and Subsection 070.02. All services not specifically included in this chapter are excluded from reimbursement. (12-31-91)

02. Restriction Of Coverage. (7-1-93)

a. Out-patient psychiatric mental health services are limited to twelve (12) hours of psychiatric evaluations per eligible recipient in any twelve (12) month period; and any combination of individual or group psychotherapy services provided by a physician up to a maximum of forty-five (45) hours of service in the consecutive twelve (12) months period beginning with the first such service. (11-10-81)

b. Particular restrictions pertaining to payment for sterilization procedures are contained in Section 090; and (12-31-91)

c. Restrictions governing payment for abortions are contained in Section 095; and (12-31-91)

d. Payment for tonometry is limited to one (1) examination for individuals over the age of forty (40) years during any twelve (12) month period (in addition to tonometry as a component of examination to determine visual acuity). In the event examination to determine visual acuity is not done, two (2) tonometry examinations per twelve (12) month period are allowed recipients over the age of forty (40). This limitation does not apply to recipients receiving continuing treatment for glaucoma. (10-25-88)

e. Payment for physical therapy services performed in the physician’s office is limited to those services which are described and supported by the diagnosis; and (11-10-81)

f. Payment for allowable injectable vitamins will be allowed when supported by the diagnosis.

Injectable vitamin therapy is limited to Vitamin B12 (and analogues), Vitamin K (and analogues), folic acid, and mixtures consisting of Vitamin B12, folic acid, and iron salts in any combination. (11-10-81)

g. Corneal transplants and kidney transplants are covered by the MA program. (5-15-84)

03. Misrepresentation Of Services. Any representation that a service provided by a nurse practitioner, nurse midwife, physical therapist, physician assistant, psychologist, social worker, or other nonphysician professional as a physician service is prohibited. (6-1-86)

04. Physician Penalties For Late ~~PRO~~ QIO Review. Medicaid will assess the physician a penalty for failure to ~~have~~ request a preadmission review from the Department or its designee, for procedures and diagnosis listed on the select list in the Department's Physician Provider Handbook and the QIO Idaho Medicaid Provider Manual, in accordance with Subsection 080.02.a. of these rules and Idaho Department of Health and Welfare Rules, IDAPA 16.03.10, "Rules Governing Provider Reimbursement in Idaho," as amended. ~~A penalty will be assessed~~ If a retrospective review determines the procedure was medically necessary, and the physician was late in obtaining a preadmission review the Department will assess a penalty according to Subsection 070.05 entitled "Physician Penalty Chart". The penalty will be assessed after billing payment for physician services has occurred. ~~(3-30-01)(4-1-03)T~~

05. Physician Penalty Chart. (3-1-92)

a. A request for preadmission ~~PRO~~ QIO review that is one (1) day late will result in a penalty of fifty dollars (\$50). ~~(3-30-01)(4-1-03)T~~

b. A request for preadmission ~~PRO~~ QIO review that is two (2) days late will result in a penalty of one hundred dollars (\$100). ~~(3-30-01)(4-1-03)T~~

c. A request for preadmission ~~PRO~~ QIO review that is three (3) days late will result in a penalty of one hundred and fifty dollars (\$150). ~~(3-30-01)(4-1-03)T~~

d. A request for preadmission ~~PRO~~ QIO review that is four (4) days late will result in a penalty of two hundred dollars (\$200). ~~(3-30-01)(4-1-03)T~~

e. A request for preadmission ~~PRO~~ QIO review that is five (5) days late or later will result in a penalty of two hundred and fifty dollars (\$250). ~~(3-30-01)(4-1-03)T~~

06. Physician Excluded From The Penalty. Any physician who provides care but has no control over the admission, continued stay or discharge of the patient will not be penalized. Assistant surgeons and multi-surgeons are not excluded from the penalty. (3-1-92)

07. Procedures For Medicare Cross-Over Claims. If a MA recipient is eligible for Medicare, the physician must bill Medicare first for the services rendered to the recipient. (11-10-81)

a. If a physician accepts a Medicare assignment, the Department will pay the physician for the services, up to the Medicaid allowable amount minus the Medicare payment, and forward the payment to the physician automatically based upon the Medicare Summary Notice (MSN) information on the computer tape which is received from the Medicare Part B Carrier on a weekly basis. (5-1-02)T

b. If a physician does not accept a Medicare assignment, a Medicare Summary Notice (MSN) must be attached to the appropriate claim form and submitted to the Department. The Department will pay the physician for the services, up to the Medicaid allowable amount minus the Medicare payment. (5-1-02)T

c. In order for the Department to make payment, the physician must agree to accept the payment from Medicare and Medicaid as payment in full for covered services. (11-10-81)

08. Procedure For Locum Tenens Claims And Reciprocal Billing. (3-15-02)

a. In reimbursement for Locum Tenens/Reciprocal Billing, the patient's regular physician may submit

the claim and receive payment for covered physician services (including emergency visits and related services) provided by a Locum Tenens physician who is not an employee of the regular physician if: (3-15-02)

- i. The regular physician is unavailable to provide the visit services. (3-15-02)
 - ii. The Medicaid patient has arranged for or seeks to receive services from the regular physician. (3-15-02)
 - iii. The regular physician pays the Locum Tenens for his services on a per diem or similar fee-for-time basis. (3-15-02)
 - iv. The substitute physician does not provide the visit services to Medicaid patients over a continuous period of longer than ninety (90) days for Locum Tenens and over a continuous period of fourteen (14) days for Reciprocal Billing. (3-15-02)
 - v. The regular physician identifies the services as substitute physician services meeting the requirements of this Section by appending modifier-Q6 (service furnished by a Locum Tenens physician) to the procedure code or Q5 (services furnished by a substitute physician under Reciprocal Billing arrangements). (3-15-02)
 - vi. The regular physician must keep on file a record of each service provided by the substitute physician associated with the substitute physician's UPIN, and make this record available to the department upon request. (3-15-02)
 - vii. The claim identifies (in a manner specified by the department) the physician who furnished the services. (3-15-02)
- b.** If the only Locum Tenens/Reciprocal billing services a physician performs in connection with an operation are post-operative services furnished during the period covered by the global fee, those services shall not be reported separately on the claim as substitution services, but shall be deemed as included in the global fee payment. (3-15-02)
- c.** A physician may have Locum Tenens/reciprocal billing arrangements with more than one (1) physician. The arrangements need not be in writing. Locum Tenens/reciprocal billing services need not be provided in the office of the regular physician. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

080. IN-PATIENT HOSPITAL SERVICES.

01. Exceptions And Limitations. The following exceptions and limitations apply to in-patient hospital services: (11-10-81)

- a.** Payment is limited to semi-private room accommodations. (11-10-81)
 - i. The Department must not authorize reimbursement for any part of a private room unless the attending physician orders a private room for the patient because of medical necessity. (11-10-81)
 - ii. If a patient or the family of a patient desires a private room, the party ordering the private room will be responsible for full payment for the private room. (11-10-81)
- b.** If a MA recipient is eligible for Medicare, the hospital must first bill Medicare for the services rendered to the recipient. (11-10-81)

c. If services are related to the professional component of laboratory and x-ray services, the payment for Medicare co-insurance and deductible will be made and forwarded to the hospital automatically based upon the EOMB cross-over information. (11-10-81)

d. Hospital care associated with noncovered services as contained in Section 065 is excluded from MA payment. (12-31-91)

02. Payment Procedures. The following procedures are applicable to in-patient hospitals: (11-10-81)

a. The patient's admission and length of stay is subject to preadmission, concurrent and retrospective review by a ~~Peer Review Organization (PRO)~~ Quality Improvement Organization (QIO) designated by the Department. ~~PRO QIO~~ review will be governed by provisions of the ~~PRO QIO Idaho Medicaid~~ Provider Manual as amended. If such review identifies that an admission or continued stay is not medically necessary, then no Medicaid payment will be made. Failure to obtain a timely ~~PRO QIO~~ review as required by Section 080, and as outlined in the ~~PRO QIO Idaho Medicaid~~ Provider Manual as amended, will result in the ~~PRO QIO~~ conducting a late review. After a ~~PRO QIO~~ review has determined that the hospital stay was medically necessary, Medicaid will assess a late review penalty to the hospital as outlined in Subsection 080.04 entitled "Hospital Penalty Chart". ~~(3-1-92)~~(4-1-03)T

i. All admissions are subject to ~~PRO QIO~~ review to determine if continued stay in inpatient status is medically necessary. A ~~PRO QIO~~ continued stay review is required when the recipient's length of stay exceeds the number of days certified by the ~~PRO QIO~~. If no initial length of stay certification was issued by the ~~PRO QIO~~, a ~~PRO QIO~~ continued stay review is required when the admission exceeds a number of days as specified by the Department. ~~(3-30-01)~~(4-1-03)T

ii. Reimbursement for services originally identified as not medically necessary by the ~~PRO QIO~~ will be made if such decision is reversed by the appeals process required in Idaho Department of Health and Welfare Rules, IDAPA 16, Title 05, Chapter 03, Section 301, et seq., "Rules Governing Contested Cases Proceedings and Declaratory Rulings". ~~(12-31-91)~~(4-1-03)T

iii. Absent the Medicaid recipient's informed decision to incur services deemed unnecessary by the ~~PRO QIO~~, or not authorized by the ~~PRO QIO~~ due to the negligence of the provider, no payment for denied services may be obtained from the recipient. ~~(12-3-90)~~(4-1-03)T

b. In reimbursing licensed hospitals, the Department will pay the lesser of customary charges or the reasonable cost of semi-private rates for in-patient hospital care in accordance with the rules set forth in Idaho Department of Health and Welfare Rules, IDAPA 16, Title 03, Chapter 10, "Rules Governing Medicaid Provider Reimbursement in Idaho". The upper limits for payment must not exceed the payment which would be determined as reasonable cost using the Title XVIII standards and principles. (12-31-91)

c. If a MA recipient is eligible for Medicare the hospital must first bill Medicare for the services rendered to the recipient. (11-10-81)

i. If services are related to the professional component of laboratory and x-ray services, the payment for Medicare co-insurance and deductible will be made and forwarded to the hospital automatically based upon the EOMB cross-over information. (11-10-81)

ii. For all other services, a Medicare EOMB must be attached to the appropriate claim form and submitted to Medicaid for the billing of Medicare co-insurance and deductible charges. (3-30-01)

d. Diagnostic tests and procedures, including laboratory tests, pathological, and x-ray examinations whether provided on an in-patient or an out-patient basis, are reimbursable only if related to the diagnosis and treatment of a covered medical condition. (12-3-90)

e. Only tests or evaluations specifically ordered by a physician will be reimbursed. (12-3-90)

03. Duties Of The Designated ~~PRO QIO~~. The designated ~~PRO QIO~~ shall must prepare, distribute and maintain a provider manual; ~~The PRO provider manual shall be distributed by the PRO and which must be~~

periodically updated ~~thereafter~~. The manual will include, and is not limited to, the following: ~~(10-1-89)~~(4-1-03)T

a. The ~~PROQIO~~'s policies, criteria, standards, operating procedures, and forms for performing: preadmission monitoring, assessment reviews, continued stay requests, and requests for retroactive medical reviews. ~~(10-1-89)~~(4-1-03)T

b. Department selected diagnoses and elective procedures in which a hospital will request preauthorization of an admission, transfer, or continuing stay. (10-1-89)

c. A provision that the ~~PRO QIO~~ will inform the hospital of a certification within five (5) days, or other time frame as determined by the Department, of an approved admission, transfer, or continuing stay. ~~(3-30-01)~~(4-1-03)T

d. The method of notice to hospitals of ~~PRO QIO~~ denials for specific admissions, transfers, continuing stays, or services rendered in post-payment reviews. ~~(10-1-89)~~(4-1-03)T

e. The procedures which providers or recipients will use to obtain reconsideration of a denial by the ~~PRO QIO~~ prior to appeal to the Department ~~in accordance with the provisions of Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, Section 301, et seq., "Rules Governing Contested Cases and Declaratory Rulings"~~. Such requests for reconsideration by the ~~PRO QIO~~ must be made in writing to the ~~PRO QIO~~ within ~~sixty~~ one hundred eighty (180) days of the issuance of the "Notice of Non-Certification of Hospital Days". ~~(12-31-91)~~(4-1-03)T

04. Hospital Penalty Chart. (3-1-92)

a. A request for a preadmission and/or continued stay ~~PRO QIO~~ review that is one (1) day late will result in a penalty of two hundred and sixty dollars (\$260), from the total Medicaid paid amount of the inpatient hospital stay. ~~(3-30-01)~~(4-1-03)T

b. A request for a preadmission and/or continued stay ~~PRO QIO~~ review that is two (2) days late will result in a penalty of five hundred and twenty dollars (\$520), from the total Medicaid paid amount of the inpatient hospital stay. ~~(3-30-01)~~(4-1-03)T

c. A request for a preadmission and/or continued stay ~~PRO QIO~~ review that is three (3) days late will result in a penalty of seven hundred and eighty dollars (\$780), from the total Medicaid paid amount of the inpatient hospital stay. ~~(3-30-01)~~(4-1-03)T

d. A request for a preadmission and/or continued stay ~~PRO QIO~~ review that is four (4) days late will result in a penalty of one thousand and forty dollars (\$1,040), from the total Medicaid paid amount of the inpatient hospital stay. ~~(3-30-01)~~(4-1-03)T

e. A request for a preadmission and/or continued stay ~~PRO QIO~~ review that is five (5) days late or greater will result in a penalty of one thousand three hundred dollars (\$1,300), from the total Medicaid paid amount of the inpatient hospital stay. ~~(3-30-01)~~(4-1-03)T

(BREAK IN CONTINUITY OF SECTIONS)

085. OUT-PATIENT HOSPITAL SERVICES.

On site services eligible for payment include preventive, diagnostic, therapeutic, rehabilitative or palliative items, or services furnished by or under the direction of a physician or dentist, unless excluded by any other provisions of this chapter. (3-22-93)

01. Exceptions And Limitations. (7-1-93)

a. Claims for emergency room service must include a diagnosis and copy of the emergency room

record. (11-10-81)

b. Payment for emergency room service is limited to six (6) visits per calendar year. (11-10-81)

c. Emergency room services which are followed immediately by admission to inpatient status will be excluded from the six (6) visit limit. (11-10-81)

02. Procedures For Medicare Cross-Over Claims. (11-10-81)

a. If an MA recipient is eligible for Medicare, the hospital must first bill Medicare for the services rendered to the recipient. (11-10-81)

b. If the services are related to the professional component of laboratory and x-ray services, the Department will pay the hospital for the services, up to the Medicaid allowable amount minus the Medicare payment, and forward the payment to the hospital automatically based upon the Medicare Summary Notice (MSN) cross-over information. (5-1-02)T

c. For all other services, a Medicare Summary Notice (MSN) must be attached to the appropriate claim form and submitted to the Department. The Department will pay the provider for the services up to the Medicaid allowable amount minus the Medicare payment. (5-1-02)T

03. Preauthorization For Selected Outpatient Procedures. Failure to obtain a timely review from the Department or its designee prior to delivery of outpatient services, listed on the select procedure and diagnosis list in the QIO Idaho Medicaid Providers Manual and the Hospital Provider Handbook as amended for clients who are eligible at the time of service, will result in a retrospective review. The Department will assess a late review penalty, as outlined in Subsection 080.04 of these rules, when a review is conducted due to an untimely request. (4-1-03)T

(BREAK IN CONTINUITY OF SECTIONS)

201. DEFINITIONS.

For purposes of Sections 200 through 233, unless the context clearly requires otherwise, the following words and terms shall have the following meanings: (4-5-00)

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. (4-5-00)

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. (4-5-00)

03. Conviction. An individual or entity is considered to have been convicted of a criminal offense: (3-30-01)

a. When a judgment of conviction has been entered against the individual or entity by a federal, state, or local court, regardless of whether there is an appeal pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged; (3-30-01)

b. When there has been a finding of guilt against the individual or entity by a federal, state, or local court; (3-30-01)

c. When a plea of guilty or nolo contendere by the individual or entity has been accepted by a federal,

state, or local court; or (3-30-01)

d. When the individual or entity has entered into participation in a first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld. (3-30-01)

04. Exclusion. A specific person or provider will be precluded from directly or indirectly providing services and receiving reimbursement under Medicaid. (4-5-00)

05. 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. (4-5-00)

06. 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. (4-5-00)

07. 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. (4-5-00)

08. 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. (4-5-00)

09. 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. (4-5-00)

10. Person. An individual, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private. (4-5-00)

~~**11. PRO.** Any peer review organization. (4-5-00)~~

~~**121. Program.** The Medicaid Program or any part thereof, including Idaho's state plan. (4-5-00)~~

~~**132. 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. (4-5-00)~~

~~**143. Sanction.** Any abatement or corrective action taken by the Department which is appealable under Section 224 of these rules. (4-5-00)~~

~~**154. State Plan.** The Medicaid Program as it exists in Idaho. (4-5-00)~~

~~**165. Provider Suspension.** The temporary barring of a person from participation in the Medicaid program pending further investigation or additional action. (4-5-00)~~

(BREAK IN CONTINUITY OF SECTIONS)

215. PERMISSIVE EXCLUSIONS.
The Department may exclude any person or entity for a period of not less than one (1) year: (4-5-00)

01. Endangerment Of Health Or Safety Of A Patient. Where there has been a finding by the

Department or ~~peer review group or organization~~ Quality Improvement Organization (QIO) of endangering the health or safety of a patient. ~~(4-5-00)~~(4-1-03)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. (4-5-00)

03. Other Exclusions. For any reason for which the Secretary of Health and Human Services, or his designee, could exclude an individual or entity. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

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~~ Quality Improvement Organization (QIO), institutional providers, professional organizations, contractors, other health insurance payors, and other agencies or Departmental divisions. ~~(4-5-00)~~(4-1-03)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM

DOCKET NO. 16-0309-0218

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective December 1, 2002.

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 56-203(g), 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 December 18, 2002.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation 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:

Clozapine is a psychotropic medication which requires care coordination and close medical oversight for the client. Currently Clozapine is the only medication for which Medicaid pays a special reimbursement for care coordination. Medicaid has determined that since providers are already reimbursed for managing client care and medications Clozapine Care Coordination should be discontinued.

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 the public comment should be addressed.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226(1)(c), Idaho Code and are necessary in order to comply with deadlines in amendments to governing law.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of time constraints and the rulemaking is to comply with judicial order.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Arla Farmer at (208) 364-1958.

Anyone can submit written comments regarding this proposed rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before December 25, 2002.

DATED this 10th day of October, 2002.

Sherri Kovach
Administrative Procedures Coordinator
DHW – Administrative Procedures Section
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0218

111. -- 1167. (RESERVED).

~~117. CLOZAPINE CARE COORDINATION.~~

~~01. **Qualifications.** The Department will make payments for care coordination services associated with prescribed Clozapine therapy to entities operating manufacturer registered Clozapine treatment systems. (2-19-92)~~

~~02. **Payment Procedures.** A single payment for each calendar week (or portion thereof) will be made. Payments for care coordination services are made in lieu of payments for chemotherapy visits to mental health centers and/or physician medical management services unless significant identifiable services in excess of those required by the manufacturers registered treatment system are required and documented. The rate of payment will be established in accordance with Subsection 060.04. (2-19-92)~~

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.10 - RULES GOVERNING MEDICAID PROVIDER REIMBURSEMENT IN IDAHO

DOCKET NO. 16-0310-0203

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective November 1, 2002.

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) 56-120, 56-202, 56-203, 56-1003(1), 56-1004(1)(a), Idaho Code. Also, Title XIX (Medicaid) of the Social Security Act (see 42 CFR Section 447).

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 December 18, 2002.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation 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:

Rule amendments change the methodology by which hospital rate and cost reimbursement settlements are set.

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 the public comment should be addressed.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226(1)(b), Idaho Code and are necessary in order to comply with deadlines in amendments to governing law or federal programs.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because rulemaking occurred to comply with executive mandate.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Jan Uren at (208) 364-1854.

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 December 25, 2002.

DATED this 10th day of October, 2002.

Sherri Kovach
Administrative Procedures Coordinator
DHW – Administrative Procedures Section
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0310-0203

451. DEFINITIONS.

In determining hospital reimbursement on the basis either of Customary Charges or of the Reasonable Cost of services under Medicaid guidelines, whichever is less, the following will apply: (4-5-00)

01. Allowable Costs. The Current Year's Title XIX apportionment of a hospital's Allowable Costs determined at final or interim settlement consist of those costs permitted by the principles of reimbursement contained in the Provider Reimbursement Manual (PRM) and do not include costs already having payment limited by Medicaid rate file or any other Medicaid charge limitation. (4-5-00)

02. Apportioned Costs. Apportioned Costs consist of the share of a hospital's total Allowable Costs attributed to Medicaid program recipients and other patients so that the share borne by the program is based upon actual services received by program recipients, as set forth in the applicable Title XVIII principles of cost reimbursement as specified in the PRM and in compliance with Medicaid reimbursement rules. (4-5-00)

03. Capital Costs. For the purposes of hospital reimbursement, Capital Costs are those allowable costs considered in the settlement that represent the cost to each hospital for its reasonable property related and financing expense, and property taxes. (4-5-00)

04. Case-Mix Index. The Case-Mix Index for a hospital is the average weight of values assigned to a range of diagnostic related groups, including but not limited to, those used in the Medicare system or adjoining states and applied to Medicaid discharges included in a hospital's fiscal year end settlement. The index will measure the relative resources required to treat Medicaid inpatients. The Case-Mix Index of the Current Year will be divided by the index of the principal year to assess the percent change between the years. (7-1-97)

05. Charity Care. Charity Care is care provided to individuals who have no source of payment, third-party or personal resources. (7-1-97)

06. Children's Hospital. A Children's Hospital is a Medicare certified hospital as set forth in 42 CFR Section 412.23(d). (7-1-97)

07. Cost Report. A Cost Report is the complete Medicare cost reporting form HCFA 2552, or its successor, as completed in full and accepted by the Intermediary for Medicare cost settlement and audit. (7-1-97)

08. Current Year. Any hospital cost reporting period for which Reasonable Cost is being determined will be termed the Current Year. (7-1-97)

09. Customary Charges. Customary Charges reflect the regular rates for inpatient or outpatient services charged to patient(s) liable for payment for their services on a charge basis. Implicit in the use of charges as the basis for comparability (or for apportionment under certain apportionment methods) is the objective that services are related to the cost of services billed to the Title XIX program. No more than one hundred percent (100%) of covered charges will be reimbursed for the separate Operating Costs for either total inpatient services or total outpatient services at the time of final cost settlement for any fiscal year with the exception set forth in Subsection 453.02. (7-1-97)

10. Disproportionate Share Hospital (DSH) Allotment Amount. The DSH Allotment Amount determined by Health Care Financing Administration which is eligible for federal matching funds in any federal fiscal period for disproportionate share payments. (7-1-97)

11. Disproportionate Share Hospital (DSH) Survey. The DSH Survey is an annual data request from the Department to the hospitals to obtain the information necessary to compute DSH pursuant to Subsection 454.01. (7-1-97)

12. Disproportionate Share Threshold. The Disproportionate Share Threshold shall be: (7-1-97)

a. The arithmetic mean plus one (1) standard deviation of the Medicaid Utilization Rates of all Idaho Hospitals; or (7-1-97)

b. A Low Income Revenue Rate exceeding twenty-five percent (25%). (7-1-97)

13. Excluded Units. Excluded Units are distinct units in hospitals which are certified by Medicare according to 42 CFR Sections 412.25, 412.27 and 412.29 for exclusion from the Medicare prospective payment system. (7-1-97)

14. Hospital Inflation Index. ~~For purposes of determining the rate of increases of historical and forecasted Title XIX Inpatient Operating Cost Limits, and interim rates, the DRI, Data Resources Incorporated, Type Hospital Market Basket quarterly moving average, or its successor, is the Hospital Inflation Index. An index calculated through Department studies and used to adjust inpatient operating cost limits and interim rates for the current year.~~ (7-1-97)(11-1-02)T

15. Low Income Revenue Rate. The Low Income Revenue Rate is the sum of the following fractions, expressed as a percentage, calculated as follows: (7-1-97)

a. Total Medicaid inpatient revenues paid to the hospital, plus the amount of the cash subsidies received directly from state and local governments in a cost reporting period, divided by the total amount of revenues and cash subsidies of the hospital for inpatient services in the same cost reporting period; plus (7-1-88)

b. The total amount of the hospital's charges for inpatient hospital services attributable to charity care in the same cost reporting period, divided by the total amount of the hospital's charges for inpatient services in the hospital in the same period. The total inpatient charges attributed to charity care shall not include contractual allowances and discounts and reduction in charges given to Medicare, Medicaid, other third-party payors, or cash for patient services received directly from state and local governments county assistance programs. (7-1-97)

16. Medicaid Inpatient Day. For purposes of DSH payments, an inpatient day is defined as a Medicaid inpatient day in a hospital for which there is also no Medicare inpatient day counted. (7-1-97)

17. Medicaid Utilization Rate (MUR). The MUR for each hospital will be computed using the Department's record of paid inpatient days for the fiscal year divided by the total inpatient days for the same fiscal year as reported in the DSH Survey. In this paragraph, the term "inpatient days" includes Medicaid swing-bed days, administratively necessary days, newborn days, days in specialized wards, days provided at an inappropriate level of care, and Medicaid inpatient days from other states. In this paragraph, "Medicaid inpatient days" includes paid days not counted in prior DSH Threshold computations. (4-5-00)

18. Obstetricians. For purposes of an adjustment for hospitals serving a disproportionate share of low income patients, and in the case of a hospital located in a rural area, as defined by the federal Executive Office of Management and Budget, the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures. (7-1-88)

19. On-Site. A service location over which the hospital exercises financial and administrative control. "Financial and administrative control" means a location whose relation to budgeting, cost reporting, staffing, policy-making, record keeping, business licensure, goodwill and decision-making are so interrelated to those of the hospital that the hospital has ultimate financial and administrative control over the service location. The service location shall be in close proximity to the hospital where it is based, and both facilities serve the same patient population (e.g. from the same area, or catchment, within Medicare's defined Metropolitan Statistical Area (MSA) for urban hospitals or thirty-five (35) miles from a rural hospital). (4-5-00)

20. Operating Costs. For the purposes of hospital reimbursement, Operating Costs are the allowable costs included in the cost centers established in the finalized Medicare Cost Report to accumulate costs applicable to providing routine and ancillary services to patients for the purposes of cost assignment and allocation in the step-down process. (7-1-97)

21. Other Allowable Costs. Other Allowable Costs are those Reasonable Costs recognized under the Medicaid Reasonable Cost principles for services not subject to Medicaid limitations of coverage or reimbursement limits. Costs which are not reimbursed as Operating Costs, but recognized by Medicare principles as Allowable Costs will be included in the total Reasonable Costs. Other Allowable Costs include, but are not necessarily limited to, physician's component which was combined-billed, Capital Costs, ambulance costs, excess costs, carry-forwards and medical education costs. (7-1-97)

22. Principal Year. The Principal Year is the period from which the Title XIX Inpatient Operating Cost Limit is derived. (7-1-97)

a. For services rendered from July 1, 1987 through July 5, 1995, the Principal Year shall be the provider's fiscal year ending in calendar year 1984 in which a finalized Medicare Cost Report or its equivalent is prepared for Title XIX cost settlement. (7-1-97)

b. For inpatient services rendered after July 5, 1995, through June 30, 1998, the Principal Year shall be the provider's fiscal year ending in calendar year 1992 in which a finalized Medicare Cost Report, or its equivalent, is prepared for Title XIX cost settlement. (7-1-97)

c. For inpatient services rendered after June 30, 1998, the Principal Year shall be the provider's fiscal year ending in calendar year 1995 in which a finalized Medicare Cost Report or its equivalent is prepared for Title XIX cost settlement. (7-1-97)

d. For inpatient services rendered on or after November 1, 2002, the Principal Year shall be the provider's fiscal year ending in calendar year 1998 in which a finalized Medicare Cost Report or its equivalent is prepared for Title XIX cost settlement. (11-1-02)T

23. Public Hospital. For purposes of Subsection 453.02, a Public Hospital is a hospital operated by a federal, state, county, city, or other local government agency or instrumentality. (7-1-97)

24. Reasonable Costs. Except as otherwise provided in Section 453, Reasonable Costs include all necessary and ordinary costs incurred in rendering the services related to patient care which a prudent and cost-conscious hospital would pay for a given item or service which do not exceed the Title XIX cost limit. (7-1-97)

25. Reimbursement Floor Percentage. The percentage of allowable Medicaid costs guaranteed to hospitals with more than forty (40) licensed and Medicare certified inpatient beds during the following state fiscal years is as follows: (7-1-97)

a. State Fiscal Year Ending June 30, 1996 - eighty percent (80%); (7-1-97)

b. State Fiscal Year Ending June 30, 1997 - eighty-one percent (81%); (7-1-97)

c. State Fiscal Year Ending June 30, 1998 - eighty-two percent (82%); (7-1-97)

d. State Fiscal Year Ending June 30, 1999 - eighty-three percent (83%); (7-1-97)

e. State Fiscal Year Ending June 30, 2000 - eighty-four percent (84%); (7-1-97)

f. State Fiscal Year Ending June 30, 2001 - eighty-five percent (85%); ~~(7-1-97)~~(11-1-02)T

g. State Fiscal Year Ending June 30, 2002 and thereafter - eighty-five percent (85%). (11-1-02)T

26. TEFRA. TEFRA is the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97-248. (7-1-97)

27. Uninsured Patient Costs. For the purposes of determining the additional costs beyond uncompensated Medicaid costs that may be reimbursed as a DSH payment without exceeding the state Allotment

Amount, only inpatient costs of uninsured patients will be considered. An inpatient with insurance but no covered benefit for the particular medically necessary service, procedure or treatment provided is an uninsured patient. (4-5-00)

28. Upper Payment Limit. The Upper Payment Limit for hospital services shall be as defined in the Code of Federal Regulations. (7-1-97)

452. TITLE XIX INPATIENT OPERATING COST LIMITS.

In the determination of Reasonable Costs, a separate Title XIX cost limit for the services rendered under the approved state plan will be in effect during the Current Year. Payments will meet the costs of an economically and efficiently operated facility when the Title XIX cost limit, in effect during the same Current Year, is applied. Subsections 452.01 and 452.02 of this rule describe the determination of inpatient operating cost limits. (~~7-1-97~~)(11-1-02)T

01. Title XIX Cost Limits For Dates Of Service Prior To A Current Year. The reimbursable Reasonable Costs for services rendered prior to the beginning of the Principal Year, but included as prior period claims in a subsequent period's Cost Report, will be subject to the same operating cost limits as the claims under settlement. (7-1-97)

02. Application Of The Title XIX Cost Limit ~~After Effective Date Of Rules.~~ In the determination of a hospital's Reasonable Costs for inpatient services rendered after the effective date of a Principal Year, a Hospital Inflation Index, computed for each hospital's fiscal year end, will be applied to the Operating Costs, excluding Capital Costs and Other Allowable Costs as defined for the Principal Year and adjusted on a per diem basis for each subsequent year under the Hospital Inflation Index. (~~7-1-97~~)(11-1-02)T

a. Each inpatient routine service cost center, as reported in the finalized Principal Year end Medicare Cost Report, will be segregated in the Title XIX cost limit calculation and assigned a share of total Title XIX inpatient ancillary costs. The prorated ancillary costs shall be determined by the ratio of each Title XIX routine cost center's reported costs to total Title XIX inpatient routine service costs in the Principal Year. (7-1-97)

b. Each routine cost center's total Title XIX routine service costs plus the assigned share of Title XIX inpatient ancillary costs of the Principal Year will be divided by the related Title XIX patient days to identify the total costs per diem in the Principal Year. (7-1-97)

i. The related inpatient routine service cost center's per diem capital and graduate medical education costs plus the prorated share of inpatient ancillary capital costs will be subtracted from the per diem amount identified in Subsection 452.02.b. to identify each inpatient routine service cost center per diem cost limit in the Principal Year. (7-1-97)

ii. If a provider did not have any Title XIX inpatient utilization or render any Title XIX inpatient services in an individual inpatient routine service cost center in the fiscal year serving as the Principal Year, the Principal Year for only those routine cost centers without utilization in the provider's Principal Year will be appropriately calculated using the information available in the next subsequent year in which Title XIX utilization occurred. (7-1-97)

c. Each routine cost center's cost per diem for the Principal Year will be multiplied by the Hospital Inflation Index for each subsequent fiscal year. (7-1-97)

d. The sum of the per diem cost limits for the Title XIX inpatient routine service cost centers of a hospital during the Principal Year, as adjusted by the Hospital Inflation Index, will be the Title XIX cost limit for Operating Costs in the Current Year. (7-1-97)

i. At the date of final settlement, reimbursement of the Title XIX Current Year inpatient routine cost centers plus the assigned ancillary costs will be limited to the total per diem Operating Costs as adjusted for each subsequent fiscal year after the Principal Year through the Current Year by the Hospital Inflation Cost Index. (7-1-97)

ii. Providers will be notified of the estimated inflation index periodically or Hospital Inflation Index (HCFA Market Basket Index) prior to final settlement only upon written request. (7-1-97)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.10 - RULES GOVERNING MEDICAID PROVIDER REIMBURSEMENT IN IDAHO

DOCKET NO. 16-0310-0204

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective August 1, 2002.

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 56-203(g), 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 December 18, 2002.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation 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 change will remove wheelchairs from the list of routine supplies of ICF/MR facilities. This rule eliminates the requirement that ICF/MR facilities must purchase wheelchairs for residents and will provide an incentive to facilities to admit wheelchair bound persons. This rule change will eliminate a cash flow problem for facilities and allow a person to take their own wheelchair from facility to facility and, facility to a community placement.

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 the public comment should be addressed.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226(1)(c), Idaho Code and are necessary in order to confer a benefit to the public.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted with the ICF/MR industry.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Lloyd Forbes at (208) 364-1831.

Anyone can submit written comments regarding this proposed rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before December 25, 2002.

DATED this 10th day of October, 2002.

Sherri Kovach
Administrative Procedures Coordinator
DHW – Administrative Procedures Section
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0310-0204

405. ANCILLIARY AND ROUTINE NURSING SUPPLIES.

01. Ancillary Supplies.

Ancillary Supplies
Artificial Limbs
Canes
Laboratory Tests
Legend Drugs and Insulin paid to facilities on a patient and prescription specific basis
Radiology
X-ray

(7-1-93)

02. Routine Supplies.

Routine Supplies
A & D Ointment
ABD Pad
Ace Bandages
Acquamatic K Pads
Air Mattress
Alcohol Applicators
Arm Slings
Asepto Syringes
Autoclave Sheets
Baby Powder
Band Aid Spots
Band Aids
Bandages/Elastic
Bandages/Sterile
Basins
Bed Frame Equipment

Routine Supplies
Bed Pans
Bedside Tissues
Benzoin Aerosol
Bibs
Bottles/Specimen
Braces
Butterfly Closures
Cannula/Nasal
Catheter Clamp
Catheter Plug
Catheter Tray
Catheters, any size
Catheters/Irrigation
Clinitest
Clysis Set
Coloplast
Cotton Balls
Crutches
Decubitus Ulcer Pads
Defecation Pads
Denture Cup
Deodorant
Dermessage
Disposable Leg Bag
Disposable Underpads
Donut Pad
Douche Bags
Drainage Bags
Drainage Sets
Drainage Tubing
Dressing/Sterile
Dressing Tray

Routine Supplies
Drugs Nonlegend
Enema Cans/Disposable
Enema/Fleets
Enema/Fleets in Oil
Female Urinal
Finger Cots
Flex Straws
Flotation Mattress
Foot Cradle
Gastric Feeding Tube
Gloves/Nonsterile
Gloves/Sterile
Gowns
Hand Feeding
Harris Flush Tube
Heat Cradle
Heating Pad
Heel Protectors
Hexol
Hot Pack Machine
Ice Bag
Identification Bands
Incontinency Care
Invalid Ring
IPPB Machine
Irrigation Bulb
Irrigation Set
Irrigation Solution
Irrigation Tray

Routine Supplies
IV Set
Jelly/Lubricating
Killet Ampules
Kleenex
Kling bandages/Sterile
KY Jelly
Levine Tube
Linen
Lotion
Maalox
Male Urinal
Massages
Medical Social Services
Medicine Cups
Medicine Dropper
Merthiolate Spray
Milk of Magnesia
Mineral Oil
Mouthwashes
Nasal Cannula
Nasal Catheter
Nasal Gastric Tube
Nasal Tube
Needles
Nonallergic Tape (paper tape)
Nursing Services
Occupational Therapy
Ointment/Skin Nonprescription

Routine Supplies
Overhead Trapese
Oxygen
Oxygen Equipment-IPPB
Oxygen Mask/Disposable
Oxygen/Nondisposable
Peroxide
Personal Laundry (except for dry cleaning and special laundry)
Pitcher
Physical Therapy* (subject to Department policy)
Plastic Bib
Pumps* (subject to Department policy)
Rectal Tube
Restraints
Room and Board
Sand Bags
Scalpel
Sheep Skin
Special Diets
Specimen Cup
Speech Therapy
Sponges/Sterile
Sterile Pads
Stomach Tube
Suction Machines
Suppositories
Surgical Dressings
Surgical Pads
Surgical Tape/Nonallergic
Suture Set Suture Tray
Swabs/Lemon & Glycerin

Routine Supplies
Tape (Lab-Testing)
Tape/Autoclave
Testing Sets/Refills
Thermometers
Tincture of Benzoin
Tongue Blades
Tracheostomy Sponges
Tray Service
Tubing/IV
Tubing/Blood
Tubing/Drainage
Urinals
Urinary Drainage Tube Underpads (if more than occasional use)
Urological Solutions
Vaseline
Walkers
Water Pitchers
Wheel Chairs <u>(except for ICF/MR facilities)</u>
Water for Injection

**Subject to Department policy*

(1-1-82)(8-1-02)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

**16.05.05 - RULES GOVERNING FEES FOR HEALTH OPERATING PERMITS,
LICENSES AND INSPECTION SERVICES**

DOCKET NO. 16-0505-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2003 Idaho State Legislature for final approval. The rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Fifty-seventh Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291. In June 2002, the Board of Environmental Quality adopted the text of the proposed rule as a temporary rule, which is currently effective.

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 and 39-107, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reasons for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 7, 2002, Volume 02-8, pages 60 through 62. The agency received no public comments on the proposal, and the rule has been adopted as initially proposed. The rulemaking record can be obtained by contacting the undersigned.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Barry Burnell at (208)373-0502 or bburnell@deq.state.id.us.

DATED this 22nd day of October, 2002.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton, Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pgradwoh@deq.state.id.us

IDAPA 16, TITLE 05, Chapter 05

**RULES GOVERNING FEES FOR HEALTH OPERATING PERMITS,
LICENSES AND INSPECTION SERVICES**

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-8, August 7, 2002, pages 60 through 62.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.06.14 - RULES GOVERNING THE PREVENTION OF MINORS' ACCESS TO TOBACCO PRODUCTS

DOCKET NO. 16-0614-0201

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is October 1, 2002.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Title 39, Chapter 57, Idaho Code and 42 U.S.C. 300x -26, 45 C.F.R. 96, Idaho Code.

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

December 9, 2002, at 7:00 p.m.
Owyhee Room, Vista Inn
2645 Airport Way, Boise

December 11, 2002, at 7:00 p.m.
Ameritel Inn
645 Lindsay Blvd., Idaho Falls

December 17, 2002, at 7:00 p.m.
Eagle East Room, Ameritel Inn
333 Ironwood, Coeur d'Alene

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation 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 change provides the Department with the ability to refuse to renew a retailer's tobacco sales permit when the retailer has unpaid civil money penalties for violations on the permit. A permit would be issued when the fine is paid in full. This rule adjusts the date used to determine the number of permits or retailers from January 1st of each year to December 31st of the previous year. This will provide the most accurate accounting of active retail permits during the prior year.

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 the public comment should be addressed.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226(1)(a), Idaho Code and are necessary in order to protect public health.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because time constraints did not allow for negotiated rule making. However, the Department is holding public hearings on this rule change.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Decker Sanders at (208) 334-5934.

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 December 25, 2002.

DATED this 10th day of October, 2002.

Sherri Kovach
Administrative Procedures Coordinator
DHW – Administrative Procedures Section
450 West State Street, 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0614-0201

020. APPLICATION FOR PERMIT.

All businesses which sell or distribute tobacco products to the public must obtain a permit issued annually for no charge by the Department of Health and Welfare. (4-5-00)

01. Where To Obtain An Application For Permit. An application can be obtained, at no cost to the applicant, from the Department of Health and Welfare, Division of Family and Community Services, PO Box 83720, Boise, Idaho, 83720-0036, ~~at no cost to the applicant~~. Application may be made through online services where available. (~~3-15-02~~)(10-1-02)T

02. Separate Permits. A separate permit must be obtained for each place of business. The permit is non-transferable to another person, business, or location. (3-15-02)

03. Renewal Of Permit. All permits must be renewed annually and are valid for twelve (12) calendar months. (4-5-00)

a. The Department will mail notices of renewal for permits no later than ninety (90) days prior to the expiration date on the permit. (4-5-00)

b. An application for renewal must be submitted annually by each business through written application or online services where available. (3-15-02)

c. A business with multiple sites may submit a single written application to renew the permit at each site, so long as the application is accompanied by a list of business locations and addresses. (3-15-02)

d. A permit will not be renewed for any location until any past due fines for violations are paid in full. Fines are considered past due when not paid within ten (10) days of the citation date, or within ten (10) days after notification that the fine is upheld upon appeal. Violation fines under appeal are not considered past due. (10-1-02)T

04. Application For Exemption. Businesses seeking exemption from vendor assisted sales ~~shall~~ must submit information to the Department to establish compliance with criteria set forth in Subsections 007.14.a. through 007.14.c. (~~4-5-00~~)(10-1-02)T

(BREAK IN CONTINUITY OF SECTIONS)

101. INSPECTIONS.

01. Random And Unannounced Inspections. The total number of random and unannounced inspections under Section 101 shall be determined by: (3-15-02)

a. The number of permittees on the ~~first~~ last day of each year multiplied by the percentage of violations for the preceding year multiplied by a factor of ten (10). A calculation checklist is provided under Appendix B; (~~3-15-02~~)(10-1-02)T

b. In no instance shall the total number of inspections be less than the number of permittees, or exceed twice the number of permittees. (3-15-02)

c. The Department and the Idaho State Police ~~shall~~ must conduct at least one (1), unannounced inspection per year at every known business location identified as a retailer of tobacco products to the public. All additional inspections required to meet the total number specified under Section 101 shall be conducted in a random

manner.

~~(3-15-02)~~(10-1-02)T

02. Who Will Inspect. Inspections will be conducted by an adult enforcement officer accompanied by a minor. (4-5-00)

03. Law Enforcement Agency Inspections. (4-5-00)

a. In addition to the inspections set forth in Subsection 101.01, any law enforcement agency may conduct inspections consistent with agency policy and procedure with or without a minor at any business location, at any time, where tobacco products are sold or distributed to the public. (3-15-02)

b. Law enforcement agencies conducting inspections under Subsection 101.03.a. will report the results from their inspections to the Department. All citations will become part of the permittee's permanent record. (3-15-02)

04. Complaint Investigation. (3-15-02)

a. The Department ~~shall~~ **must** refer all written complaints concerning the sale of tobacco products to minors to the appropriate agency for investigation. Investigation activities include, but are not limited to, inspections to determine the compliance with this chapter. ~~(3-15-02)~~(10-1-02)T

b. Inspections conducted as part of the investigation of a written complaint are not included in the overall number of inspections identified under Subsections 101.01 and 101.03. Citations issued during the investigation of a written complaint ~~shall~~ **must** be added to the permittee's permanent record. ~~(3-15-02)~~(10-1-02)T

05. Issuance Of Citation Or Report. (4-5-00)

a. For inspections conducted under Subsection 101.01 a representative of the business will be provided with a report, within two (2) business days, after the inspection was conducted and no violations were found, or a representative of the business will be issued a citation within two (2) business days after the random unannounced inspection. (3-15-02)

b. For inspections conducted under Subsections 101.03 and 101.04, a representative of the business will be provided with a report, within two (2) business days, after the result of the inspection is received by the Department and no violations were found, or a representative of the business will be issued a citation within two (2) business days after the result of the inspection is received by the Department. The date the Department provides notification of the citation ~~shall~~ **must** be used for determination of timely payment of fines and all other administrative actions including requests for waivers and request for appeals. ~~(3-15-02)~~(10-1-02)T

(BREAK IN CONTINUITY OF SECTIONS)

APPENDIX B

RANDOM AND UNANNOUNCED INSPECTION CHECKLIST

Inspection Year _____

1. Number of Permittees as of ~~January~~ December 31, 20____: _____

Multiplied by:

2. Overall Violation Rate for Prior Year (20__) (Percentage) _____ x ____.

3. Multiplied by 10: _____

4. Total of Random and Unannounced Inspections: _____

IDAPA 18 - DEPARTMENT OF INSURANCE

18.01.17 - SURPLUS LINES - DELEGATION OF RESPONSIBILITY

DOCKET NO. 18-0117-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 41-211, 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, Volume No. 02-9, September 4, 2002, pages 104 and 105.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Jim Genetti at (208) 334-4250.

Dated this 23rd day of October, 2002.

Mary L. Hartung, Director
Idaho Department of Insurance
700 West State Street - 3rd Floor
P.O. Box 83720
Boise, ID 83720-0043
Telephone No. (208) 334-4250
Fax: (208) 334-4398

IDAPA 18, TITLE 01, Chapter 17

SURPLUS LINES - DELEGATION OF RESPONSIBILITY

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-9, September 4, 2002, pages 104 and 105.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 18 - DEPARTMENT OF INSURANCE
18.01.18 - OPEN LINES FOR EXPORT - SURPLUS LINES
DOCKET NO. 18-0118-0201
NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 41-211, 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, Volume No. 02-9, September 4, 2002, page 106 and 107.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Jim Genetti at (208) 334-4250.

Dated this 23rd day of October, 2002.

Mary L. Hartung, Director
Idaho Department of Insurance
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Fax: (208) 334-4398

IDAPA 18, TITLE 01, Chapter 18

OPEN LINES FOR EXPORT - SURPLUS LINES

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-9, September 4, 2002, pages 106 and 107.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 18 - DEPARTMENT OF INSURANCE

18.01.32 - QUALIFICATIONS OF LICENSED INSURANCE CONSULTANTS

DOCKET NO. 18-0132-0201 (REPEAL OF CHAPTER)

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 41-211, 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, Volume No. 02-7, July 3, 2002, page 217. This chapter is being repealed in its entirety.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Jim Genetti at (208) 334-4250.

Dated this 23rd day of October, 2002.

Mary L. Hartung, Director
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IDAPA 18, TITLE 01, Chapter 32

QUALIFICATIONS OF LICENSED INSURANCE CONSULTANTS

This chapter is being repealed in its entirety.

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-7, July 3, 2002, page 217](#).

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 18 - DEPARTMENT OF INSURANCE
18.01.42 - LISTING FEES - SURPLUS LINES INSURERS
DOCKET NO. 18-0142-0201 (REPEAL OF CHAPTER)
NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 41-211, 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, Volume No. 02-7, July 3, 2002, page 218. This chapter is being repealed in its entirety.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Shad Priest at (208) 334-4250.

Dated this 23rd day of October, 2002.

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IDAPA 18, TITLE 01, Chapter 42

LISTING FEES - SURPLUS LINES INSURERS

This chapter is being repealed in its entirety.

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-7, July 3, 2002, page 218.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 18 – DEPARTMENT OF INSURANCE RULES

18.01.43 - CERTIFICATION OF FIRE INSPECTORS

DOCKET NO. 18-0143-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 41-211, 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, Volume No. 02-7, July 3, 2002, page 219.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Mark Larson at (208) 334-4250.

Dated this 23rd day of October, 2002.

Mary L. Hartung, Director
Idaho Department of Insurance
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Boise, ID 83720-0043
Telephone No. (208) 334-4250
Fax: (208) 334-4398

IDAPA 18, TITLE 01, Chapter 43

CERTIFICATION OF FIRE INSPECTORS

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-7, July 3, 2002, pages 219 and 220.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 18 - DEPARTMENT OF INSURANCE
18.01.49 - FIRE PROTECTION SPRINKLER CONTRACTORS
DOCKET NO. 18-0149-0201
NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 41-211, 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, Volume No. 02-7, July 3, 2002, pages 221 and 222.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Mark Larson at (208) 334-4250.

Dated this 23rd day of October, 2002.

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IDAPA 18, TITLE 01, Chapter 49

FIRE PROTECTION SPRINKLER CONTRACTORS

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-7, July 3, 2002, pages 221 and 222.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 18 - DEPARTMENT OF INSURANCE
18.01.50 - ADOPTION OF 1997 INTERNATIONAL FIRE CODE
DOCKET NO. 18-0150-0201
NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 41-211, 41-253, and 41-254, 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, Volume No. 02-9, September 4, 2002, pages 134 through 140.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Mark Larson at (208) 334-4250.

Dated this 23rd day of October, 2002.

Mary L. Hartung, Director
Idaho Department of Insurance
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IDAPA 18, TITLE 01, Chapter 50

ADOPTION OF 1997 INTERNATIONAL FIRE CODE

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-9, September 4, 2002, pages 134 and 140.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 18 - DEPARTMENT OF INSURANCE

18.01.52 - RULES GOVERNING DISCLOSURE REQUIREMENTS FOR INSURANCE PRODUCERS WHEN CHARGING FEES

DOCKET NO. 18-0152-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 41-211, 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, Volume No. 02-9, September 4, 2002, pages 141 through 144.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Jim Genetti at (208) 334-4250.

Dated this 23rd day of October, 2002.

Mary L. Hartung, Director
Idaho Department of Insurance
700 West State Street - 3rd Floor
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Telephone No. (208) 334-4250
Fax: (208) 334-4398

IDAPA 18, TITLE 01, Chapter 52

RULES GOVERNING DISCLOSURE REQUIREMENTS FOR INSURANCE PRODUCERS WHEN CHARGING FEES

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-9, September 4, 2002, pages 141 and 144.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 18 - DEPARTMENT OF INSURANCE

18.01.53 - CONTINUING EDUCATION

DOCKET NO. 18-0153-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 41-211, 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, Volume No. 02-7, July 3, 2002, pages 223 through 227.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Jim Genetti at (208) 334-4250.

Dated this 23rd day of October, 2002.

Mary L. Hartung, Director
Idaho Department of Insurance
700 West State Street - 3rd Floor
P.O. Box 83720
Boise, ID 83720-0043
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Fax: (208) 334-4398

IDAPA 18, TITLE 01, Chapter 53

CONTINUING EDUCATION

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-7, July 3, 2002, pages 223 and 227.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 18 - DEPARTMENT OF INSURANCE

18.01.54 - RULE TO IMPLEMENT THE NAIC MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS MODEL ACT

DOCKET NO. 18-0154-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 41-211, 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, Volume No. 02-9, September 4, 2002, pages 145 through 155.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Joan Krosch at (208) 334-4250.

Dated this 23rd day of October, 2002.

Mary L. Hartung, Director
Idaho Department of Insurance
700 West State Street - 3rd Floor
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Boise, ID 83720-0043
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IDAPA 18, TITLE 01, Chapter 54

RULE TO IMPLEMENT THE NAIC MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS MODEL ACT

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-9, September 4, 2002, pages 145 through 155.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 18 - DEPARTMENT OF INSURANCE
18.01.55 - FIRE SAFETY STANDARDS FOR DAY CARE
DOCKET NO. 18-0155-0201
NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 41-211, 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, Volume No. 02-7, July 3, 2002, pages 228 and 229.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Mark Larson at (208) 334-4250.

Dated this 23rd day of October, 2002.

Mary L. Hartung, Director
Idaho Department of Insurance
700 West State Street - 3rd Floor
P.O. Box 83720
Boise, ID 83720-0043
Telephone No. (208) 334-4250
Fax: (208) 334-4398

IDAPA 18, TITLE 01, Chapter 55

FIRE SAFETY STANDARDS FOR DAY CARE

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-7, July 3, 2002, pages 228 and 229.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 18 - DEPARTMENT OF INSURANCE

18.01.62 - ANNUAL AUDITED FINANCIAL REPORTS

DOCKET NO. 18-0162-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 41-211, 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, Volume No. 02-7, July 3, 2002, pages 230 through 232.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Martha Hopper at (208) 334-4250.

Dated this 23rd day of October, 2002.

Mary L. Hartung, Director
Idaho Department of Insurance
700 West State Street - 3rd Floor
P.O. Box 83720
Boise, ID 83720-0043
Telephone No. (208) 334-4250
Fax: (208) 334-4398

IDAPA 18, TITLE 01, Chapter 62

ANNUAL AUDITED FINANCIAL REPORTS

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-7, July 3, 2002, pages 230 through 232.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 18 - DEPARTMENT OF INSURANCE
18.01.65 - RULES FOR THE SURPLUS LINE BROKERS
DOCKET NO. 18-0165-0201
NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 41-211, 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, Volume No. 02-9, September 4, 2002, pages 156 through 158.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Jim Genetti at (208) 334-4250.

Dated this 23rd day of October, 2002.

Mary L. Hartung, Director
Idaho Department of Insurance
700 West State Street - 3rd Floor
P.O. Box 83720
Boise, ID 83720-0043
Telephone No. (208) 334-4250
Fax: (208) 334-4398

IDAPA 18, TITLE 01, Chapter 65

RULES FOR THE SURPLUS LINE BROKERS

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-9, September 4, 2002, pages 156 through 158.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 18 - DEPARTMENT OF INSURANCE
18.01.78 - MUTUAL INSURANCE HOLDING COMPANY RULES
DOCKET NO. 18-0178-0201
NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 41-211, 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, Volume No. 02-7, July 3, 2002, pages 233 and 234.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Martha Hopper at (208) 334-4250.

Dated this 23rd day of October, 2002.

Mary L. Hartung, Director
Idaho Department of Insurance
700 West State Street - 3rd Floor
P.O. Box 83720
Boise, ID 83720-0043
Telephone No. (208) 334-4250
Fax: (208) 334-4398

IDAPA 18, TITLE 01, Chapter 78

MUTUAL INSURANCE HOLDING COMPANY RULES

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-7, July 3, 2002, pages 233 and 234.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 19 - BOARD OF DENTISTRY

19.01.01 - RULES OF THE IDAHO STATE BOARD OF DENTISTRY

DOCKET NO. 19-0101-0201 - (FEE RULE)

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective after the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. After the pending rule is approved, rejected, 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 54-912(2), (4) and (10), 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 October 2, 2002, Idaho Administrative Bulletin, Volume 02-10 starting at pages 433 through 438.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 54-912(10), Idaho Code.

The proposed revision to Rule 12 changes the anesthesia permit application fee from \$100 to \$300. The fee increase was necessitated by the fact that the effective period of the anesthesia permit was lengthened from 3 to 5 years and the administrative costs to the Board for the evaluations conducted in connection with an application for an initial, renewed or reinstated permit greatly exceed the amount of the current fee being assessed.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Michael J. Sheeley, Executive Director, Idaho State Board of Dentistry, at (208) 334-2369.

DATED this 24th day of October, 2002.

Michael J. Sheeley, Executive Director
Idaho State Board of Dentistry
708½ W. Franklin Street, Boise, Idaho 83702
(208) 334-2369 (telephone) / (208) 334-3247 (facsimile)

IDAPA 19, TITLE 01, Chapter 01

RULES OF THE IDAHO STATE BOARD OF DENTISTRY

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-10, October 2, 2002, pages 433 through 438.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 23 - STATE BOARD OF NURSING

23.01.01 - RULES OF THE IDAHO BOARD OF NURSING

DOCKET NO. 23-0101-0202

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1404, 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.

Pursuant to Section 67-5228, Idaho Code, typographical and/or clerical corrections have been made to the rule and are being published with this Notice of Rulemaking as part of the pending rule. These changes were identified through discussions with nurses around the state during informal gatherings that were conducted in September and October 2002.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the October 2, 2002 Idaho Administrative Bulletin, Volume 02-10, pages 485 through 507.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Sandra Evans, MAEd., R.N., Executive Director, at (208) 334-3110 ext. 26.

DATED this 8th day of November, 2002.

Sandra Evans, MAEd., R.N.
Executive Director
Idaho State Board of Nursing
280 N. 8th St., Ste. 210
P. O. Box 83720
Boise, Idaho 83720-0061
Phone: (208) 334-3110 ext. 26
Fax: (208) 334-3262

IDAPA 23, TITLE 01, Chapter 01

RULES OF THE IDAHO BOARD OF NURSING

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 text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-10, October 2, 2002, pages 485 through 507.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 23-0101-0202

SUBSECTIONS 010.25 AND 010.30

010. DEFINITIONS.

~~4125.~~ **Strategy Plan Of Care.** The goal-oriented plan strategy developed to assist individuals or groups to achieve optimal health potential. ~~This includes, but is not limited to, hygiene and comfort measures, supporting human functions and responses, administration of prescribed medications and treatments, health counseling and teaching and establishment of an environment conducive to well-being.~~ (7-1-93)()

~~2230.~~ **Legal Scope Of Practice.** The extent of treatment, activity, influence, or range of actions permitted or authorized for licensed nurses based on the nurse's education, preparation, and experience. (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

SUBSECTION 400.02, 400.03.a., AND 400.03.b.

~~400. STANDARDS FOR THE PRACTICE OF NURSING—PURPOSE~~ **DECISION-MAKING MODEL.**
~~To identify the roles and responsibilities of the licensed professional nurse and the licensed practical nurse working in hospitals, nursing homes, physicians' offices, and other settings. The decision-making model is the process by which a licensed nurse evaluates whether a particular act is within the legal scope of that nurse's practice and determines whether to delegate the performance of a particular nursing task in a given setting. This model applies to all licensure categories permitting active practice, regardless of practice setting.~~ (7-1-96)()

~~02.~~ **Deciding To Delegate** ~~Responsibilities.~~ When delegating nursing care ~~acts,~~ the licensed nurse retains ~~responsibility~~ accountability for the delegated acts and the consequences of delegation, ~~and~~ Before delegating any task the nurse shall: (7-1-96)()

03. Monitoring Delegation. Subsequent to delegation, the licensed nurse shall: ()

~~ja.~~ Evaluate the ~~client's~~ patient's response and the outcome of the delegated act, ~~and take such further action as necessary; and~~ (7-1-96)()

~~05b.~~ ~~**Supervision Responsibilities.**~~ ~~When nursing care activities are delegated, the licensed nurse shall~~ Determine the degree of supervision required and ~~shall~~ evaluate whether the activity is completed in a manner that meets acceptable outcomes. The degree of supervision shall be based upon the health status and stability of the ~~client~~ patient, the complexity of the care and the knowledge and competence of the individual to whom the activity is delegated. (7-1-96)(____)

(BREAK IN CONTINUITY OF SECTIONS)

SUBSECTION 490.05

~~0490.~~ **UNLICENSED ASSISTIVE PERSONNEL (UAP).**

The term unlicensed assistive personnel, also referred to as "UAP", is used to designate unlicensed personnel employed to perform nursing care services ~~for the ill, injured, handicapped or disabled when authorized/delegated at~~ under the direction and supervision of licensed nurses ~~in hospitals, nursing homes, private homes and other health care agencies and settings where health care is needed or performed. In the public or private school setting, unlicensed assistive personnel may also include, but are not limited to, teachers, secretaries, administrators and teacher aides.~~ The term unlicensed assistive personnel ~~additionally~~ also includes ~~other~~ licensed or credentialed health care workers whose job responsibilities extend to ~~client~~ health care services beyond their usual and customary roles and which activities are provided under the direction and supervision of licensed nurses. (7-1-96)(____)

~~05.~~ **Assistance With Medications.** Where permitted by law, ~~After~~ completion of a Board-approved training program, unlicensed assistive personnel in ~~a non-institutional~~ care settings may assist ~~the client~~ patients who cannot independently self-administer medications, provided that: (7-1-96)(____)

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO BOARD OF PHARMACY

DOCKET NO. 27-0101-0201 (FEE RULE)

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective after the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. After the pending rule is approved, rejected, 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, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 54-1706, 54-1717, and 54-1719(1) and (4), 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 September 4, 2002 Idaho Administrative Bulletin, Volume 02-9, pages 178 through 180.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 54-1706, 54-1717, 54-1719(3), 54-1720, and 67-5226(1)(a) and (2), Idaho Code. An immediate danger is inherent in ephedrine products if they are sold in dosage amounts in excess of the rule or containing synthetic rather than naturally occurring ephedrine alkaloids. The fee charged under this rule is necessary to fund testing of these products to ensure compliance with the requirements of the rule.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the spending rule, contact R.K. "Mick" Markuson, Director, at (208) 334-2356.

DATED this 10th day of October, 2002.

R.K. "Mick" Markuson, Director
Idaho Board of Pharmacy
3380 Americana Terrace, Ste. 320
P. O. Box 83720, Boise, Idaho 83720-0067
Telephone: (208) 334-2356 / Fax: (208) 334-3536

IDAPA 27, TITLE 01, Chapter 01

RULES OF THE IDAHO BOARD OF PHARMACY

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-9, September 4, 2002, pages 178 through 180.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-0202

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 54-1717, 54-1719, and 37-2702, 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 October 2, 2002 Idaho Administrative Bulletin, Volume 02-10, page 594.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact R.K. "Mick" Markuson, Director, at (208) 334-2356.

DATED this 23rd day of October, 2002.

R.K. "Mick" Markuson, Director
Idaho State Board of Pharmacy
3380 Americana Terrace, Ste. 320
P. O. Box 83720
Boise, Idaho 83720-0067
Phone: (208) 334-2356
Fax: (208) 334-3536

IDAPA 27, TITLE 01, Chapter 01

RULES OF THE IDAHO STATE BOARD OF PHARMACY

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-10, October 2, 2002, page 594.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-0203

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 54-1717 and 54-1719, 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 October 2, 2002 Idaho Administrative Bulletin, Volume 02-10, pages 595 through 598.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact R.K. "Mick" Markuson, Director, at (208) 334-2356.

DATED this 23rd day of October, 2002.

R.K. "Mick" Markuson, Director
Idaho State Board of Pharmacy
3380 Americana Terrace, Ste. 320
P. O. Box 83720
Boise, Idaho 83720-0067
Phone: (208) 334-2356
Fax: (208) 334-3536

IDAPA 27, TITLE 01, Chapter 01

RULES OF THE IDAHO STATE BOARD OF PHARMACY

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-10, October 2, 2002, pages 595 through 598.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-0204

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 54-1717 and 54-1718, 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 October 2, 2002 Idaho Administrative Bulletin, Volume 02-10, pages 599 and 600.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact R.K. "Mick" Markuson, Director, at (208) 334-2356.

DATED this 23rd day of October 2002.

R.K. "Mick" Markuson, Director
Idaho State Board of Pharmacy
3380 Americana Terrace, Ste. 320
P. O. Box 83720
Boise, Idaho 83720-0067
Phone: (208) 334-2356
Fax: (208) 334-3536

IDAPA 27, TITLE 01, Chapter 01

RULES OF THE IDAHO STATE BOARD OF PHARMACY

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-10, October 2, 2002, pages 599 and 600.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 31 - PUBLIC UTILITIES COMMISSION

31.71.02 - RAILROAD ACCIDENT REPORTING RULES

DOCKET NO. 31-7102-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Idaho Public Utilities Commission and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Public Utilities Commission has adopted a pending rule. This action is authorized pursuant to Sections 61-515, 61-113, and 61-129, Idaho Code, and 49 C.F.R. Section 225.1.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any changes 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. No comments were received concerning the proposed rule. The original text of the pending rule and the reasons for its adoption were published in the September 4, 2002, Idaho Administrative Bulletin, Volume 02-9, at pages 183 and 184.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Donald L. Howell, II, Deputy Attorney General, at (208) 334-0312.

DATED at Boise, Idaho this 3rd day of October, 2002.

Jean D. Jewell
Commission Secretary
Idaho Public Utilities Commission
472 W. Washington St. (83702-5983)
PO Box 83720, Boise, ID 83720-0074
Tele: (208) 334-0338
FAX: (208) 334-3762

IDAPA 31, TITLE 71, Chapter 02

RAILROAD ACCIDENT REPORTING RULES

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-9, September 4, 2002, pages 183 and 184.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(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 rule is being adopted as proposed. The original text of the proposed rule was published in the October 2, 2002, Idaho Administrative Bulletin, Volume 02-10, pages 637 through 671.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Janice Boyd, at (208) 334-7530.

DATED this 23rd day of October, 2002.

Janice Boyd
Tax Policy Specialist
Idaho State Tax Commission
800 Park Blvd. Plaza IV
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7530
Fax: (208) 334-7844

IDAPA 35, TITLE 01, Chapter 01

INCOME TAX ADMINISTRATIVE RULES

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-10, October 2, 2002, pages 637 through 671.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 35 - IDAHO STATE TAX COMMISSION
35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0102-0201
NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(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 rule is being adopted as proposed. The original text of the proposed rule was published in the September 4, 2002, Idaho Administrative Bulletin, Volume 02-9, pages 185 through 195.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jim Husted, at (208) 334-7530.

DATED this 23rd day of October, 2002.

Jim Husted
Tax Policy Specialist
Idaho State Tax Commission
800 Park Blvd. Plaza IV
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7530
Fax: (208) 334-7844

IDAPA 35, TITLE 01, Chapter 02

IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-9, September 4, 2002, pages 185 through 195.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 35 - IDAHO STATE TAX COMMISSION
35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0102-0202
NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(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 rule is being adopted as proposed. The original text of the proposed rule was published in the October 2, 2002, Idaho Administrative Bulletin, Volume 02-10, pages 672 through 675.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jim Husted, at (208) 334-7530.

DATED this 23rd day of October, 2002.

Jim Husted
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Idaho State Tax Commission
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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 complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-10, October 2, 2002, pages 672 through 675.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(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 rule is being amended from the original published in the September 4, 2002, Idaho Administrative Bulletin, Volume 02-9, pages 196 through 200. In Subsections 130.42; 130.44 and 130.45, regarding categories of manufactured housing, clarification is being made as to land assessed separately, land assessed with the manufactured home, or affixed to leased land with the intent to declare as real property.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Alan Dornfest, at (208) 334-7530.

DATED this 23rd day of October, 2002.

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**IDAPA 35
TITLE 01
Chapter 03**

PROPERTY 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 text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-9, September 4, 2002, pages 196 through 200.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 35-0103-0201

SUBSECTIONS 130.42, 130.44, AND 130.45

130. EQUALIZATION BY CATEGORY -- IDENTIFICATION AND REAPPRAISAL (Rule 130).

Sections 63-109 and 63-315, Idaho Code. Property shall be identified for assessment purposes in the categories outlined below. These categories are to be used on the current year's assessment notice, assessment roll and abstract. (3-15-02)

42. Category 46 - Manufactured Housing. Structures transportable in one (1) or more sections, built on a permanent chassis, for use with or without permanent foundation located on land under the same ownership as the manufactured home but assessed separate from the land. Include any manufactured home located on land under the same ownership as the manufactured home on which a statement of intent to declare a real property has been filed but becomes effective the following year. (~~3-15-02~~)()

44. Category 48 - Manufactured Housing. Manufactured housing permanently affixed to land under the same ownership as the manufactured home and on which a statement of intent to declare as real property has been filed and has become effective. (~~3-15-02~~)()

45. Category 49 - Manufactured Housing. Manufactured housing permanently affixed to leased land and on which a statement of intent to declare as real property has been filed and has become effective. ()

456. Category 55 - Boats Or Aircraft. Unlicensed watercraft or unregistered aircraft. (3-23-94)

467. Category 56 - Construction Machinery, Tools, And Equipment. Unlicensed equipment such as cranes, tractors, scrapers, and rock crushers, used in the building trade or road construction. (3-23-94)

478. Category 57 - Equities In State Property. Property purchased from the state under contract. (4-5-95)

489. Category 59 - Furniture, Fixtures, Libraries, Art, And Coin Collections. Trade articles used commercially for convenience, decoration, service, storage, including store counters, display racks, typewriters, office machines, surgical and scientific instruments, paintings, books, coin collections, and all such items held for rent or lease. (3-23-94)

4950. Category 60 - Improvements On Railroad Rights-Of-Way. Improvements located on railroad rights-of-way under separate ownership. (3-23-94)

501. Category 61 - Improvements By Lessee Other Than Category 62. Improvements made by the tenant or lessee to landlord's property. (3-23-94)

- 542.** **Category 62 - Improvements On Exempt Or Public Land.** Taxable improvements which are owned separately from exempt or public land on which they are located. (3-23-94)
- 523.** **Category 63 - Logging Machinery, Tools, And Equipment.** Unlicensed logging machinery, shop tools, and equipment not assessed as real property. (3-23-94)
- 534.** **Category 64 - Mining Machinery, Tools, And Equipment.** Unlicensed mining machinery, shop tools, and equipment not assessed as real property. (3-23-94)
- 545.** **Category 65 - Manufactured Housing.** Manufactured housing not considered real property located on exempt, rented or leased land. Include any manufactured home located on exempt, rented or leased land on which a statement of intent to declare as real property has been filed but becomes effective the following year. (3-15-02)
- 556.** **Category 66 - Net Profits Of Mines.** That amount of money or its equivalent received from the sale or trade of minerals or metals extracted from the Earth after deduction of allowable expenses. See Section 63-2802, Idaho Code, and Rule 982 of these rules. (3-30-01)
- 567.** **Category 67 - Operating Property.** Property assessed by the State Tax Commission. (3-30-01)
- 578.** **Category 68 - Other Miscellaneous Machinery, Tools, And Equipment.** Unlicensed machinery, tools, and equipment not used in construction, logging, mining, or not used exclusively in agriculture. (3-15-02)
- 589.** **Category 69 - Recreational Vehicles.** Unlicensed recreational vehicles. (3-23-94)
- 5960.** **Category 70 - Reservations And Easements.** Reservations, including mineral rights reserved divide ownership of property rights. Easements convey use but not ownership. (3-23-94)
- 601.** **Category 71 - Signs And Signboards.** Signs and signboards, their bases and supports. (3-23-94)
- 642.** **Category 72 - Tanks, Cylinders, Vessels.** Containers. (3-23-94)
- 623.** **Category 81 - Exempt Property.** For county use in keeping an inventory, including acreage, of exempt real and personal property. (3-23-94)

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-0202

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(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 proposed Rule 635 is being amended from the proposed text to clarify in the Subsection 635.01.c. the qualifying criteria for the term "continue to be eligible". In Subsection 635.07.c. remove the words "or any qualifying use for the speculative agricultural value exemption has been stopped. (1-1-01)T"

The text of the pending rule is being amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the September 4, 2002, Idaho Administrative Bulletin, Vol. 02-9, pages 201 through 203.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Alan Dornfest, at (208) 334-7530.

DATED this 23rd day of October, 2002.

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IDAPA 35, TITLE 01, Chapter 03

PROPERTY 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 text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-9, September 4, 2002, pages 201 through 203.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 35-0103-0202

SUBSECTION 635.01.c. AND 635.07.c.

635. PARTIAL EXEMPTION FOR PARCELS OF LAND IN A RURAL HOME SITE DEVELOPMENT PLAT (Rule 635).

Section 63-602FF, Idaho Code.

(1-1-02)T

01. Definitions. For the purpose of implementing the partial exemption under Section 63-602FF, Idaho Code, beginning with assessments for 2002, the following terms are defined. (1-1-02)T

c. “Continue to be eligible.” “Continue to be eligible” means the parcel must have been eligible for the speculative ~~agricultural~~ value exemption on January 1 of the year immediately preceding the year for which eligibility for the speculative home site exemption is to be determined. Continue to be eligible also means once granted, the speculative home site exemption will be granted each year ~~regardless of current use, until improvements are being built~~ the property meets each of the qualifying criteria stated in Subsections 635.02.a., through 635.02.c., 635.02.e., and 635.02.f., of this rule. ~~(1-1-02)F()~~

07. Removal Of The Speculative Home Site Exemption.

(1-1-02)T

c. The speculative home site exemption shall be removed from any parcel of land when “improvements are being built”. The speculative home site exemption must not be removed until “improvements are being built” upon the parcel, even if, the ownership of a parcel of land has been transferred ~~or any qualifying use for the speculative agricultural value exemption has been stopped.~~ ~~(1-1-02)F()~~

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-0203

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(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 proposed Rule 316 is being amended from the proposed text for grammatical and typographical changes. In Subsection 316.01.d.and 01.e. the definitions for "appraisal cycle" and "remediation plan" have been amended. In Subsection 316.02 a grammatical change was made. In Subsection 316.03 the "remediation plans" were amended. In Subsection 316.04 the actions taken to ensure the county that is out of compliance reaches compliance has been amended.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the August 7, 2002, Idaho Administrative Bulletin, Volume 02-8, pages 69 through 72.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Alan Dornfest, at (208) 334-7530.

DATED this 23rd day of October, 2002.

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IDAPA 35, TITLE 01, Chapter 03

PROPERTY 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 text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-8, August 7, 2002, pages 69 through 72.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 35-0103-0203

SUBSECTIONS 316.01.a., 316.01.d., 316.02, 316.03, AND 316.04

316. COMPLIANCE OF CONTINUING VALUATION PROGRAM (Rule 316).

Sections 63-314 and 63-316, Idaho Code.

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01. Definitions.

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d. Appraisal Cycle. “Appraisal cycle” means consecutive five (5) year periods beginning with appraisals completed for the 1998 property roll, as established by the requirement in Section 63-314, Idaho Code.

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e. Remediation Plan. “Remediation plan” means, a written statement of the actions that will be taken by the county not in compliance with the requirements of Section 63-314, Idaho Code, to bring the continuing program of valuation into compliance with said Section.

()

02. Monitoring Procedure. The State Tax Commission will monitor compliance with the continuing program of valuation in each county no less than annually. The State Tax Commission will monitor the completion of the appraisal of no less than twenty percent (20%) of all parcels by the end of the first year of the appraisal cycle, no less than forty percent (40%) by the end of the second year, no less than sixty percent (60%) by the end of the third year, no less than eighty percent (80%) by the end of the fourth year, and no less than one hundred percent (100%) by the end of the fifth year in order that all parcels are appraised no less than every five (5) years. As a result of the monitoring process, the State Tax Commission will prepare and distribute progress reports to each county assessor at the end of each monitoring period. Each monitoring period will be conducted in the following manner:

()

03. Remediation Plans. If the results of any July report show that a county has not achieved the adequate appraisal of the required percent of the parcels, as stated in Subsection 316.02 of this rule, the assessor and board of county commissioners will be required to submit to the State Tax Commission, a remediation plan that demonstrates how compliance will be achieved. The remediation plan will be submitted to the State Tax Commission on or before September 15. The State Tax Commission will determine whether the plan is acceptable on or before October 1. Once a remediation plan has been approved, the continuing valuation program of the county will be considered in compliance so long as the county meets the terms of the remediation plan. The State Tax Commission will monitor progress toward successful completion of any remediation plan at intervals scheduled with the county assessor.

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04. State Tax Commission To Ensure Corrective Action.

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a. During the first four (4) years of any appraisal cycle, if any July progress report shows that a county assessor has not achieved the adequate appraisal of the required percent of parcels, as stated in Subsection 316.02 and implementation of the subsequent remediation plan does not achieve the required percent or the next July progress report shows the number of completed appraisals continues to be less than the required percent, the State Tax Commission will begin proceedings to ensure corrective action is taken up to and including taking exclusive and complete control of the continuing program of valuation as provided for in Section 63-316, Idaho Code. ()

b. If, at the end of any appraisal cycle a county has not achieved adequate appraisal of all parcels, the State Tax Commission may begin proceedings to ensure corrective action is taken, up to and including taking exclusive and complete control of the continuing program of valuation as provided for in Section 63-316, Idaho Code. If, at the end of an appraisal cycle, a county has not met the requirements of Section 63-314, Idaho Code, and no extension has been granted pursuant to the provisions of Section 63-316(6), Idaho Code, the county plan for the next appraisal cycle submitted to the State Tax Commission must include provision for field inspection of those parcels not field inspected by the end of the expired appraisal cycle and an additional field inspection of the same parcels for the current plan for the continuing program of valuation. ()

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-0204

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This pending rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(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 temporary and 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 temporary and proposed rule was published in the August 7, 2002, Idaho Administrative Bulletin, Volume 02-8, pages 73 through 76.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Alan Dornfest, at (208) 334-7530.

DATED this 23rd day of October, 2002.

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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 complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-8, August 7, 2002, pages 73 through 76.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-0205

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(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 rule is being adopted as proposed. The original text of the proposed rule was published in the September 4, 2002, Idaho Administrative Bulletin, Volume 02-9, pages 204 through 225.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Alan Dornfest, at (208) 334-7530.

DATED this 23rd day of October, 2002.

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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 complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-9, September 4, 2002, pages 204 through 225.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 35 - IDAHO STATE TAX COMMISSION
35.01.05 - MOTOR FUELS TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0105-0201
NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(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 rule is being adopted as proposed. The original text of the proposed rule was published in the October 2, 2002, Idaho Administrative Bulletin, Volume 02-10, pages 676 through 683.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Randy Nilson, at (208) 334-7530.

DATED this 23rd day of October, 2002.

Randy Nilson
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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 complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-10, October 2, 2002, pages 676 through 683.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 35 - IDAHO STATE TAX COMMISSION

**35.01.09 - IDAHO COUNTY OPTION KITCHEN AND TABLE WINE
TAX ADMINISTRATIVE RULES**

DOCKET NO. 35-0109-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(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 rule is being adopted as proposed. The original text of the proposed rule was published in the September 4, 2002, Idaho Administrative Bulletin, Volume 02-09, page 226.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jim Husted, at (208) 334-7530.

DATED this 23rd day of October, 2002.

Jim Husted
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IDAPA 35, TITLE 01, Chapter 09

**IDAHO COUNTY OPTION KITCHEN AND TABLE WINE
TAX ADMINISTRATIVE RULES**

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-9, September 4, 2002, page 226.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.10 - IDAHO CIGARETTE AND TOBACCO PRODUCTS TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0110-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(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 rule is being adopted as proposed. The original text of the proposed rule was published in the September 4, 2002, Idaho Administrative Bulletin, Volume 02-9, pages 227 and 228.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jim Husted, at (208) 334-7530.

DATED this 23rd day of October, 2002.

Jim Husted
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IDAPA 35, TITLE 01, Chapter 10

IDAHO CIGARETTE AND TOBACCO PRODUCTS TAX ADMINISTRATIVE RULES

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-9, September 4, 2002, pages 227 and 228.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.12 - IDAHO BEER TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0112-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(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 rule is being adopted as proposed. The original text of the proposed rule was published in the September 4, 2002, Idaho Administrative Bulletin, Volume 02-9, page 229.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jim Husted, at (208) 334-7530.

DATED this 23rd day of October, 2002.

Jim Husted
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P.O. Box 36
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(208) 334-7530
Fax: (208) 334-7844

IDAPA 35, TITLE 01, Chapter 12

IDAHO BEER TAX ADMINISTRATIVE RULES

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-9, September 4, 2002, page 229.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 35 - STATE TAX COMMISSION

35.02.01 - TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES

DOCKET NO. 35-0201-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 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 rule is being adopted as proposed. The original text of the proposed rule was published in the October 2, 2002, Idaho Administrative Bulletin, Volume 02-10, page 689 through 692.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Janice Boyd, (208) 334-7530.

DATED this 23rd day of October, 2002.

Janice Boyd
Tax Policy Specialist
Idaho State Tax Commission
800 Park Blvd. Plaza IV
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7530
Fax: (208) 334-7844

IDAPA 35, TITLE 02, Chapter 01

TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-10, October 2, 2002, pages 689 through 692.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 37 - DEPARTMENT OF WATER RESOURCES

37.03.07 - STREAM CHANNEL ALTERATION RULES

DOCKET NO. 37-0307-0201

NOTICE OF RULEMAKING - TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 23, 2002.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule. The action is authorized pursuant to Section 42-3803, Idaho Code.

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

The purpose of this rulemaking is to amend Rule 25 to provide that projects and activities approved under the Federal Clean Water Act (P.L. 92-500) are deemed to meet minimum standards in accordance with Section 42-3803(d), Idaho Code. The procedural requirements of Chapter 38, Title 42, Idaho Code, requiring the filing, processing and approval of an application for permit are dispensed with for a project or activity that obtains approval pursuant to the Federal Clean Water Act.

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, or welfare.

NEGOTIATED RULEMAKING: Negotiated rulemaking was not conducted because the changes being made bring the rule into compliance with Idaho law.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary proposed rule, contact Norman C. Young at (208) 327-7910.

DATED this 5th day of October, 2002.

Joe Jordan, Chairman
Idaho Water Resource Board
1301 N. Orchard
Boise, Idaho 83706
(208) 327-7910
(208) 327-7866 (Fax)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 37-0307-0201

025. EXEMPTIONS (Rule 25).

01. Work On Existing Or Proposed Reservoir Projects. Permits are not required under the provisions of Title 42, Chapter 38 for construction work on any existing or proposed reservoir project, including the dam, and such areas downstream as the Director may determine is reasonably necessary for construction and maintenance of the dam. (7-1-93)

02. Snake And Clearwater Rivers. Permits are not required for work within that portion of the Snake and Clearwater rivers from the state boundary upstream to the upper boundary of the Port of Lewiston Port District as

it now exists or may exist in the future.

(7-1-93)

03. Cleaning, Maintenance, Construction Or Repair Work. No permit is required of a water user or his agent to clean, maintain, construct, or repair any diversion structure, canal, ditch, or lateral or to remove any obstruction from a stream channel which is interfering with the delivery of any water under a valid existing water right or water right permit. (7-1-93)

04. Removal Of Debris. No permit is required for removal of debris from a stream channel provided that no equipment will be working in the channel and all material removed will be disposed of at some point outside the channel where it cannot again reenter the channel. (7-1-93)

05. Section 404 Permits Recognized. Projects and activities authorized under Section 404 of the Federal Clean Water Act (P.L. 92-500) meet the minimum standards of these rules. The procedural requirements of Chapter 38, Title 42, Idaho Code, requiring the filing, processing and approval of an application for permit are dispensed with as provided in Section 42-3803(d), Idaho Code, and an authorization for a project or activity pursuant to Section 404 of the Federal Clean Water Act is recognized as a permit under these rules implementing Chapter 38, Title 42, Idaho Code. (9-23-02)T

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.02.73 - RULES GOVERNING ACCIDENT PREVENTION COURSE

DOCKET NO. 39-0273-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 49-201 and 41-2515, 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 October 2, 2002 Idaho Administrative Bulletin, Volume 02-10, pages 718 through 720.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Ed Pemble, Driver Services Manager, 208-334-8000.

DATED this 23rd day of October, 2002.

Linda L. Emry, Management Assistant
Office of Budget, Policy, Intergovernmental Relations
Idaho Transportation Department
P. O. Box 7129
Boise ID 83707-1129
Phone: 208-334-8810
FAX: 208-334-8195

IDAPA 13, TITLE 01, Chapter 03

RULES GOVERNING PROPERTY TAX ADMINISTRATIVE RULES

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-10, October 2, 2002, pages 718 through 720.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.41 - RULES GOVERNING TRAFFIC CONTROL DEVICES

DOCKET NO. 39-0341-0201

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 17, 2003.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 40-313, 49-201(3) and 67-5203A, 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 December 18, 2002.

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

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

This rulemaking updates the incorporation by reference, adopting the most recent publication of the MUTCD, including Revision Number 1, dated December 28, 2001, and identifies 19 specific exceptions. The exceptions are necessary to bring the MUTCD in line with Idaho Code, correct errors and accommodate the operations of the Department and local transportation agencies. The exceptions have been approved by the FHWA and Local Highway Technical Assistance Council.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Adoption of a manual and specifications for a uniform system of traffic-control devices that conforms to the MUTCD is stipulated in Section 49-201(3), Idaho Code. Adoption of the 2000 MUTCD by January 17, 2003 is an FHWA requirement.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This rulemaking does not impose or increase any fee or charge.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because adoption of a manual and specifications for a uniform system of traffic-control devices that conforms to the MUTCD is stipulated in Section 49-201(3), Idaho Code and adoption of the 2000 MUTCD by January 17, 2003 is an FHWA requirement.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Lance Johnson, Traffic Engineer, 208-334-8557.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before December 26, 2002.

DATED this 22nd day of October, 2002.

Linda L. Emry, Management Assistant
Budget, Policy, Intergovernmental Relations
Idaho Transportation Department
3311 West State Street
P O Box 7129, Boise ID 83707-1129
Phone – 208-334-8810 / FAX – 208-334-8195

THE FOLLOWING IS THE TEXT OF DOCKET NO. 39-0341-0201

001. TITLE AND SCOPE.

01. **Title.** This rule shall be known as IDAPA 39.03.41, "Rules Governing Traffic Control Devices," IDAPA 39, Title 03, Chapter 41. (3-30-01)

02. **Scope.** It is the purpose of this rule to establish guidelines standards, options, guidance and supporting information for the design, construction and implementation of traffic control devices. (~~3-30-01~~)(1-17-03)T

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.

The "Manual on Uniform Traffic Control Devices for Streets and Highways" is published by the Federal Highway Administration of the U.S. Department of Transportation. The ~~1988 Millennium~~ edition of the Manual and all subsequent amendments, through and including revision number ~~seven (7) one~~ dated ~~January 3, 2000 December 28, 2001~~, are hereby incorporated by reference and made a part of the Rules of the Idaho Transportation Department. The following exceptions to the Manual are adopted by the Idaho Transportation Board: (~~3-30-01~~)(1-17-03)T

~~01. Section 2A-23, Height. In the second paragraph revise the fourth sentence as follows: All route markers and warning and regulatory signs on expressways shall be at least six (6) feet above the level of the pavement edge, except "Wrong Way" and "Do Not Enter" signs on interchange ramps which shall be at least four (4) feet above the level of the pavement edge. (5-16-90)~~

~~02. Section 2F-16, Vertical Clearance. In the second paragraph revise the second sentence as follows: Notwithstanding the above, all regulatory and warning signs and route markers shall be at least six (6) feet above the level of the pavement edge, except "Wrong Way" and "Do Not Enter" signs on interchange ramps which shall be at least four (4) feet above the level of the pavement edge. (5-16-90)~~

~~03. Section 4B-5, Meaning Of Signal Indications. In paragraph 3C, substitute the following for the first sentence: Except when a sign is in place prohibiting a turn, vehicular traffic facing any steady red signal may cautiously enter the intersection to turn right, or to turn left from a one (1) way or two (2) way street into a one (1) way street, after stopping as required by Subsections 001.01 and 001.02 above. (5-16-90)~~

~~04. Section 7D-5, Meaning Of Signal Indications. On page 7D-3, under the heading, The Steady Circular Red or Red Arrow, shall have the following meanings: In paragraph three (3), substitute the following for the first sentence: Except when a sign is in place prohibiting a turn, vehicular traffic facing any steady red signal may cautiously enter the intersection to turn right, or to turn left from a one (1) way or two (2) way street into a one (1) way street, after stopping as required by Subsections 001.01 and 001.02 above. (10-1-94)~~

~~05. Section 6F-6b, Interim Markings. Delete the first sentence under Item 1 and substitute the following two (2) sentences in its place: For federal aid funded projects, all short term broken line pavement markings shall use the same cycle length as permanent markings and be at least four (4) feet long, except that, half cycle lengths with a minimum of two (2) foot stripes may be used for roadways with severe curvature. For state funded construction and maintenance work, all short term broken line pavement markings shall use the same cycle length as permanent markings and be at least one (1) foot long, except that, half cycle lengths with one (1) foot stripes may be used for roadways with severe curvature. (10-1-94)~~

~~06. Section 8B-9, Stop Signs At Grade Crossings (R1-1, W3-1). Delete the first two (2) paragraphs and substitute the following: Under Idaho law, wherever a highway crosses one (1) or more railroads at grade, the~~

~~Department or local authorities within their respective jurisdictions shall place and maintain stop signs, directing vehicular traffic approaching the crossing to come to a full stop prior to entering the crossing at all railroad crossings where electric or mechanical warning signals do not exist. Placement of these stop signs shall be mandatory except when, in the determination of the Department or local authorities, the existence of stop signs at a given crossing would constitute a greater hazard than their absence.~~ (12-26-90)

071. Section 2H-804, Color-Format General Design Requirements For Recreational And Cultural Interest Area Symbol Signs. On page 2H-2, ~~modify~~ the first sentence to read as follows: Recreational and cultural interest area symbol signs ~~and general guide signs erected in these areas~~ shall be square or rectangular in shape and shall have a white symbol or legend and white border on a brown background, with the exception of Scenic Byway signs which shall be allowed to use a multi-colored format. (3-30-01)(1-17-03)T

02. Section 1A.11, Relation To Other Documents. On page 1A-10, in the first paragraph under Standard, delete the last referenced publication, "Standard Highway Signs, 1979 Edition (FHWA)". At the end of the paragraph add the following sentence: "The latest edition of the 2002 Idaho Transportation Department (ITD) Sign Chart shall be a part of this Manual as a reference for all sign number designations and any additional special signs if used on a highway under the jurisdiction of the Idaho Transportation Department. Add the following as the first sentence under Support, "The "Standard Highway Signs, 2002 Edition (FHWA)" as referenced in this Manual shall be adopted as a supporting document." (1-17-03)T

03. Section 2C.05, Placement Of Warning Signs. On pages 2C-6 and 2C-7, the attached tables shall be adopted to replace Table 2C-4, "Guidelines for Advance Placement of Warning Signs". (1-17-03)T

04. Section 2C.27, CROSS TRAFFIC DOES NOT STOP Plaque (W4-4P). On page 2C-23, delete the third paragraph titled "Guidance" in its entirety. Replace the fourth paragraph titled "Option" with the following: "The CROSS TRAFFIC DOES NOT STOP (W4-4P) plaque (see page 2C-924) may be used in combination with a STOP sign when engineering judgment indicates that drivers frequently misinterpret the intersection as a multi-way stop condition." Replace the fifth paragraph titled "Standard" with the following: "If the W4-4P plaque is used, it shall be installed below the STOP sign." On page 2C-24, revise plaque W4-4P to delete the arrow and use text only. (1-17-03)T

05. Section 2D.15, Cardinal Direction Auxiliary Signs (M3-1 through M3-4). On page 2D-12, change the first sentence under Standard to read as follows: "To improve the readability, the first letter of the cardinal direction words shall be ten percent larger, rounded up to the nearest whole number size, except for those sign installations that were in existence prior to the adoption of this rule." (1-17-03)T

06. Section 2E.28, Interchange Exit Numbering. On page 2E-36, in the fourth sentence under Standard, revise the sentence to read as follows: "The standard exit number plaque shall include the word EXIT, the appropriate exit number, and the suffix letter A or B (on multi-exit interchanges) in a single-line format on a plaque 750 mm (30 in) in height, except for those sign installations that were in existence prior to the adoption of this rule." (1-17-03)T

07. Section 2E.37, Interchange Sequence Signs. On page 2E-55, revise the last Standard to an Option to read as follows: "Interchange Sequence signs located in the median may be installed at overhead sign height". (1-17-03)T

08. FHWA Compliance Dates, Pavement Markings. Revise the FHWA compliance dates for the additional roadways to be striped under the new minimum criteria from January 3, 2003 to January 3, 2005. (1-17-03)T

09. Section 4D.04, Meaning Of Vehicular Signal Indications. On page 4D-5, in the second paragraph of Item C.1, substitute the following for the first sentence: "Except when a sign is in place prohibiting a turn on red or a RED ARROW signal indication is displayed, vehicular traffic facing a CIRCULAR RED signal indication may cautiously enter the intersection to turn right, or to turn left from a one (1) way or two (2) way street into a one (1) way street, after stopping in conformance with the provisions of the Idaho Vehicle Code." (1-17-03)T

10. Section 4K.03, Warning Beacon. On page 4K-3, in the second paragraph under Standard, revise

the second sentence to read as follows: “The beacon shall not be included within the border of the sign.” (1-17-03)T

11. Section 7B.11, School Speed Limit Assembly (S4-1, S4-2, S4-3, S4-4, S5-1). On page 7B-8, in the last paragraph under Option, revise the second sentence to read as follows: “The lenses of the Speed Limit Sign Beacon shall not be positioned within the face of the School Speed Limit (S5-1) sign.” (1-17-03)T

12. Section 8B.07, STOP Or YIELD Signs At Highway-Rail Grade Crossings. On page 8B-7, delete the first five paragraphs titled as “Option, Support and Guidance Statements,” retaining the Standard for Stop Ahead or Yield Ahead Advance Warning signs and substitute the following: “Standard: Under Idaho law, wherever a highway crosses one (1) or more railroads at grade, the Department or local authorities within their respective jurisdictions, shall place and maintain stop signs, directing vehicular traffic approaching the crossing to come to a full stop prior to entering the crossing at all railroad crossings where electric or mechanical warning signals do not exist. Placement of these stop signs shall be mandatory except when, in the determination of the Department or local authorities, the existence of stop signs at a given crossing would constitute a greater hazard than their absence.” (1-17-03)T

13. Section 8B.18, Dynamic Envelope Delineation. On page 8B-15, revise Standard to read as follows: “If used, the dynamic envelope shall be contrasting pavement color and/or contrasting pavement texture.” And, on page 8B-15, revise Guidance to read as follows: “If used, dynamic envelope contrasting pavement color and/or texture should be placed for a distance of 1.8 m (6 ft) from the nearest rail, installed parallel to the tracks, unless the operating railroad company advises otherwise.” (1-17-03)T

14. Figure 8B-4, Typical Train Dynamic Envelope Delineation Pavement Markings. On page 8B-16, delete Figure in it’s entirety. (1-17-03)T

15. Section 8D.07, Traffic Control Signals At Or Near Highway-Rail Grade Crossings. On page 8D-11, in the first full paragraph titled Standard, add text “if justified by an engineering study”, to the end of the final sentence in the paragraph. (1-17-03)T

16. Section 10C.03, STOP Or YIELD Signs (R1-1, R1-2, W3-1a, W3-2a). On page 10C-1 and 10C-2, delete the five (5) paragraphs titled as “Standard, Guidance, and Option Statements”, retaining the Standard for Stop Ahead or Yield Ahead Advance Warning signs and substituting the following: “Standard: Under Idaho law, wherever a highway crosses one (1) or more railroads at grade, the Department or local authorities within their respective jurisdictions, shall place and maintain stop signs, directing vehicular traffic approaching the crossing to come to a full stop prior to entering the crossing at all railroad crossings where electric or mechanical warning signals do not exist. Placement of these stop signs shall be mandatory except when, in the determination of the Department or local authorities, the existence of stop signs at a given crossing would constitute a greater hazard than their absence.” (1-17-03)T

17. Section 10C.15 Dynamic Envelope Delineation Markings. (1-17-03)T

a. Page 10C-9. On page 10C-9, delete the word “markings” in the title and, under Support, delete the word “markings”. (1-17-03)T

b. Page 10C-11. On page 10C-11, under Option, revise the sentence to read as follows: “The dynamic envelope may be delineated on the pavement using contrasting pavement color and/or contrasting pavement texture (see Figures 10C-1 and Figure 10C-4).” (1-17-03)T

i. On page 10C-11, delete “Standard, relating to pavement markings in its entirety”. (1-17-03)T

ii. On page 10C-11, revise Guidance, to read as follows: “If used at the light-rail transit crossing, dynamic envelope contrasting pavement color and/or texture should be placed at a distance of 1.8 m (6 ft) from the nearest rail, installed parallel to the tracks, unless the transit authority and/or operating railroad company advises otherwise.” (1-17-03)T

iii. On page 10C-11, delete the fourth paragraph under the second Option. (1-17-03)T

18. Figure 10C-2, Typical Light Rail Transit Vehicle Dynamic Envelope Delineation Pavement Markings. On page 10C-10, delete Figure 10C-2 in its entirety. (1-17-03)T

19. Section 10D.06, Traffic Signal Preemption Turning Restrictions. On page 10D-6, under the third paragraph titled Guidance: add text “if justified by an engineering study,” to the end of the final sentence in the paragraph.

Table 2C-4. Guidelines for Advance Placement of Warning Signs (English Units) ¹									
Posted or 85 th Percentile Speed (mph)	Condition A: High judgement required ²	Condition B: Deceleration to the listed advisory Speed (mph) for the condition ⁴							
		0 ³	10	20	30	40	50	60	70
20	225 ft	N/A ⁵	N/A ⁵						
25	325 ft	N/A ⁵	N/A ⁵	N/A ⁵					
30	450 ft	N/A ⁵	N/A ⁵	N/A ⁵					
35	550 ft	N/A ⁵	N/A ⁵	N/A ⁵	N/A ⁵				
40	650 ft	125 ft	N/A ⁵	N/A ⁵	N/A ⁵				
45	750 ft	175 ft	125 ft	N/A ⁵	N/A ⁵	N/A ⁵			
50	850 ft	250 ft	200 ft	150 ft	100 ft	N/A ⁵			
55	950 ft	300 ft	275 ft	225 ft	175 ft	100 ft	N/A ⁵		
60	1100 ft	400 ft	350 ft	300 ft	250 ft	175 ft	N/A ⁵		
65	1200 ft	475 ft	425 ft	400 ft	350 ft	275 ft	175 ft	N/A ⁵	
70	1250 ft	550 ft	525 ft	500 ft	425 ft	350 ft	250 ft	150 ft	N/A ⁵
75	1350 ft	650 ft	625 ft	600 ft	525 ft	450 ft	350 ft	250 ft	100 ft

Notes:

1. The standard distance calculations in the above chart are based on a sign legibility distance of 175 feet for Condition A which is the appropriate legibility distance for a 5 inch, Series D word legend. The distances for Condition B are based on a sign legibility distance of 250 feet which is appropriate for an alignment warning symbol sign.

2. Typical conditions are locations where the road user must use extra time to adjust speed and change lanes in heavy traffic because of a complex driving situation. This may be for a multi-lane facility with vehicle weaving and lane change requirements using several of the traffic flow warning signs such as Merge and Lane Ends that requires the application of Driver Decision Sight Distance. The distances are determined by providing the driver a PIEV time of 14.0 to 14.5 seconds for the vehicle maneuvers (2000 AASHTO Policy, Exhibit 3-3, Decision Sight Distance, Avoidance Maneuver E) minus the legibility distance of 175 feet for the appropriate sign.

3. Typical condition is the warning of a potential stop situation. Typical signs are Stop Ahead, Yield head, Signal Ahead, and Intersection Advance Warning signs. The distances are based on the 2000 AASHTO Policy, Stopping Sight Distance, Exhibit 3-1, providing a PIEV time of 2.5 seconds, a deceleration rate of 11.2 ft/sec² minus the sign legibility distance of 175 feet.

4. Typical conditions are locations where the road user must decrease speed to maneuver through the warned condition. Typical signs are Turn, Curve, Reverse Turn or Curve. The distance is determined by providing a 2.5 second PIEV time, a vehicle deceleration rate of 10 ft/sec² minus the sign legibility distance of 250 feet.

5. No suggested minimum distances are provided for these speeds, as the placement location is dependent on site conditions and other signing to provide an adequate advance warning for the driver. The values have been rounded to uniform distances.

Table 2C-4. Guidelines for Advance Placement of Warning Signs (Metric Units)¹														
<u>Posted or 85th Percentile Speed (km/h)</u>	<u>Condition A: High judgement required²</u>	<u>Condition B: Deceleration to the listed advisory Speed (km/h) for the condition⁴</u>												
		<u>0³</u>	<u>10</u>	<u>20</u>	<u>30</u>	<u>40</u>	<u>50</u>	<u>60</u>	<u>70</u>	<u>80</u>	<u>90</u>	<u>100</u>	<u>110</u>	<u>120</u>
30 km/h	60 m	N/A ⁵												
40 km/h	100 m	N/A ⁵												
50 km/h	150 m	N/A ⁵												
60 km/h	180 m	30 m	N/A ⁵	N/A ⁵	N/A ⁵									
70 km/h	220 m	50 m	40 m	30 m	N/A ⁵	N/A ⁵	N/A ⁵							
80 km/h	260 m	80 m	60 m	55 m	50 m	40 m	30 m	N/A ⁵						
90 km/h	310 m	110 m	90 m	80 m	70 m	60 m	40 m	N/A ⁵	N/A ⁵					
100 km/h	350 m	130 m	120 m	115 m	110 m	100 m	90 m	70 m	60 m	40 m	N/A ⁵			
110 km/h	380 m	170 m	160 m	150 m	140 m	130 m	120 m	110 m	90 m	70 m	50 m	N/A ⁵		
120 km/h	420 m	200 m	190 m	185 m	180 m	170 m	160 m	140 m	130 m	110 m	90 m	60 m	40 m	
130 km/h	460 m	230 m	230 m	225 m	220 m	210 m	200 m	180 m	170 m	150 m	120 m	100 m	70 m	50 m

Notes:

1. The standard distance calculations in the above chart are based on a sign legibility distance of 50 m for Condition A which is the appropriate legibility distance for a 125 mm, Series D word legend. The distances for Condition B are based on a sign legibility distance of 75 m which is appropriate for an alignment warning symbol sign.

2. Typical conditions are locations where the road user must use extra time to adjust speed and change lanes in heavy traffic because of a complex driving situation. This may be for a multi-lane facility with vehicle weaving and lane change requirements using several of the traffic flow warning signs such as Merge and Lane Ends that requires the application of Driver Decision Sight Distance. The distances are determined by providing the driver a PIEV time of 14.0 to 14.5 seconds for the vehicle maneuvers (2000 AASHTO Policy, Exhibit 3-3, Decision Sight Distance, Avoidance Maneuver E) minus the legibility distance of 50 m for the appropriate sign.

3. Typical condition is the warning of a potential stop situation. Typical signs are Stop Ahead, Yield Ahead, Signal Ahead, and Intersection Advance Warning signs. The distances are based on the 2000 AASHTO Policy, Stopping Sight Distance, Exhibit 3-1, providing a PIEV time of 2.5 seconds, a deceleration rate of 3.4 m/sec² minus the sign legibility distance of 50 m.

4. Typical conditions are locations where the road user must decrease speed to maneuver through the warned condition. Typical signs are Turn, Curve, Reverse Turn or Curve. The distance is determined by providing a 2.5 second PIEV time, a vehicle deceleration rate of 3.0 m/sec² minus the sign legibility distance of 75 m.

5. No suggested minimum distances are provided for these speeds, as the placement location is dependent on

site conditions and other signing to provide an adequate advance warning for the driver. The values have been rounded to uniform distances.

(1-17-03)T

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

01. Street and Mailing Address. The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of P.O. Box 7129, Boise ID 83707-1129. (1-17-03)T

02. Office Hours. Daily office hours are 8 a.m. to 5 p.m. except Saturday, Sunday and state holidays. (1-17-03)T

03. Telephone And FAX Numbers. The central office may be contacted during office hours by phone at 208-334-8000 or by fax at 208-334-3858. (1-17-03)T

04. Idaho Transportation Department District Offices. Offices are at the following locations: (1-17-03)T

a. Idaho Transportation Department District 1
605 Prairie, Coeur d'Alene
Mailing address - P.O. Box D, Coeur d'Alene, Idaho 83814
Office Hours - 7 a.m. to 4 p.m., Pacific Time Zone
Phone – (208) 772-1200 (1-17-03)T

b. Idaho Transportation Department District 2
26th and North and South Highway, Lewiston
Mailing address - P.O. Box 837, Lewiston, Idaho 83501
Office Hours - 7 a.m. to 4 p.m., Pacific Time Zone
Phone – (208) 799-5090 (1-17-03)T

c. Idaho Transportation Department District 3
8150 Chinden Blvd., Boise
Mailing address - P.O. Box 8028, Boise, Idaho 83707
Office Hours - 8 a.m. to 5 p.m., Mountain Time Zone
Phone – (208) 334-8300 (1-17-03)T

d. Idaho Transportation Department District 4
216 Date Street, Shoshone
Mailing address - P.O. Box 2-A, Shoshone, Idaho 83352
Office Hours - 8 a.m. to 5 p.m., Mountain Time Zone
Phone – (208) 886-7800 (1-17-03)T

e. Idaho Transportation Department District 5
5151 South 5th, Pocatello
Mailing address - P.O. Box 4700, Pocatello, Idaho 83201
Office Hours - 8 a.m. to 5 p.m., Mountain Time Zone
Phone – (208) 239-3367 (1-17-03)T

f. Idaho Transportation Department District 6
206 North Yellowstone, Rigby
Mailing address - P.O. Box 97, Rigby, Idaho 83442
Office Hours - 8 a.m. to 5 p.m., Mountain Time Zone
Phone – (208) 745-8735 (1-17-03)T

0056. ~~IDAHO~~ PUBLIC RECORDS ACT COMPLIANCE.

Rules contained herein are promulgated in accordance with Title 67, Chapter 52, Idaho Administrative Procedures Act (IDAPA) and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Idaho Attorney General". All

records associated with this chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code. ~~(3-30-01)~~(1-17-03)T

~~0067.~~ -- 099. (RESERVED).

100. AVAILABILITY OF MANUAL.

01. Review Of Manual. Persons wishing to review the Manual ~~and subsequent amendments, through and including revision number seven (7);~~ may do so at ~~the Department's Headquarters in Boise or at a District Office of the Department in Boise, Coeur d'Alene, Lewiston, Pocatello, Rigby, or Shoshone~~ any of the locations listed in Section 005. The Manual and subsequent amendments are also available for review at the Idaho State Library.

~~(3-30-01)~~(1-17-03)T

02. Purchase Of Manual. ~~Copies of the 1988 edition of~~ The Manual and all subsequent amendments dated December 28, 2001, with Revision No. 1 changes may be viewed and printed from the Federal Highway Administration website, <http://mutcd.fhwa.dot.gov> or purchased from a number of organizations described on the website, such as the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402 ~~AASHTO, ATSSA, and ITE.~~

~~(3-30-01)~~(1-17-03)T

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.46 - RULES GOVERNING STUDED TIRES

DOCKET NO. 39-0346-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 49-201 and 49-948, 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, Volume 02-10, page 721 and 722.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Greg Laragan, Assistant Chief Engineer, Operations, 208-334-8535.

DATED this 23rd day of October, 2002.

Linda L. Emry, Management Assistant
Office of Budget, Policy, Intergovernmental Relations
Idaho Transportation Department
P. O. Box 7129
Boise ID 83707-1129
Phone: 208-334-8810
FAX: 208-334-8195

IDAPA 39, TITLE 03, Chapter 46

RULES GOVERNING STUDED TIRES

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-10, October 2, 2002, pages 721 and 722.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.60 - RULES GOVERNING OUTDOOR ADVERTISING

DOCKET NO. 39-0360-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 40-312, Idaho Code.

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

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-10, pages 723 through 733.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Leonard Hill, Right-of-Way Manager, 208-334-8520.

DATED this 23rd day of October, 2002.

Linda L. Emry, Management Assistant
Office of Budget, Policy, Intergovernmental Relations
Idaho Transportation Department
P. O. Box 7129
Boise ID 83707-1129
Phone: 208-334-8810
FAX: 208-334-8195

IDAPA 39, TITLE 03, Chapter 60

RULES GOVERNING OUTDOOR ADVERTISING

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-10, October 2, 2002, pages 723 through 733.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT
39.03.63 - RULES GOVERNING TRAFFIC ACCIDENT MEMORIALS
DOCKET NO. 39-0363-0201
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2003.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 49-1316 and 55-2201 through 2210, 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 December 18, 2002.

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

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

Changes to the existing rule include: removal of the gold star as the only allowable traffic accident memorial; new guidelines for fabrication and placement of traffic accident memorials; provision for removal on non-conforming memorials; requirement for notification of adjacent property owners before placement; and guidelines for safety of the participants when on the state highway system.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: This action is necessary to bring the rule into compliance with the changes to Section 49-1316, Idaho Code, in Senate Bill 1137, effective July 1, 2001.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This rulemaking does not impose or increase any fee or charge.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this action is necessary to bring the rule into compliance with Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Steve Holland, Transportation Staff Engineering Assistant, 208-334-8565.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before December 26, 2002.

DATED this 23rd day of October, 2002.

Linda L. Emry, Management Assistant
Budget, Policy, Intergovernmental Relations
Idaho Transportation Department
3311 West State Street
P O Box 7129
Boise ID 83707-1129
Phone – 208-334-8810
FAX – 208-334-8195

THE FOLLOWING IS THE TEXT OF DOCKET NO. 39-0363-0201

001. TITLE AND SCOPE.

01. Title. This rule shall be known as IDAPA 39.03.63, “Rules Governing Traffic Accident Memorials.” IDAPA 39, TITLE 03, Chapter 63. (1-1-03)T

02. Scope. This rule specifies ~~the~~ procedures to ~~be followed when erecting golden stars~~ erect traffic accident memorials, hereafter referred to as memorial(s), in memory of people killed in traffic accidents on Idaho state highways under the jurisdiction of the Idaho Transportation Department (Department), pursuant to Section 49-1316, Idaho Code. (~~9-14-92~~)(1-1-03)T

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for this chapter. (1-1-03)T

003. ADMINISTRATIVE APPEALS.

Administrative appeals under this chapter shall be governed by IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General”. (1-1-03)T

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter. (1-1-03)T

005. OFFICE – OFFICE HOURS – MAILING AND STREET ADDRESS – PHONE NUMBERS.

01. Street and Mailing Address. The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of P.O. Box 7129, Boise ID 83707-1129. (1-1-03)T

02. Office Hours. Daily office hours are 8 a.m. to 5 p.m. except Saturday, Sunday and state holidays. (1-1-03)T

03. Telephone and FAX numbers. The central office may be contacted during office hours by phone at 208-334-8000 or by fax at 208-334-3858. (1-1-03)T

04. Idaho Transportation Department District Offices are at the following locations: (1-1-03)T

a. Idaho Transportation Department District 1
605 Prairie, Coeur d’Alene
Mailing address - P.O. Box D, Coeur d’Alene, Idaho 83814
Office Hours - 7 a.m. to 4 p.m., Pacific Time Zone
Phone – (208) 772-1200 (1-1-03)T

b. Idaho Transportation Department District 2
26th and North and South Highway, Lewiston
Mailing address - P.O. Box 837, Lewiston, Idaho 83501
Office Hours - 7 a.m. to 4 p.m., Pacific Time Zone
Phone – (208) 799-5090 (1-1-03)T

c. Idaho Transportation Department District 3
8150 Chinden Blvd., Boise
Mailing address - P.O. Box 8028, Boise, Idaho 83707
Office Hours - 8 a.m. to 5 p.m., Mountain Time Zone
Phone – (208) 334-8300 (1-1-03)T

d. Idaho Transportation Department District 4

216 Date Street, Shoshone
Mailing address - P.O. Box 2-A, Shoshone, Idaho 83352
Office Hours - 8 a.m. to 5 p.m., Mountain Time Zone
Phone – (208) 886-7800 (1-1-03)T

e. Idaho Transportation Department District 5
5151 South 5th, Pocatello
Mailing address - P.O. Box 4700, Pocatello, Idaho 83201
Office Hours - 8 a.m. to 5 p.m., Mountain Time Zone
Phone – (208) 239-3367 (1-1-03)T

f. Idaho Transportation Department District 6
206 North Yellowstone, Rigby
Mailing address - P.O. Box 97, Rigby, Idaho 83442
Office Hours - 8 a.m. to 5 p.m., Mountain Time Zone
Phone – (208) 745-8735 (1-1-03)T

006. PUBLIC RECORDS ACT COMPLIANCE.

All records associated with this chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code. (1-1-03)T

0027. -- 099. (RESERVED).

100. GENERAL.

In accordance with Section 49-1316, Idaho Code, relatives or friends of a person killed in a traffic accident upon a non-interstate highway of the state highway system may erect a golden star apply for a permit to erect a memorial in memory of the decedent. The decedent's next of kin must approve the star before friends can place it at the accident site. The golden star must be erected adjacent to the portion of the highway where the accident occurred. Only one (1) star may be placed for each fatal accident. Stars are not permitted on interstate highways, or within boundaries of incorporated cities. Only one (1) memorial may be placed per fatal accident. Memorials placed before January 1, 2003 may be retained if they meet all of the requirements of Section 200 and Subsections 300.01 through 300.03.
(9-14-92)(1-1-03)T

101. PERMIT.

After January 1, 2003, relatives or friends of a person killed in a traffic accident upon a state highway shall obtain an approved encroachment permit from the Department prior to installing, maintaining or removing a memorial within the state highway right-of-way. As a condition of permit approval, the individual(s) wishing to install a memorial must provide the Department with the following: (1-1-03)T

a. Written approval from the decedent's next of kin, who are related by blood, marriage or adoption;
and (1-1-03)T

b. Written approval from all property owners whose property is within a five hundred foot (500') radius of the proposed memorial location. (1-1-03)T

1042. -- 199. (RESERVED).

200. PHYSICAL REQUIREMENTS.

The maximum tip-to-tip dimensions of the star shall be twelve (12) inches a memorial shall be thirty-six (36) inches high, sixteen (16) inches wide and shall weigh no more than seven (7) pounds. The star shall be made of high grade plywood, plastic, aluminum, or steel material as commonly used for highway signs. The height requirement shall be measured from the ground level to the highest point on the memorial, the width shall be measured horizontally at the memorial's widest point and the weight is based on the portion above the ground.
(9-14-92)(1-1-03)T

01. Shape And Color. Stars Memorials shall be gold color and the standard five (5) point design not be shaped or colored to portray, resemble or conflict with any traffic control device. The top point of the star shall point in a vertical direction. Stars shall be attached via two (2) bolts to an upright post. No other signs or items shall

be attached to the post. The *star memorial* shall not be reflectorized. (9-14-92)(1-1-03)T

~~02.~~ **Installation.** Each post shall be of a U-shaped steel section similar to a highway delineator post weighing approximately one point twelve (1.12) pounds per linear foot. The person installing the post must comply with the call before you dig requirements of Sections 55-2201 through 2210, Idaho Code, before installing the post. (9-14-92)

~~032.~~ **Additional Requirements Adornment.** No text or items of adornment shall be ~~hung from~~ placed on or near the ~~star~~, and no inscription shall be placed on the ~~star~~ a memorial. (9-14-92)(1-1-03)T

~~03.~~ **Memorial Site.** Planting or landscaping at a memorial is prohibited. (1-1-03)T

201. -- 299. (RESERVED).

300. APPROVAL LOCATION.

Memorials must be erected as near as practical to the milepost location where the accident occurred. The person installing the memorial shall be responsible for contacting a utility locating service to identify the location of any utilities in the area prior to placement of the memorial. See call-before-you-dig requirements in Sections 55-2201 through 2210 of Idaho Code. The applicant shall also be required to meet on site with the Department highway maintenance supervisor assigned to the area where a *star memorial* is to be erected ~~shall approve the star location so as to minimize any adverse effect on maintenance operations such as mowing, snowplowing, etc.~~ to review the proposed installation. The Department highway maintenance supervisor will be responsible for final approval of the memorial location. (9-14-92)(1-1-03)T

~~01.~~ **Shoulder.** Memorials shall be placed as far as practical from the edge of roadway, but must be placed a minimum of twenty (20) feet from the roadway shoulder where highway right-of-way width permits. (1-1-03)T

~~02.~~ **Medians.** Placement of an accident memorial in the median of any interstate or non-interstate highway is prohibited. (1-1-03)T

~~03.~~ **Incorporated Cities.** Memorials are prohibited within the boundaries of incorporated cities. (1-1-03)T

301. -- 399. (RESERVED).

400. SAFETY PRECAUTIONS.

~~01.~~ **Placement Location.** Stars shall be placed as far as practical from the highway traffic but must be placed a minimum of twenty (20) feet from the highway shoulder where highway right-of-way width permits. Stars shall be mounted at an elevation approximately four (4) feet above the ground. (9-14-92)

~~021.~~ **Installation Or Maintenance Parking.** ~~Installation or maintenance family members and friends~~ Those participating in the installation, ~~or~~ maintenance, or removal of the *star must memorial* shall park their vehicle(s) as far as practical from the ~~traffic~~ travel lanes and in an area where there is adequate sight distance on the highway ~~is good~~ in both directions. (9-14-92)(1-1-03)T

~~032.~~ **Degree Of Safety Participants And Motorists.** Those participating in the installation, maintenance, or removal of a memorial must wear proper safety attire and obey all safety procedures approved by the Department at the time of permit issuance. A high degree of safety must be maintained for the ~~motorist~~ traveling public and the participants ~~must be maintained~~ during the installation, maintenance, or removal of a memorial. (9-14-92)(1-1-03)T

401. -- 499. (RESERVED).

500. MAINTENANCE REQUIREMENTS.

~~01. Responsibility. The Idaho Transportation Department will not~~ The Department shall not be responsible for maintenance, vandalism, damage, or theft of a memorial. The permittee shall be responsible for maintenance, vandalism, or theft of the star or post memorial. All memorials must be maintained in good condition at all times and in a manner that complies with this rule. ~~(9-14-92)~~(1-1-03)T

~~02. Maintenance Responsibility. Stars must be maintained in good condition or they will be removed by the highway maintenance supervisor.~~ (9-14-92)

~~03. Additional Conditions. No planting or landscaping work shall be done at the star location.~~ (9-14-92)

501. COMPLIANCE.

01. Improper Installation. Memorials not installed in compliance with this rule shall be subject to removal by the Department. (1-1-03)T

02. Maintenance. Memorials not maintained in good condition shall be subject to removal by the Department. (1-1-03)T

03. Traffic Hazard. Memorials that have been installed or maintained in such a manner that either the memorial or the participants create a traffic hazard shall be subject to removal by the Department. (1-1-03)T

~~5042. -- 999. (RESERVED).~~

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT
39.03.81 - RULES GOVERNING ISSUANCE OF TEMPORARY PERMITS
IN LIEU OF FULL REGISTRATION

DOCKET NO. 39-0381-0102

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 49-201 and 49-432, 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 December 5, 2001 Idaho Administrative Bulletin, Volume 01-12, pages 104 through 106.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Alan Frew, Port of Entry Manager, 208-334-8694.

DATED this 23rd day of October, 2002.

Linda L. Emry, Management Assistant
Office of Budget, Policy, Intergovernmental Relations
Idaho Transportation Department
P. O. Box 7129
Boise ID 83707-1129
Phone: 208-334-8810
FAX: 208-334-8195

IDAPA 39, TITLE 03, Chapter 81

RULES GOVERNING ISSUANCE OF TEMPORARY PERMITS
IN LIEU OF FULL REGISTRATION

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 01-12, December 5, 2001, pages 104 through 106.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 45 - HUMAN RIGHTS COMMISSION
45.01.01 - RULES OF THE HUMAN RIGHTS COMMISSION
DOCKET NO. 45-0101-0201
NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This pending rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-5906(12), 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 reason for the change.

The Commission rules required the Commission to serve a complaint of discrimination on a Respondent and its determination of probable cause or no probable cause to believe that discrimination had occurred on the Complainant and the Respondent by certified mail. The proposed rule removes the requirement of mailing by certified mail.

The proposed rule has been adopted as proposed. The original text of the proposed rule was published in the July 3, 2002, Idaho Administrative Bulletin, Volume No. 02-7, pages 247 through 251.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Jo-Ann Bowen at (208) 334-2873.

DATED this 16th day of October, 2002.

Leslie R. Goddard, Director
Idaho Human Rights Commission
1109 Main Street, Suite 400
P.O. Box 83720, Boise, Idaho 83720
(208) 334-2873 / fax: (208) 334-2664

IDAPA 45, TITLE 01, Chapter 01

RULES OF THE HUMAN RIGHTS COMMISSION

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-7, July, 2002, pages 247 through 251.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 47 - DIVISION OF VOCATIONAL REHABILITATION

47.01.01 - RULES OF IDAHO DIVISION OF VOCATIONAL REHABILITATION

DOCKET NO. 47-0101-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 33-2301, Idaho Code, and the 1998 Amendments of the Rehabilitation Act of 1973.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule:

To reorganize and reduce the rules of Vocational Rehabilitation from three chapters to one.

The pending rules are being adopted as proposed. The original text of the proposed rule was published in the October 2, 2002 Idaho Administrative Bulletin, Volume No. 02-10 pages 734 through 740.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Sue Payne (208) 334-3390 extension 110.

DATED this 21st day of October, 2002.

Barry J. Thompson
Administrator
Idaho Division of Vocational Rehabilitation
650 W. State Street, Room 150
P.O. Box 83720
Boise, ID 83720-0096
(208) 334-3390 ext. 108, Fax: (208) 334-5305

IDAPA 47, TITLE 01, Chapter 01

RULES OF IDAHO DIVISION OF VOCATIONAL REHABILITATION

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-10, October 2, 2002, pages 734 through 740.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 47 - DIVISION OF VOCATIONAL REHABILITATION

47.01.02 - FIELD SERVICES

DOCKET NO. 47-0102-0201 - (REPEAL OF CHAPTER)

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 33-2301, Idaho Code, and the 1998 Amendments of the Rehabilitation Act of 1973.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule:

To reorganize and reduce the rules of Vocational Rehabilitation from three chapters to one.

The pending rules are being adopted as proposed. The original text of the proposed rule was published in the October 2, 2002 Idaho Administrative Bulletin, Volume No. 02-10 page 741.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Sue Payne (208) 334-3390 extension 110.

DATED this 21st day of October, 2002.

Barry J. Thompson, Administrator
Idaho Division of Vocational Rehabilitation
650 W. State Street, Room 150
P.O. Box 83720, Boise, ID 83720-0096
(208) 334-3390 ext. 108, Fax: (208) 334-5305

IDAPA 47, TITLE 01, Chapter 02

FIELD SERVICES

This chapter is being repealed in its entirety.

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-10, October 2, 2002, page 741.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 47 - DIVISION OF VOCATIONAL REHABILITATION

47.01.03 - MANAGEMENT SERVICES

DOCKET NO. 47-0103-0201 - (REPEAL OF CHAPTER)

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 33-2301, Idaho Code, and the 1998 Amendments of the Rehabilitation Act of 1973.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule:

To reorganize and reduce the rules of Vocational Rehabilitation from three chapters to one.

The pending rules are being adopted as proposed. The original text of the proposed rule was published in the October 2, 2002 Idaho Administrative Bulletin, Volume No. 02-10 page 742.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Sue Payne (208) 334-3390 extension 110.

DATED this 21st day of October, 2002.

Barry J. Thompson, Administrator
Idaho Division of Vocational Rehabilitation
650 W. State Street, Room 150
P.O. Box 83720, Boise, ID 83720-0096
(208) 334-3390 ext. 108, Fax: (208) 334-5305

IDAPA 47, TITLE 01, Chapter 03

MANAGEMENT SERVICES

This chapter is being repealed in its entirety.

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-10, October 2, 2002, page 742.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 48 - DEPARTMENT OF COMMERCE

48.01.03 - RULES OF THE IDAHO REGIONAL TRAVEL AND CONVENTION GRANT PROGRAM

DOCKET NO. 48-0103-0201

NOTICE OF RULEMAKING

PENDING RULE AND AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is October 3, 2002. This pending rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Section(s) 67-4715, 67-4717, AND 67-4718, Idaho Code.

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

To update the application submittal to allow for online, disc or CD submissions.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department of Commerce amended the temporary rule with the same revisions, which have been made to the pending rule. Only the sections that have changes differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the October 2, 2002, Idaho Administrative Bulletin Vol. 02-10, page(s) 743 and 744.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Idaho Department of Commerce, Carl Wilgus (208) 334-2470.

DATED this 17th day of September, 2002.

Carl Wilgus
Administrator, Tourism Development
Department of Commerce
700 W. State St.
PO Box 83720, Boise ID 83720-0093
(208) 334-2470; FAX (208) 334-2631

IDAPA 48, TITLE 01, Chapter 03

RULES OF THE IDAHO REGIONAL TRAVEL AND CONVENTION GRANT PROGRAM

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 text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-10, October 2, 2002, pages 743 and 744](#).

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 48-0103-0201

SUBSECTION 008.02

008. ELIGIBLE PROJECTS.

02. Application Submittal. Applicants must submit one (1) complete signed application, and a completed ~~electronic version~~ online, disc, or CD version of their application electronically delivered or postmarked ~~and electronically delivered~~ no later than forty-five (45) days prior to the grant awards. If the application is not complete, the application ~~will~~ may not be considered for funding. ~~(10-3-02)T~~(10-3-02)T

IDAPA 56 - IDAHO RANGELAND RESOURCES COMMISSION

56.01.01 - RULES OF ADMINISTRATIVE PROCEDURE OF THE IDAHO RANGELAND RESOURCES COMMISSION

DOCKET NO. 56-0101-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 58-1408, 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 October 2, 2002, Idaho Administrative Bulletin Volume 02-10, pages 745 and 746.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Gretchen Hyde, Director, at (208) 398-7002.

DATED this 23rd day of October, 2002.

Gretchen Hyde, Director
Idaho Rangeland Resources Commission
2655 Cherry Circle
P. O. Box 126, Emmett, Idaho 83617
Phone: (208) 398-7002
Fax: (208) 398-7002

IDAPA 56, TITLE 01, Chapter 01

RULES OF ADMINISTRATIVE PROCEDURE OF THE IDAHO RANGELAND RESOURCES COMMISSION

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-10, October 3, 2002, pages 745 and 746.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2003 Idaho State Legislature for final approval. The rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Fifty-seventh Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This rule is an amendment to longstanding administrative rules which regulate activities that are not regulated by the federal government. The action is authorized by Sections 39-105 and 39-107, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reasons for commencing the proposed rulemaking is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 7, 2002, Volume 02-8, pages 77 through 82. DEQ received public comments concerning the proposed rule and the Board revised the initial proposal as allowed under Section 67-5227, Idaho Code, at Sections 603, 605, 611 and 614. The remaining sections have been adopted as initially proposed. DEQ's Rulemaking and Public Comment Summary, which contains a complete consideration of the issues raised by the public and an explanation of the reasons for changes between the text of the proposed rule and the text of the pending rule, is included in the rulemaking record, which can be obtained by contacting the undersigned.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Kate Kelly at (208) 373-0502 or kkelly@deq.state.id.us.

DATED this 23rd day of October, 2002.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pgradwoh@deq.state.id.us

IDAPA 58, TITLE 01, Chapter 01

RULES FOR THE CONTROL OF AIR POLLUTION IN 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 text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-8, August 7, 2002, pages 77 through 82.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

***DUE TO THE NUMBER OF CHANGES IN SECTIONS 603, 605, 611, AND 614
THEY ARE BEING PUBLISHED IN THEIR ENTIRETY.***

((NEW TEXT BEING ADDED IS SHOWN IN ITALICS.))

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 58-0101-0201

603. GENERAL RESTRICTIONS.

01. Categories And Materials. No person shall allow, suffer, cause or permit any open burning operation unless it is a category of open burning set forth in Sections 6060 through 6167 and ~~does~~ the materials burned do not include any of the following ~~materials~~: (5-1-94)()

- a. Garbage, as defined in Section 006: (5-1-94)()
- b. Dead animals or parts thereof, animal parts, or animal wastes (feces, feathers, litter, etc.) except as provided in Section 616. (5-1-94)()
- c. ~~Junked in~~ Motor vehicles, parts, or any materials resulting from a salvage operation: (5-1-94)()
- d. Tires or other rubber materials or products: (5-1-94)()
- e. Plastics: (5-1-94)()
- f. Asphalt or composition roofing or any other asphaltic material or product: (5-1-94)()
- g. Tar, tar paper, waste or heavy petroleum products, or paints: (5-1-94)()
- h. Lumber or timbers treated with preservatives: (5-1-94)()
- i. Trade waste, as defined in Section 006, except as specifically allowed ~~in~~ under Sections 6060 through 6167: (5-1-94)()
- j. Insulated wire: (5-1-94)()
- k. Pathogenic wastes: ~~or~~: (5-1-94)()
- l. Hazardous wastes. (5-1-94)

02. Air Pollution Episodes. No person shall allow, suffer, cause or permit any open burning to be initiated during any stage of an air pollution episode declared by the Department in accordance with Sections 5540, 557 ~~and~~ through 5642. (5-1-94)()

03. Emergency Authority. In accordance with Title 39, Chapter 1, Idaho Code, the Department has the authority to require immediate abatement of any open burning in cases of emergency requiring immediate action to protect human health or safety. ()

(BREAK IN CONTINUITY OF SECTIONS)

605. (RESERVED) REASONABLE CONTROL OF OPEN BURNING.

Reasonable precautions shall be taken to reduce smoke emissions and impacts during open burning. Reasonable precautions may include, but are not limited to, the following: ()

01. Combustion Efficiency. Burn when fuels are dry, and the burn material is well aerated to maximize the combustion efficiency and minimize emissions. ()

02. Dispersion. Burn when atmospheric conditions are conducive to adequate smoke dispersion. Avoid burning during stagnant conditions or at night. ()

03. Smoke Management. Burn according to procedures set forth in a Department-approved Smoke Management Program. ()

04. Local Area. Avoid smoke impacts to nearby human habitations or activities. ()

05. Road Hazards. Avoid causing visibility hazards along roadways. If a burn has the potential to cause visibility hazards on roadways, contact the local or state transportation agency prior to burning for applicable traffic control requirements. ()

06. Fire Safety. Always check with the local fire district or department for current fire safety requirements. ()

(BREAK IN CONTINUITY OF SECTIONS)

611. RESIDENTIAL DOMESTIC HOUSEHOLD SOLID WASTE DISPOSAL FIRES.

The burning of solid waste, including vegetative waste (tree leaves, gardening waste, and yard trimmings), produced by the day-to-day operation of a domestic household is allowed subject to the following conditions: ()

01. Fires Allowed. Open outdoor fires used to dispose of solid waste (e.g. rubbish, tree leaves, yard trimmings, gardening waste, etc.) excluding garbage produced by the operation of a domestic household is an allowable form of open burning when the following provisions are met: **No Local Prohibition.** The burning is not prohibited by local government ordinances or rules. (5-1-94)()

a- No scheduled house to house solid waste collection service is available; and (5-1-94)

b- The burning is conducted on the property where the solid waste was generated. (5-1-94)

02. Fires Exempt. Open outdoor fires used to dispose of tree leaves, gardening waste or yard trimmings are exempt from Subsection 611.01.a. when conducted in accordance with local governmental ordinances or rules which allow for the open burning of tree leaves, gardening waste or yard trimming during certain periods of the year: **On-Site Waste Burning Only.** The burning is conducted on the property where the solid waste was generated. (5-1-94)()

03. Daylight Burning Only. The burning is conducted only during daylight hours, and no fire is allowed to burn or smolder overnight. ()

04. Collection Service Unavailable. Fires used to dispose of non-vegetative domestic household solid waste are allowed only when scheduled house-to-house solid waste collection service is not available. ()

05. No Prohibited Materials. The solid waste does not include any of the materials specifically prohibited from burning in Subsection 603.01. ()

(BREAK IN CONTINUITY OF SECTIONS)

614. PRESCRIBED FIRE MANAGEMENT BURNING.

The use of open outdoor fires to obtain the objectives of prescribed fire management burning is an allowable form of open burning when the provisions of Section 614 are met. (5-1-94)

01. ~~Burning Permits Or Prescribed Fire Plans~~ Prescribed Burning in Accordance with Smoke Management Programs. (5-1-94)

~~a.~~ Whenever a burning permit or prescribed fire plan is required by the Department of Lands, U.S.D.A. Forest Service, or any other state or federal agency responsible for land management, any person who conducts or allows prescribed burning shall meet all permit and/or plan conditions and terms which control smoke. (5-1-94)

~~b.~~ The Department will seek interagency agreements to assure permits or plans issued by agencies referred to in Subsection 614.01.a. provide adequate consideration for controlling smoke from prescribed burning. (5-1-94)

02. ~~Smoke Management Plans For Prescribed Burning.~~ (5-1-94)

~~a.~~ Whenever a permit or plan is not required by the Department of Lands, U.S.D.A. Forest Service, or any other state or federal agency responsible for land management, ~~a~~Any person who ~~may~~ conducts or allows prescribed fire management burning shall meet all conditions set forth, as defined in Section 006, if conducted in accordance with a Department-approved Smoke Management Plan for Prescribed Burning Program and the Idaho Forest Practices Act, Chapter 13, Title 38, Idaho Code, and the rules promulgated thereto, IDAPA 20.02.01, "Rules Pertaining to the Idaho Forest Practices Act". (5-1-94)()

02. Other Prescribed Burning. Any person conducting or allowing prescribed fire management burning not conducted in accordance with a Department-approved Smoke Management Program should, and after April 1, 2004 must, adhere to the time periods for burning set by the Department and made available through the Department's toll-free number. ()

03. ~~Rights Of Way Fires.~~ The open burning of woody debris generated during the clearing of rights of way shall be open burned according to Sections 38-101 and 38-401, Idaho Code, IDAPA 20 Title 16 and Sections 606 through 616 of these rules. (5-1-94)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 - WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS

DOCKET NO. 58-0102-0202

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Fifty-seventh Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

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

DESCRIPTIVE SUMMARY: A detailed summary of the reasons for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, Volume 02-7, July 3, 2002, page 252. The agency received no public comments on the proposal, and the rule has been adopted as initially proposed. The rulemaking record can be obtained by contacting the undersigned.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning the proposed rulemaking, contact Rick Jarvis at (208)373-0502 or rjarvis@deq.state.id.us.

Dated this 22nd day of October, 2002.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pgradwoh@deq.state.id.us

IDAPA 58, TITLE 01, Chapter 02

WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-7, July 3, 2002, page 252.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 - WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS

DOCKET NO. 58-0102-0203

NOTICE OF RULEMAKING - PENDING AND TEMPORARY RULE

EFFECTIVE DATE: The temporary rule was effective October 18, 2002. This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2003 Idaho State Legislature for final approval. The rule will become final and effective immediately upon the adjournment *sine die* of the First Regular Session of the Fifty-seventh Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226(1) and 67-5226(4), Idaho Code, notice is hereby given that the Board has adopted a temporary and a pending rule. The action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reasons for adopting the pending rule is set forth in the initial proposed rule published in the Idaho Administrative Bulletin, August 7, 2002, Volume 02-8, pages 102 through 105. The only comment received was from the U.S. Environmental Protection Agency in support of the rule. The rule has been adopted as initially proposed. The rulemaking record can be obtained by contacting the undersigned.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in that the rule complies with deadlines in federal law and confers a benefit. The City of Boise is subject to comply with new effluent limits for copper and lead with the earliest deadline of February 12, 2003. If site-specific criteria modifications for copper and lead are adopted and approved by EPA, some aspects of their compliance schedule would be unnecessary or could be modified. Meeting the current compliance schedules would incur additional capital and operating expenses for the City and its ratepayers. These additional expenses may not provide a significant benefit to the environment and might be avoided if proposed site-specific water quality criteria become effective.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rule, contact Chris Mebane at (208)373-0502 or cmebane@deq.state.id.us.

DATED this 21st day of October, 2002.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton, Boise, Idaho 83706-1255
(208)373-0418 / Fax No. (208)373-0481
pgradwoh@deq.state.id.us

IDAPA 58, TITLE 01, Chapter 02

WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS

This rule is being adopted as a temporary rule effective October 18, 2002.

In accordance with Section 67-5226(4), the text of the temporary rule is being printed in this Bulletin.

There are no substantive changes to the pending rule from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-8, August 7, 2002, pages 102 through 105.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE

275. SITE-SPECIFIC SURFACE WATER QUALITY CRITERIA.

01. Procedures For Establishing Site-specific Water Quality Criteria. The water quality criteria adopted in these standards may not always reflect the toxicity of a pollutant in a specific water body. These criteria also represent a limited number of the natural and human-made chemicals that exist in the environment which may pose a threat to designated or existing beneficial uses. Thus, it may be possible in some water bodies to develop new water quality criteria or modify existing criteria through site-specific analyses which will effectively protect designated and existing beneficial uses. (8-24-94)

a. The following are acceptable conditions for developing site-specific criteria: (8-24-94)

i. Resident species of a water body are more or less sensitive than those species used to develop a water quality criterion. (8-24-94)

(1) Natural adaptive processes have enabled a viable, balanced aquatic community to exist in waters where natural background levels of a pollutant exceed the water quality criterion (i.e., resident species have evolved a greater resistance to higher concentrations of a pollutant). (8-24-94)

(2) The composition of aquatic species in a water body is different from those used to derive a water quality criterion (i.e., more or less sensitive species to a pollutant are present or representative of a water body than have been used to derive a criterion). (8-24-94)

ii. Biological availability and/or toxicity of a pollutant may be altered due to differences between the physicochemical characteristics of the water in a water body and the laboratory water used in developing a water quality criterion (e.g., alkalinity, hardness, pH, salinity, total organic carbon, suspended solids, turbidity, natural complexing, fate and transport water, or temperature). (8-24-94)

iii. The affect of seasonality on the physicochemical characteristics of a water body and subsequent effects on biological availability and/or toxicity of a pollutant may justify seasonally dependent site-specific criteria. (8-24-94)

iv. Water quality criteria may be derived to protect and maintain existing ambient water quality. (8-24-94)

v. Other factors or combinations of factors that upon review of the Department may warrant modifications to the criteria. (8-24-94)

b. Any person may develop site-specific criteria in accordance with these rules. To insure that the approach to be used in developing site-specific criteria is scientifically valid, the Department shall be involved early in the planning of any site-specific analyses so that an agreement can be reached concerning the availability of existing data, additional data needs, methods to be used in generating new data, testing procedures to be used, schedules to be followed and quality control and assurance provisions to be used. (8-24-94)

c. Site-specific criteria shall not impair designated or existing beneficial uses year-round (or seasonally for seasonal dependent criteria) and shall prevent acute and chronic toxicity outside of approved mixing zones. If site-specific criteria are seasonally dependent, the period when the criteria apply shall be clearly identified. (8-24-94)

d. Site-specific criteria, if appropriate, shall include both chronic and acute concentrations to more accurately reflect the different tolerances of resident species to the inherent variability between concentrations and toxicological characteristics of a pollutant. (8-24-94)

e. Site-specific criteria shall be clearly identified as maximum (not to be exceeded) or average values. If a criterion represents an average value, the averaging period shall be specified. The conditions, if any, when the criteria apply shall be clearly stated (e.g., specific levels of hardness, pH, water temperature, or bioavailability). Specific sampling requirements (location, frequency, etc.), if any, shall also be specified. (8-24-94)

f. A site may be limited to the specific area affected by a point or nonpoint source of pollution or, if appropriate, an expanded geographical area (e.g., ecoregion, river basin, sub-basin, etc.). For a number of different water bodies to be designated as one site, their respective aquatic communities cannot vary substantially in sensitivity to a pollutant. Site boundaries shall be geographically defined. (8-24-94)

g. Proposed site-specific water quality criteria must be approved by the Board in accordance with the Idaho Administrative Procedure Act. The Department of Environmental Quality shall determine whether to approve a request for site-specific criteria in accordance with this section and within twenty-eight (28) days after receipt of the request, and will introduce acceptable site-specific criteria for rule-making. (8-24-94)

h. The following are acceptable procedures for developing site-specific criteria for aquatic life protection. (8-24-94)

i. Site-specific analyses for the development of new water quality criteria shall be conducted in a manner which is scientifically justifiable and consistent with the assumptions and rationale in "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses," EPA 1985. This document is available for review at the Idaho Department of Environmental Quality or may be obtained from EPA or the U.S. Government Printing Office. (8-24-94)

ii. Site-specific analyses for the modification of existing water quality criteria shall be conducted in accordance with one of the following procedures, as described in the "Water Quality Standards Handbook", EPA 1983. This document is available for review at the Idaho Department of Environmental Quality or may be obtained from EPA or the U.S. Government Printing Office. (8-24-94)

(1) **Recalculation Procedure.** This procedure is used to account for differences in sensitivity to a pollutant between resident species and those species used in deriving the criterion. Bioassays in laboratory water may be required for untested resident species. (8-24-94)

(2) **Indicator Species Procedure.** This procedure is used to account for differences in biological availability and/or toxicity of a chemical between the physicochemical characteristics of the water in a water body and the laboratory water used in developing criteria. Bioassays in site water are required using resident species or acceptable nonresident species. (8-24-94)

(3) **Resident Species Procedure.** This procedure is used to account for differences in both resident species sensitivity and biological availability and/or toxicity of a pollutant. Bioassays in site water using resident species are required. (8-24-94)

- (4) Water effects ratios as defined by EPA guidance documents. (8-24-94)
- (5) Other scientifically defensible procedures such as relevant aquatic field studies, laboratory tests, biological translators, fate and distribution models, risk analyses or available scientific literature. (8-24-94)
- (a) Deviations from the above described EPA procedures shall have justifications which are adequately documented and based on sound scientific rationale. (8-24-94)
- (b) The data, testing procedures and application factors used to develop site-specific criteria shall reflect the nature of the pollutant (e.g., persistency, bioaccumulation potential, avoidance or attraction responses in fish, etc.), the designated and existing beneficial uses, and the most sensitive resident species of a water body. (8-24-94)

02. Water Quality Criteria For Specific Waters. Standards provided in Sections 276 through 298 for specific waters will supersede Sections 210, 250, 251, 252, and 253 when the application of the standards contained in both sections would present a conflict. (~~4-5-00~~)(10-18-02)T

(BREAK IN CONTINUITY OF SECTIONS)

278. LOWER BOISE RIVER SUBBASIN, HUC 17050114 SUBSECTION 150.12.

01. Boise River, SW-1 And SW-5 – Salmonid Spawning And Dissolved Oxygen. The waters of the Boise River from Veterans State Park to its mouth will have dissolved oxygen concentrations of six (6) mg/l or seventy-five percent (75%) of saturation, whichever is greater, during the spawning period of salmonid fishes inhabiting those waters. (3-15-02)

02. Indian Creek, SW-3b, Mason Creek, SW-6, And Sand Hollow Creek, SW-17 - Modified Aquatic Life Use. All numeric criteria applicable to the seasonal cold water aquatic life use apply with the exception of dissolved oxygen. Dissolved oxygen concentrations are to exceed four (4) mg/l at all times. (3-15-02)

03. Fifteenmile Creek, SW-7; Tenmile Creek, SW-8, And Five Mile Creek, SW-10 - Modified Aquatic Life Use. All numeric criteria applicable to the seasonal cold water aquatic life use apply. (3-15-02)

04. Boise River, SW-5 And SW-11a – Copper And Lead Aquatic Life Criteria. The water-effect ratio (WER) values used in the equations in Subsection 210.02 for calculating copper and lead CMC and CCC values shall be two and five hundred seventy-eight thousandths (2.578) for dissolved copper and two and forty-nine thousandths (2.049) for lead. These site-specific criteria shall apply to the Boise River from the Lander St. wastewater outfall to where the channels of the Boise River become fully mixed downstream of Eagle Island. (10-18-02)T

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 - WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS

DOCKET NO. 58-0102-0204

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2003 Idaho State Legislature for final approval. The rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Fifty-seventh Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

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

DESCRIPTIVE SUMMARY: A detailed summary of the reasons for commencing the proposed rulemaking is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 7, 2002, Volume 02-8, pages 106 through 138. DEQ received public comments concerning the proposed rule and has revised the initial proposal as allowed under Section 67-5227, Idaho Code, at Section 120. The remaining sections have been adopted as initially proposed. DEQ's Rulemaking and Public Comment Summary, which contains a complete consideration of the issues raised by the public and an explanation of the reasons for changes between the text of the proposed rule and the text of the pending rule, is included in the rulemaking record, which can be obtained by contacting the undersigned.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rule, contact Chris Mebane at (208)373-0502 or cmebane@deq.state.id.us.

DATED this 24th day of October, 2002.

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**IDAPA 58
TITLE 01
Chapter 02**

WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS

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 text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-8, August 7, 2002, pages 106 through 138.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 58-0102-0204

SUBSECTION 120.07

120. CLEARWATER BASIN.

Surface waters found within the Clearwater basin total ten (10) subbasins and are designated as follows: (4-5-00)

07. South Fork Clearwater Subbasin. The South Fork Clearwater Subbasin, HUC 17060305, is comprised of eighty-two (82) water body units.

Unit	Waters	Aquatic Life	Recreation	Other
C-1	South Fork Clearwater River - Butcher Creek to mouth	COLD SS	PCR	SRW
C-2	Cottonwood Creek - Cottonwood Creek waterfall (9.0 miles upstream) to mouth	COLD SS	PCR	
C-3	Cottonwood Creek - source to Cottonwood Creek waterfall (9.0 miles upstream)	COLD SS	PCR	
C-4	Red Rock Creek - Red Rock Creek waterfall (3.6 miles upstream) to mouth			
C-5	Red Rock Creek - source to Red Rock Creek waterfall (3.6 miles upstream)			
C-6	Stockney Creek - source to mouth			
C-7	Shebang Creek - source to mouth			
C-8	South Fork Cottonwood Creek - source to mouth			
C-9	Long Haul Creek - source to mouth			
C-10	Threemile Creek - source to mouth	COLD SS	SCR	
C-11a	Butcher Creek - source <u>unnamed tributary (4.5 miles above mouth) in T30N, R03E, Sec. 1</u> to mouth	COLD SS	SCR	
C-11b	<u>Butcher Creek - source to unnamed tributary (4.5 miles above mouth) in T30N, R03E, Sec. 1</u>	COLD	SCR	

Unit	Waters	Aquatic Life	Recreation	Other
C-12	South Fork Clearwater River - Johns Creek to Butcher Creek	COLD SS	PCR	SRW
C-13	Mill Creek - source to mouth			
C-14	Johns Creek - Gospel Creek to mouth	COLD SS	SCR	
C-15	Gospel Creek - source to mouth	COLD SS	SCR	
C-16	West Fork Gospel Creek - source to mouth	COLD SS	SCR	
C-17	Johns Creek - Moores Creek to Gospel Creek	COLD SS	SCR	
C-18	Johns Creek - source to Moores Creek	COLD SS	SCR	
C-19	Moores Creek - source to mouth	COLD SS	SCR	
C-20	Square Mountain Creek - source to mouth	COLD SS	SCR	
C-21	Hagen Creek - source to mouth	COLD SS	SCR	
C-22	South Fork Clearwater River - Tenmile Creek to Johns Creek	COLD SS	PCR	SRW
C-23	Wing Creek - source to mouth	COLD SS	SCR	
C-24	Twentymile Creek - source to mouth			
C-25	Tenmile Creek - Sixmile Creek to mouth			
C-26	Tenmile Creek - Williams Creek to Sixmile Creek	COLD SS	SCR	
C-27	Tenmile Creek - source to Williams Creek	COLD SS	SCR	
C-28	Williams Creek - source to mouth	COLD SS	SCR	
C-29	Sixmile Creek - source to mouth			
C-30	South Fork Clearwater River - Crooked River to Tenmile Creek	COLD SS	PCR	SRW
C-31	Crooked River - Relief Creek to mouth	COLD SS	SCR	
C-32	Crooked River - confluence of West and East Fork Crooked Rivers to Relief Creek	COLD SS	SCR	
C-33	West Fork Crooked River - source to mouth			

Unit	Waters	Aquatic Life	Recreation	Other
C-34	East Fork Crooked River - source to mouth			
C-35	Relief Creek - source to mouth			
C-36	South Fork Clearwater River - confluence of American River and Red River to Crooked River	COLD SS	PCR	SRW
C-37	Red River- Siegel Creek to mouth	COLD SS	PCR	DWS SRW
C-38	Red River - South Fork Red River to Siegel Creek	COLD SS	PCR	DWS SRW
C-39	Moose Butte Creek - source to mouth			
C-40	South Fork Red River - Trapper Creek to mouth	COLD SS	SCR	
C-41	South Fork Red River - West Fork Red River to Trapper Creek	COLD SS	SCR	
C-42	West Fork Red River - source to mouth	COLD SS	SCR	
C-43	South Fork Red River - source to West Fork Red River	COLD SS	SCR	
C-44	Trapper Creek - source to mouth	COLD SS	SCR	
C-45	Red River - source to South Fork Red River	COLD SS	SCR	DWS SRW
C-46	Soda Creek - source to mouth	COLD SS	SCR	
C-47	Bridge Creek - source to mouth	COLD SS	SCR	
C-48	Otterson Creek - source to mouth	COLD SS	SCR	
C-49	Trail Creek - source to mouth	COLD SS	SCR	
C-50	Siegel Creek - source to mouth	COLD SS	SCR	
C-51	Red Horse Creek - source to mouth			
C-52	American River - East Fork American River to mouth	COLD SS	PCR	DWS SRW
C-53	Kirks Fork - source to mouth			
C-54	East Fork American River - source to mouth			
C-55	American River - source to East Fork American River	COLD SS	PCR	DWS SRW
C-56	Elk Creek - confluence of Big Elk and Little Elk Creeks to mouth			

Unit	Waters	Aquatic Life	Recreation	Other
C-57	Little Elk Creek - source to mouth	COLD SS	SCR	
C-58	Big Elk Creek - source to mouth	COLD SS	SCR	
C-59	Buffalo Gulch - source to mouth			
C-60	Whiskey Creek - source to mouth	COLD SS	SCR	
C-61	Maurice Creek - source to mouth			
C-62	Newsome Creek - Beaver Creek to mouth			
C-63	Bear Creek - source to mouth			
C-64	Nugget Creek - source to mouth			
C-65	Beaver Creek - source to mouth			
C-66	Newsome Creek - Mule Creek to Beaver Creek			
C-67	Mule Creek - source to mouth	COLD SS	SCR	
C-68	Newsome Creek - source to Mule Creek			
C-69	Haysfork Creek - source to mouth			
C-70	Baldy Creek - source to mouth	COLD SS	SCR	
C-71	Pilot Creek - source to mouth			
C-72	Sawmill Creek - source to mouth			
C-73	Sing Lee Creek - source to mouth			
C-74	West Fork Newsome Creek - source to mouth			
C-75	Leggett Creek - source to mouth			
C-76	Fall Creek - source to mouth			
C-77	Silver Creek - source to mouth	COLD SS	SCR	
C-78	Peasley Creek - source to mouth			
C-79	Cougar Creek - source to mouth			
C-80	Meadow Creek - source to mouth			
C-81	Sally Ann Creek - source to mouth			
C-82	Rabbit Creek - source to mouth			

(3-30-01)()

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.04 - RULES FOR ADMINISTRATION OF WASTEWATER TREATMENT FACILITY GRANTS

DOCKET NO. 58-0104-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2003 Idaho State Legislature for final approval. The rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Fifty-seventh Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This rulemaking is an amendment to longstanding administrative rules that regulate activities not regulated by the federal government. This action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reasons for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, Vol. 02-8, August 7, 2002, pages 143 through 161. The agency received no public comments on the proposal, and the rule has been adopted as initially proposed. The rulemaking record can be obtained by contacting the undersigned.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this rulemaking, contact Bill Jerrel at (208)373-0502 or wjerrel@deq.state.id.us.

Dated this 21st day of October, 2002.

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IDAPA 58, TITLE 01, Chapter 04

RULES FOR ADMINISTRATION OF WASTEWATER TREATMENT FACILITY GRANTS

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-8, August 7, 2002, pages 143 through 161.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.06 - SOLID WASTE MANAGEMENT RULES AND STANDARDS

DOCKET NO. 58-0106-0201 - (CHAPTER REWRITE)

NOTICE OF RULEMAKING

PENDING RULE AND AMENDMENT TO TEMPORARY RULE - (FEE RULE)

EFFECTIVE DATE: The amendments to the temporary rule were effective October 18, 2002. This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule will become final immediately upon the adjournment sine die of the First Regular Session of the Fifty-seventh Idaho Legislature if the rule is approved by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. The rule may be rejected, amended or modified by concurrent resolution of the Legislature.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that the Board has adopted a pending rule and amended a temporary rule. The action is authorized by Sections 39-105, 39-107 and 39-7408C, Idaho Code.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to address the proper management of non-municipal solid waste. The rule will provide statewide consistency for non-municipal solid waste management, provide specific siting, operational, closure and post-closure care based on the volume of waste, waste characteristics, type of waste management facility, and potential impact to human health and the environment. The rule also provides variances to siting and operational requirements if the variance is equally as protective of human health and the environment. The rule provides an application submittal process for owners and operators and an application review and approval process for DEQ.

In April 2002 the Board adopted this rule as a temporary rule. In June 2002, DEQ published the temporary/proposed rule, inviting the public to comment on the rule. Idaho Administrative Bulletin, June 5, 2002, Vol. 02-6, pages 58 through 94. DEQ received public comments concerning the proposed rule and has revised the initial proposal as allowed under Section 67-5227, Idaho Code, at Sections 001, 005, 009 through 013, and 032. The remaining sections have been adopted as initially proposed. DEQ's Rulemaking and Public Comment Summary, which contains a complete consideration of the issues raised by the public and an explanation of the reasons for changes between the text of the proposed rule and the text of the pending rule, is included in the rulemaking record, which can be obtained by contacting the undersigned.

IDAHO CODE SECTION 39-107D STATEMENT: The U.S. Environmental Protection Agency (EPA) explains the federal role in the regulation of non-municipal solid waste (NMSW) as follows:

Subtitle D of the federal Solid Waste Disposal Act establishes a framework for federal, state, and local government cooperation in controlling the management of nonhazardous solid waste. The federal role in this arrangement is to establish the overall regulatory direction, by providing minimum nationwide standards for protecting human health and the environment, and to provide technical assistance to States for planning and developing their own environmentally sound waste management practices. *The actual planning and direct implementation of solid waste programs under subtitle D, however, remain largely State and local functions, and the act authorizes States to devise programs to deal with State-specific conditions and needs.*

56 Fed. Reg. 50978, 50979, (October 9, 1991)(emphasis added); also, see generally the SWDA, Section 4005 through 4007.

Thus, while federal regulations do provide minimal criteria for identifying those facilities that constitute an "illegal open dump", federal regulations do not provide an Idaho solid waste management program. These rules fulfill the above-described state role of developing an Idaho-specific program with respect to disposal of NMSW in Idaho. The most accurate way to describe the rules, within the confines of Section 39-107D, Idaho Code, is that the rules regulate an activity, the environmentally sound disposal of NMSW in Idaho, not regulated by the federal government.

FEE SUMMARY: In 1996 DEQ was directed by the Legislature (Section 39-7408C, Idaho Code) to adopt a siting license fee to cover the cost incurred by DEQ when reviewing a commercial solid waste siting application. This fee was approved by the 1999 Legislature. The commercial solid waste siting license fee found at Section 994 of the

existing Solid Waste Management Rules and Standards has been included in this rule.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit its web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this rulemaking, contact Dean Ehlert at (208)373-0502, dehlert@deq.state.id.us.

Dated this 23rd day of October, 2002.

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IDAPA 58, TITLE 01, Chapter 06

SOLID WASTE MANAGEMENT RULES AND STANDARDS

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 text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-6, June 5, 2002, pages 58 through 94](#).

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 58-0106-0201

SUBSECTIONS 001.03.a.x., 001.03.b.iii., AND 001.04.b.d.

001. TITLE AND SCOPE.

03. Wastes Not Regulated Under These Rules.

(4-26-02)T

- a. These rules do not apply to the following solid wastes: (4-26-02)T
- x. Asbestos as regulated by the Toxic Substances Control Act, as amended, 15 U.S.C. Sections 2601, et seq., or asbestos as regulated by the Clean Air Act, as amended, 42 U.S.C. Section 7412. ~~(4-26-02)T~~(10-18-02)T
- b. These rules do not apply to the following solid waste unless these wastes are mixed with more than incidental quantities of regulated waste; (4-26-02)T
- iii. Any agricultural solid waste which is managed and regulated pursuant to rules adopted by the Idaho Department of Agriculture. The Department reserves the authority right to use existing authorities regulate agricultural waste that impacts human health or the environment; ~~(4-26-02)T~~(10-18-02)T

04. Solid Waste Management Facilities Not Regulated Under These Rules. These Rules do not apply to the following solid waste management facilities: (4-26-02)T

d. Facilities which cease accepting solid waste prior to ~~the effective date of these rules~~ April 26, 2002 shall be required to only comply with applicable cover, seeding, grading and closure requirements of the former Solid Waste Management Rules and Standards, as follows: ~~(4-26-02)T~~(10-18-02)T

(BREAK IN CONTINUITY OF SECTIONS)

SUBSECTIONS 005.13 AND 005.35

005. DEFINITIONS.

13. Existing Facility. A facility operating and receiving solid waste on or ~~after the effective date of these rules~~ before April 26, 2002. ~~(4-26-02)T~~(10-18-02)T

35. Qualified Professional. Qualified professional means a licensed professional geologist or licensed professional engineer, as appropriate, holding current professional registration in good standing and in compliance with applicable provisions of Chapter 12, Title 54, Idaho Code. ~~(4-26-02)T~~(10-18-02)T

(BREAK IN CONTINUITY OF SECTIONS)

SUBSECTION 009.05

009. SOLID WASTE MANAGEMENT FACILITY CLASSIFICATION.

05. Wood or Mill Yard Debris Facilities. For the period of one (1) year after ~~the final effective date of these rules~~ April 1, 2003, all Wood or Mill Yard Debris Facilities that are not exempt from these Rules as provided in Section 001.03 shall be regulated as Tier I Facilities. Thereafter, all Wood and Mill Yard Debris Facilities that are not exempt from these Rules as provided in Section 001.03 shall be regulated as Tier I Facilities unless, based on site-specific criteria including but not limited to site geology, site soils, groundwater characteristics, distance to surface waters, and site climatic data, the Department determines the facility is more appropriately regulated under a different tier classification. Facilities not regulated as a Tier I Facility shall be regulated as a Tier II Facility unless the

Department determines the facility manages waste in a manner that will form toxic leachate or gas.

~~(4-26-02)F(10-18-02)T~~

SUBSECTIONS 010.01 AND 010.01.d.iii.

010. BELOW REGULATORY CONCERN FACILITIES.

01. Applicable Requirements. The owner and operator of a new BRC facility shall comply with the following requirements prior to accepting waste. The owner and operator of an existing BRC facility shall comply with the following requirements within two (2) years from ~~the effective date of these rules~~ April 26, 2002. During the two-year period from ~~the effective date~~ April 26, 2002, existing facilities shall operate in compliance with their approved operating plan and 40 CFR 257.1 through 257.3:

~~(4-26-02)F(10-18-02)T~~

d. Open Burning and Fires. Open burning is prohibited at facilities except as authorized by these rules and IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho".

(4-26-02)T

iii. Open burning shall be conducted ~~under the following conditions unless otherwise authorized by the Department or local fire authority with appropriate jurisdiction. The open burning shall be supervised by a person capable of extinguishing the fire at all times until it is extinguished, the open burning shall not occur within fifty (50) feet of any structure, the pile for open burning shall not be larger than one hundred and fifty (150) cubic yards, only one (1) pile at a time shall be burned, and each pile shall be extinguished before igniting another and pursuant to conditions set forth by the Department or local fire authority.~~ The owner and operator of the facility shall contact the Department and the local fire authority prior to conducting open burning to report its nature and location.

~~(4-26-02)F(10-18-02)T~~

SUBSECTIONS 011.01 AND 011.01.f.iii.

011. APPLICABLE REQUIREMENTS FOR TIER I FACILITIES.

01. Applicable Requirements. The owner and operator of a new Tier I facility shall comply with the following requirements prior to accepting waste. The owner and operator of an existing Tier I facility shall comply with the following requirements within two (2) years from ~~the effective date of these rules~~ April 26, 2002. During the two-year period from ~~the effective date~~ April 26, 2002, existing facilities shall operate in compliance with their approved operating plan, if any, and 40 CFR 257.1 through 257.3:

~~(4-26-02)F(10-18-02)T~~

f. Open Burning and Fires. Open burning is prohibited at facilities except as authorized by these rules and IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho".

(4-26-02)T

iii. Open burning shall be conducted ~~under the following conditions unless otherwise authorized by the Department or local fire authority with appropriate jurisdiction. The open burning shall be supervised by a person capable of extinguishing the fire at all times until it is extinguished, the open burning shall not occur within fifty (50) feet of any structure, the pile for open burning shall not be larger than one hundred and fifty (150) cubic yards, only one (1) pile at a time shall be burned, and each pile shall be extinguished before igniting another and pursuant to conditions set forth by the Department or local fire authority.~~ The owner and operator of the facility shall contact the Department and the local fire authority prior to conducting open burning to report its nature and location.

~~(4-26-02)F(10-18-02)T~~

SECTION 012, SUBSECTION 012.01.d., AND 012.03.k.iii.

012. APPLICABLE REQUIREMENTS FOR TIER II FACILITIES.

The owner and operator of a new Tier II facility shall establish compliance with the requirements of Section 012 by obtaining Department approval of the applications required in Subsection 012.02 before beginning construction and Subsection 012.04 prior to accepting waste. The owner and operator of an existing Tier II facility shall establish compliance with the requirements of Section 012 by obtaining Department approval of the applications required in Subsection 012.04 within two (2) years ~~of the effective date of these rules~~ from April 26, 2002, and Subsection 012.02 within five (5) years ~~of the effective date of these rules~~ from April 26, 2002. During the two (2) year period from ~~the effective date~~ April 26, 2002, existing facilities shall operate in compliance with their approved operating plan, if any, and 40 CFR 257.1 through 257.3. In lieu of submitting an application, the owner and operator of existing facilities may demonstrate to the Department, compliance with Section 012 by submitting copies of existing permits and other approvals that establish compliance with the applicable siting, design, operating, closure, and post-closure requirements of Section 012 and Subsection 032.01. The owner and operator of a Tier II facility shall meet the requirements of Subsection 012.05 prior to facility closure; except that owners and operators closing Tier II facilities within eighteen (18) months ~~of the effective date of these rules~~ from April 26, 2002 shall comply with applicable cover, seeding, grading and closure requirements of the former Solid Waste Management Rules and Standards, as enumerated in Subsection 001.04.d. of these rules. (4-26-02)F(10-18-02)T

01. General Siting Requirements. The owner and operator of a Tier II facility shall comply with the following siting requirements: (4-26-02)T

d. Park, Scenic or Natural Use Restriction. The active portion of a facility shall not be located closer than one thousand (1,000) feet from the boundary of any state or national park, or land reserved or withdrawn for scenic or natural use including, but not limited to, wild and scenic areas, national monuments, wilderness areas, historic sites, recreation areas, preserves and scenic trails. (4-26-02)F(10-18-02)T

03. General Operating Requirements. The owner and operator of a Tier II facility shall comply with the following operating requirements: (4-26-02)T

k. Open Burning and Fires. Open burning is prohibited at facilities except as authorized by these rules and IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho". (4-26-02)T

iii. Open burning shall be conducted ~~under the following conditions unless otherwise authorized by the Department or local fire authority with appropriate jurisdiction. The open burning shall be supervised by a person capable of extinguishing the fire at all times until it is extinguished, open burning shall not occur within fifty (50) feet of any structure, the pile for open burning shall not be larger than one hundred and fifty (150) cubic yards, only one (1) pile at a time shall be burned, and each pile shall be extinguished before igniting another and pursuant to conditions set forth by the Department or local fire authority.~~ The owner and operator of the facility shall contact the Department and the local fire authority prior to conducting open burning to report its nature and location. (4-26-02)F(10-18-02)T

SECTION 013, SUBSECTIONS 013.01.g., AND 013.03.k.iii.

013. APPLICABLE REQUIREMENTS FOR TIER III FACILITIES.

The owner and operator of a new Tier III facility shall establish compliance with the requirements of Section 013 by obtaining Department approval of the applications required in Subsection 013.02 before beginning construction and Subsection 013.04 prior to accepting waste. The owner and operator of an existing Tier III facility shall establish compliance with the requirements of Section 013 by obtaining Department approval of the applications required in Subsection 013.04 within two (2) years ~~of the effective date of these rules~~ from April 26, 2002, and Subsection 013.02 within five (5) years ~~of the effective date of these Rules~~ from April 26, 2002. During the two (2) year period from ~~the effective date~~ April 26, 2002, existing facilities shall operate in compliance with their approved operating plan and 40 CFR 257.1 through 257.3. In lieu of submitting an application, the owner and operator of existing facilities may demonstrate to the Department, compliance with Section 013 by submitting copies of existing permits and other

approvals that establish compliance with the applicable siting, design, operating, closure, and post-closure requirements of Section 013 and Subsection 032.01. The owner and operator of a Tier III facility shall meet the requirements of Subsection 012.07 prior to facility closure; except that owners and operators closing Tier III facilities within eighteen (18) months ~~of the effective date of these rules from April 26, 2002~~ shall comply with applicable cover, seeding, grading and closure requirements of the former Solid Waste Management Rules and Standards, as enumerated in Subsection 001.04.d. of these rules. ~~(4-26-02)F(10-18-02)T~~

01. General Siting Requirements. The owner and operator of a Tier III facility shall comply with the following siting requirements: (4-26-02)T

g. Park, Scenic or Natural Use Restriction. The active portion of a facility shall not be located closer than one thousand (1,000) feet from the boundary of any state or national park, or land reserved or withdrawn for scenic or natural use including, but not limited to, wild and scenic areas, national monuments, wilderness areas, historic sites, recreation areas, preserves and scenic trails. ~~(4-26-02)F(10-18-02)T~~

03. General Operating Requirements. The owner and operator of a Tier III facility shall comply with the following operating requirements: (4-26-02)T

k. Open Burning and Fires. Open burning is prohibited at facilities except as authorized by these rules and IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho". (4-26-02)T

iii. Open burning shall be conducted ~~under the following conditions unless otherwise authorized by the Department or local fire authority with appropriate jurisdiction. The open burning shall be supervised by a person capable of extinguishing the fire at all times until it is extinguished, open burning shall not occur within fifty (50) feet of any structure, the pile for open burning shall not be larger than one hundred and fifty (150) cubic yards, only one (1) pile at a time shall be burned, and each pile shall be extinguished before igniting another and pursuant to conditions set forth by the Department or local fire authority.~~ The owner and operator of the facility shall contact the Department and the local fire authority prior to conducting open burning to report its nature and location. ~~(4-26-02)F(10-18-02)T~~

(BREAK IN CONTINUITY OF SECTIONS)

SUBSECTION 032.03.b.

032. TIER II AND TIER III APPLICATION AND PLAN REVIEW AND APPROVAL.

03. Application Review. (4-26-02)T

b. Upon receipt of the Department's determination that a siting application is complete, the owner and operator shall publish a notice in a newspaper of general circulation as determined in Section 31-819, Idaho Code, in the county and the immediate vicinity of the proposed facility and shall also provide notice to local government. The notice shall include the name and location of the proposed facility, a general description of the proposed operations, the location where the application may be reviewed, and instructions directing the public to submit comments to the Department within ~~sixty~~ thirty (30) days of the date of publication. The owner and operator shall provide a copy of the published notice and notice to local government to the Department within five (5) business days of publication. ~~(4-26-02)F(10-18-02)T~~

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.06 - SOLID WASTE MANAGEMENT RULES AND STANDARDS

DOCKET NO. 58-0106-0202 - (REPEAL OF CHAPTER)

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Fifty-seventh Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Idaho Code Section 67-5224, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Sections 39-105, 39-107 and 39-7408C, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reasons for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, Volume 02-6, June 5, 2002, page 94. The agency received no public comments on the proposal, and the rule has been adopted as initially proposed. The rulemaking record can be obtained by contacting the undersigned. This chapter is being repealed in its entirety and rewritten under Docket No. 58-0106-0201.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit its web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this rulemaking, contact Dean Ehlert at (208)373-0502, dehlert@deq.state.id.us.

Dated this 23rd day of October 2002.

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IDAPA 58, TITLE 01, Chapter 06

SOLID WASTE MANAGEMENT RULES AND STANDARDS

This chapter is being repealed in its entirety.

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-6, June 5, 2002, page 94](#).

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.07 - RULES FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS AND LEAKING PETROLEUM STORAGE TANKS

DOCKET NO. 58-0107-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Fifty-seventh Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The language in Sections 006, 012, 013, 021, 022, 023, 026, 028, 050, 051, 052, 082 and 084 of the this rule differs from the language in comparable federal regulations located in 40 CFR Part 280 and, therefore, may be interpreted as broader in scope or more stringent than the comparable federal regulation. The action is authorized by Sections 39-105 and 39-107, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reasons for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, Volume 02-7, July 3, 2002, pages 278 through 307. The agency received no public comments on the proposal. The rule has been adopted as initially proposed except at Section 023, which has been revised for clarification purposes. The rulemaking record can be obtained by contacting the undersigned.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning the proposed rulemaking, contact Rick Jarvis at (208)373-0502 or rjarvis@deq.state.id.us.

Dated this 22nd day of October, 2002.

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**IDAPA 58
TITLE 01
Chapter 07**

RULES FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS AND LEAKING PETROLEUM STORAGE TANKS

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 text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-7, July 3, 2002, pages 278 through 307](#).

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 58-0107-0201

SUBSECTION 023.03

023. OPERATION AND MAINTENANCE OF CORROSION PROTECTION.

All owners and operators of steel UST systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances: ()

03. Monthly Inspection. UST systems with impressed current cathodic protection systems must also be inspected *at least once every month* to ensure the equipment is running properly. ()

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.08 - IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS

DOCKET NO. 58-0108-0102

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2003 Idaho State Legislature for final approval. The rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Fifty-seventh Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This rule updates and clarifies long-standing administrative rules. The changes are no more stringent than the applicable federal regulations. This action is authorized by Chapter 1, Title 39, Idaho Code and Chapter 21, Title 37, Idaho Code. In addition, states which have primary enforcement responsibility for the Safe Drinking Water Act are required by 40 CFR 142.10(a) and 40 CFR 142.12(b) through (d) to adopt within two years of promulgation, national primary drinking water regulations that are no less stringent than the federal regulations in effect under 40 CFR Part 141.

DESCRIPTIVE SUMMARY: A detailed summary of the reasons for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, Volume 02-7, July 3, 2002, pages 308 through 346. The agency received no public comments on the proposal, and the rule has been adopted as initially proposed. The rulemaking record can be obtained by contacting the undersigned.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Tom John at (208)373-0502, tjohn@deq.state.id.us.

DATED this 21st day of October, 2002.

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IDAPA 58, TITLE 01, Chapter 08

IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-7, July 3, 2002, pages 308 through 346.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.08 - IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS

DOCKET NO. 58-0108-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2003 Idaho State Legislature for final approval. The rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Fifty-seventh Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Chapter 1, Title 39, Idaho Code, and Chapter 21, Title 37, Idaho Code. In addition, states which have primary enforcement responsibility for the Safe Drinking Water Act are required by 40 CFR 142.10(a) and 40 CFR 142.12(b) through (d) to adopt within two years of promulgation, national primary drinking water regulations that are no less stringent than the federal regulations in effect under 40 CFR Part 141.

DESCRIPTIVE SUMMARY: A detailed summary of the reasons for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, Volume 02-7, July 3, 2002, pages 347 through 362. The agency received no public comments on the proposal, and the rule has been adopted as initially proposed. The rulemaking record can be obtained by contacting the undersigned.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Tom John at (208)373-0502, tjohn@deq.state.id.us.

DATED this 21st day of October, 2002.

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IDAPA 58, TITLE 01, Chapter 08

IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-7, July 3, 2002, pages 347 through 362](#).

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
58.01.12 - RULES FOR ADMINISTRATION OF WATER POLLUTION CONTROL LOANS

DOCKET NO. 58-0112-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2003 Idaho State Legislature for final approval. The rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Fifty-seventh Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This rulemaking is an amendment to longstanding administrative rules that regulate activities not regulated by the federal government. This action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reasons for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 7, 2002, Volume 02-8, pages 171 through 188. The agency received no public comments on the proposal, and the rule has been adopted as initially proposed. The rulemaking record can be obtained by contacting the undersigned.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this rulemaking, contact Bill Jerrel at (208)373-0502 or wjerrel@deq.state.id.us.

Dated this 21st day of October, 2002.

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IDAPA 58, TITLE 01, Chapter 12

RULES FOR ADMINISTRATION OF WATER POLLUTION CONTROL LOANS

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-8, August 7, 2002, pages 171 through 188.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.14 - RULES GOVERNING FEES FOR ENVIRONMENTAL OPERATING PERMITS, LICENSES AND INSPECTION SERVICES

DOCKET NO. 58-0114-0201 - (FEE RULE)

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2003 Idaho State Legislature for final approval. The rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Fifty-seventh Idaho Legislature if the rule is approved by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. The rule may be rejected, amended or modified by concurrent resolution of the Legislature. In June 2002, the Board of Environmental Quality adopted the text of the proposed rule as a temporary rule, which is currently effective.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This rulemaking is an amendment to long-standing administrative rules which regulate activities that are not regulated by the federal government. The action is authorized by Sections 39-105 and 39-107, and 39-119, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reasons for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 7, 2002, Volume 02-8, pages 189 through 192. The agency received no public comments on the proposal. The rule has been adopted as initially proposed except at Section 110, which has been revised for clarification purposes. The rulemaking record can be obtained by contacting the undersigned.

FEE SUMMARY: This rulemaking is a transfer of long-standing rule text relating to the imposition of environmental fees, parcel surveys and sanitary restriction administration from Department of Health and Welfare Rule chapter IDAPA 16.05.05, Rules Governing Fees for Health and Environmental Operating Permits, Licenses and Inspection Services to new DEQ rule chapter IDAPA 58.01.14, Rules Governing Fees for Environmental Operating Permits, Licenses and Inspection Services. Collection of the fees is authorized by Section 39-119, Idaho Code.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Barry Burnell at (208)373-0502 or bburnell@deq.state.id.us.

DATED this 22nd day of October, 2002.

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IDAPA 58, TITLE 01, Chapter 14

RULES GOVERNING FEES FOR ENVIRONMENTAL OPERATING PERMITS, LICENSES AND INSPECTION SERVICES

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 text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 02-8, August 7, 2002, pages 189 through 192](#).

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 58-0114-0201

SUBSECTION 110.02

110. INDIVIDUAL AND SUBSURFACE SEWAGE DISPOSAL SYSTEM PERMIT.

For those services rendered in the process of issuing installation permits for individual and subsurface sewage disposal systems (see IDAPA 58.01.03, "Rules Governing Individual and Subsurface Sewage Disposal Systems"), the following fees apply: ()

02. Multiple Households Or Buildings. For individual and subsurface sewage disposal systems serving more than one (1) household or building in any combination, the fee shall be ninety dollars (\$90) plus ten dollars (\$10) per each household or *per* each two hundred fifty (250) gallons of flow *from buildings*. ()

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.20 - RULES FOR ADMINISTRATION OF DRINKING WATER LOAN ACCOUNT

DOCKET NO. 58-0120-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2003 Idaho State Legislature for final approval. The rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Fifty-seventh Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This rulemaking is an amendment to longstanding administrative rules that regulate activities not regulated by the federal government. This action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reasons for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 7, 2002, Volume 02-8, pages 193 through 210. The agency received no public comments on the proposal, and the rule has been adopted as initially proposed. The rulemaking record can be obtained by contacting the undersigned.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this rulemaking, contact Bill Jerrel at (208)373-0502 or wjerrel@deq.state.id.us.

Dated this 21st day of October, 2002.

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IDAPA 58, TITLE 01, Chapter 20

RULES FOR ADMINISTRATION OF DRINKING WATER LOAN ACCOUNT

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-8, August 7, 2002, pages 193 through 210.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.22 - RULES FOR ADMINISTRATION OF PLANNING GRANTS FOR PUBLIC DRINKING WATER FACILITIES

DOCKET NO. 58-0122-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2003 Idaho State Legislature for final approval. The rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Fifty-seventh Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This rulemaking is an amendment to longstanding administrative rules that regulate activities not regulated by the federal government. This action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reasons for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 7, 2002, Volume 02-8, pages 211 through 223. The agency received no public comments on the proposal, and the rule has been adopted as initially proposed. The rulemaking record can be obtained by contacting the undersigned.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this rulemaking, contact Bill Jerrel at (208)373-0502 or wjerrel@deq.state.id.us.

Dated this 21st day of October, 2002.

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IDAPA 58, TITLE 01, Chapter 22

RULES FOR ADMINISTRATION OF PLANNING GRANTS FOR PUBLIC DRINKING WATER FACILITIES

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-8, August 7, 2002, pages 211 through 223.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

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Bulletin Summary of Proposed Rulemakings

PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the new issue of the state Administrative Bulletin.

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE PO Box 83720, Boise, ID 83720-0036

16.03.05 – Rule Governing Eligibility for Aid to the Aged, Blind and Disabled.

16-0305-0203 – Changes requirement for face-to-face interview to telephone interview; adds Medicaid coverage for certain eligible disabled aliens; clarifies definition of "room and board"; participant may require waiver services as a condition of eligibility for Home and Community Based Services; effective 1-1-03, income and resource exclusions for AABD will be used for eligibility determinations for both Qualified Medicare Beneficiary (QMB) eligibility and for Specified Low Income Medicare Beneficiary (SLMB) eligibility and SLBM III group is being eliminated.

16.03.09 – Rules Governing the Medical Assistance Program.

16-0309-0212 – Clarifies provider qualifications and updates terminology to read consistently within the Traumatic Brain Injury rules and with other Home and Community Based Services Waivers.

16-0309-0213 – Changes are effective 7-1-02 and comply with recent court ruling that only abortions to save the life of the mother or in cases of rape or incest will be covered through Medicaid and changes requirement to allow that only one physician is needed to certify the need for an abortion.

16-0309-0214 – Clarifies Medicaid prescription drug program and allows Medicaid to review brand name prescription drugs for medical necessity when there may be a less expensive and therapeutically interchangeable drug that might also be appropriate for the client's medical condition rather than list excluded drugs and drugs which must be prior authorized by the Department; and, except for medically necessary situations, requires that 75% of the estimated days supply of prescription medication be used before Medicaid will pay for a refill.

16-0309-0215 – Because of a reduction in Targeted Service Coordination and Early Periodic Screening, Diagnosis, and Treatment reimbursement, changes relax requirements for service coordinators in providing case management services by removing all caseload limit requirements and requirement for availability of a care coordinator on a 24 hour basis and makes different types of case management requirements more consistent; reduces ongoing Targeted Case Management (TCM) for the mentally ill from unlimited hours to a maximum of 4 hours per month and removes all caseload limit requirements and requirement for availability of a case manager on a 24 hour basis; crisis assistance will no longer be a required core element of TCM; reduces hours available for initial evaluation and service planning from 8 to 6 hours.

16-0309-0216 - Changes comply with legislative intent language, which defines Medicaid dental coverage for persons 21 years of age or older as "emergency services only", to rely on dentists and oral surgeons for determining when a dental emergency exists that requires immediate dental intervention.

16-0309-0217 – Replaces "Peer Review Organization" with "Quality Improvement Organization" per federal regulation; allows penalties to be assessed when timely review is not obtained from the Department prior to delivery of physician or outpatient procedures rather than for late submission only of review document to the QIO.

16-0309-0218 – Changes would discontinue Medicaid special reimbursement for care coordination for clients using Clozapine because providers are already reimbursed for managing client care and medications.

16.03.10 – Rules Governing Medicaid Provider Reimbursement in Idaho.

16-0310-0203 - Changes the methodology by which hospital rate and cost reimbursement settlements are set.

16-0310-0204 - Eliminates requirement that ICF/MR facilities must purchase wheelchairs for residents and will provide an incentive to facilities to admit wheelchair bound persons.

16.06.14 - Rules Governing the Prevention of Minors' Access to Tobacco Products.

****16-0614-0201** – Allows Department to refuse to renew a tobacco sales permit to a retailer who has unpaid civil money penalties for violations on the permit until fine is paid in full; adjusts the date used to determine the number of permits or retailers from January 1 of each year to December 31 of the previous year to provide the most accurate accounting of active retail permits during the prior year.

COMMENT PERIOD FOR THE PREVIOUS DOCKETS ENDS 12/25/02.

**IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT
PO Box 7129, Boise ID 83707-1129**

39.03.41 – Rules Governing Traffic Control Devices.

39-0341-0201 - Updates the incorporation by reference and adopts the most recent MUTCD and identifies 19 specific exceptions that are necessary to bring it in line with Idaho Code, correct errors and accommodate Department operations and local transportation agencies. Comment by: 12/26/02.

39.03.63 - Rules Governing Traffic Accident Memorials.

39-0363-0201 - Changes remove gold star as the only allowable memorial; sets new guidelines for fabrication and placement of memorials; provides for removal on non-conforming memorials; requires adjacent property owners be notified before placement; sets guidelines for participants' safety when on state highways. Comment by: 12/26/02.

****PUBLIC HEARINGS HAVE BEEN SCHEDULED FOR THIS DOCKET.**

Please refer to the Idaho Administrative Bulletin, **December 4, 2002, Volume 02-12** for notices and text of all rulemakings, public hearing schedules, Governor's executive orders, and agency contact names.

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The Idaho Administrative Bulletin and Administrative Code are available on-line at: <http://www2.state.id.us/adm/adminrules/>

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

**This index tracks the history of all agency rulemakings from 1993 to the present.
It includes all rulemaking activities on each chapter of rules
and includes negotiated, temporary, proposed, pending
and final rules, public hearing notices
and vacated rulemaking notices.**

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